(2019) 09 ATPMLA CK 0006

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : MP-PMLA-4147/BNG/2017, FPA-PMLA-2120/BNG/2017

M/S. Devas Multimedia Pvt. Ltd. APPELLANT

Vs

Deputy Director, Directorate Of Enforcement, Bangalore & Ors RESPONDENT

Date of Decision : 11-09-2019

Acts Referred:
Prevention Of Money Laundering Act, 2002 — Section 3, 4, 8(1), 8(4), 26
Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Indian Penal Code, 1860 — Section 120B, 420

Citation : (2019) 09 ATPMLA CK 0006

Hon'ble Judges : Manmohan Singh, J;G. C. Mishra, Acting Chairman

Bench : Division Bench

Advocate : Rajiv Nayar, Omar Ahmad, Arjun Dewan, Atul Tripathi

Final Decision : Allowed

Judgement

FPA-PMLA-2120/BNG/2017

1. The present Appeal under section 26 has been filed against the Impugned Order dated 11 October 2017, whereby the Adjudicating Authority

(â??AAâ?) has confirmed the attachment made by the Provisional Attachment Order dated 27 February 2017 (â??PAOâ?). The Respondent No.1

by the PAO had attached properties (in the form of mutual funds and bank accounts) to the tune of Rs. 21,38,66,041 (Twenty-one crores thirty-eight

lacs sixty-six thousand and forty-one] of the Appellant.

2. The Appellant submits that the Impugned Order suffers from serious legal infirmities and for non-application of mind; as the Adjudicating Authority

does not deal with the submissions of the Appellant and therefore, lacks a judicial approach as all issues raised in the reply has not discussed and legally decided. The impugned order has been passed in complete violation of the statutory provisions.

3. The attachment of the Appellantâ?s properties, have been vitiated on the ground that the Respondent No.1 has failed to supply its â??reasons to

believeâ? for the issuance of the PAO to the Appellant. Similarly, the SCN also suffers from the same illegality, as the Adjudicating Authority, at the

time issuance of SCN, failed to supply the â??reasons to believeâ? to the Appellant for issuing the SCN. In the impugned order that hearing officer

has merely re-producing the pleadings of the parties but reply filed has not been dealt with nor many relevant documents were served to the appellant.

4. The factual position is that an FIR bearing No. 2172015A002 dated 16-3-2015 has been registered by the CBI/ACU(V), New Delhi under Section

13(1)(d) read with 13(2) of the PC Act, 1988 and Section 120B read with 420 of the IPC for Criminal Misconduct, Criminal Conspiracy and Cheating

against the following persons.

(a) Shri K.R. Sridhara Murthi, the then ED of M/s. Antrix Corporation Ltd., Bangalore.

(b) Shri R. Vishwanathan, Advisor to M/s. Forge Advisors, LLC, USA and R/o. 11007, Cedarwood Drive, North Bethesda, MD-20852, USA.

(c) Shri M.G. Chandrashekhar, Ex-ISRO Official and Managing Director and Representative of M/s. Forge Advisors LLC, USA and R/o. 1011,

Arlington Bluvd, #706, Arlington VA 22209-2233, USA.

(d) M/s. Devas Multimedia Pvt. Ltd., Bangalore.

(e) Other unknown Public Servants of M/s. Antrix Corporation Ltd.,/ISRO, Department of Space.

5. That, the CBI filed the charge sheet in the subject case on 11-8-2016 against the 9 accused as detailed below:

(a) Shri K.R. Sridhara Murthi, Managing Director (Retired), Antrix Corporation Ltd.,

(b) Shri Ramachandran Vishwanathan, President & CEO M/s.

(c) Shri M.G. Chandrasekhar, Director M/s. Devas Multimedia Pvt. Ltd.

(d) M/s. Devas Multimedia Pvt. Ltd., Bangalore

(e) Shri G. Madhavan Nair, Retired Secretary DoS, Chairman ISRO & Chairman Antrix

(f) Shri Veena S. Rama Rao, Then Additional Secretary, DoS

(g) Shri A. Bhaskarnarayana, Retired Director, ISRO & Satellite

(h) Shri D. Venugopal, Director M/s. Devas Multimedia Pvt. Ltd.,

(i) Shri M. Umesh, Chartered Accountant

6. PMLA Case

(a) Statement of Shri K.R. Sridharamurthi, the then Executive Director and Managing Director of ACL was recorded on 20-10-2015. In the said

statement Sri K.R. Sridharmurthi stated his association with the ACL, his meetings with Shri Ramachandran Viswanathan and Shri M.G.

Chandrasekhar of M/s. Forge Advisors LLC, USA, and the arbitration & penalty clause in the Agreement dated 28-1-2005 entered between ACL

and DMPL.

(b) Statement of Shri V.R. Katii, Ex-Director of DMPL was recorded on 11-8-2016. In the said Statement Shri V.R. Katti has stated that he was the

Programme Director of GEOSAT and hence the ISRO has nominated him as a Director; being a nominee Director he never visited the DMPL Office

nor attended any of the Board meetings of DMPL and not received any remuneration from the DMPL; Further, resigned as Director of DMPL in the

month of Octâ??2010 i.e. before his retirement from the Government Service on 31-10-2010

(c) Letters were addressed to all the Mutual Fund Companies requesting them not to redeem/release the investments made by DMPL till further

correspondence from this office. Similarly the letters were also addressed to al the Banks requesting them not to allow the DMPL to withdraw the

money from their Accounts and not to redeem any FDâ??s/Term Deposits of DMPL (if any) till further correspondence from this office.

(d) Reply dated 7-1-2017 received from Reliance Nippon Life Asset Management Limited informing that they have put the investment of Rs.

5,23,82,400/- pertaining to DMPL under freeze.

(e) Reply dated 9-1-2017 received from DHFL Pramerica Asset Managers Pvt. Ltd., informing that they have blocked the investments worth Rs.

11,57,76,000/- of the subject company.

(f) Search was conducted under the provisions of PMLA on the premises of M/s. Devas Multimedia Pvt. Ltd., n 23-1-2017 and certain relevant documents viz., original agreement dated 28-1-2005 between Antrix Corporation Ltd., and Devas Multimedia Pvt. Ltd. Bangalore (DMPL) regarding

the leasing of space segment capacity to DMPL, Forex outward remittance documents, Balance Sheets for the years 2011-12 & 2012-13 and other

documents were seized. Consequent on search the statements dated 23-1-2017 of Shri Ranganathan Mohan, Director (Finance & HR), Shri

Venugopal, Director and Chief Technology Officer, Shri Vinod Sundar Raman, Ex-Company Secretary were recorded under the provisions of

PMLA. Further, the statement dated 25-1-2017 of Shri D. Nataraj, Ex-Director of DMPL was recorded under the provisions of PMLA.

(g) During the investigation it is noticed that DMPL has transferred an amount of Rs. 76,19,04,563/- towards share subscription and Rs.

180,77,58,989/- towards Business Support Service to its subsidiary M/s. Devas Multimedia America Inc. and Rs. 232,11,14,734/- as legal expenses

mainly to SKADDAN, USA towards the arbitration case filed by DMPL against ACL.

(h) During the investigation all the three Directors agreed that even though M/s. Devas Multimedia America Inc. is a subsidiary of DMPL the fact is

M/s. Devas Multimedia America Inc. is controlling DMPL. It was further revealed that, the total staff of DMPL was only 3 and the Staff Strength of

M/s. Devas Multimedia America Inc. was also only 3. The said Directors also stated that, there is no such Business Support Service provided by M/s.

Devas Multimedia America Inc. and the Business Support Service is only a guise/ pretext to transfer money out of the country.

(i) Further, an amount of Rs. 58,37,34,000/- is available with Antrix Corporation Ltd., which was paid by DMPL towards the upfront capacity

reservation fee.

(j) Other deposits to the extent of about Rs. 3 Crores which was given as inter-corporate loan by M/s. Devas Multimedia Pvt. Ltd., to its group

companies were identified and the concerned bank was asked not to release the said amount.

(k) Provisional Attachment Order No. 5/2017 dated 27-2-2017 was issued attaching an amount of Rs. 79,76,00,041/- available as upfront reservation

fee with ACL as well as in the form of Mutual Fund Deposits and inter-corporate loan.

(l) Aggrieved by the Provisional Attachment Order DMPL filed WP No.

11544/2017 before the Honâ?ble High Court of Karnataka and the Honâ?ble

High Court in its Order dated 15-3-2017 has ordered that â??provisional attachment may continue. However, further precipitation cannot be done

until the next date of hearingâ??.

The Honâ?ble High Court in its further order dated 10-4-2017 has ordered that, â??the benefit of the interim observations dated 15-3-2017 is

extended till consideration of this Petition and it is further made clear that keeping in view that the provisional attachment will continue, the authority

may proceed with the matter before it but however, the final order shall not be passedâ??.

(m) Aggrieved by the Order of the Honâ?ble High Court in W.P. No. 11544/2017, DMPL (Defendant -1) filed a Writ Appeal No. 2034/2017 before

the Division Bench headed by the Honâ??ble Chief Justice of Karnataka. However, the said Writ Appeal was dismissed.

(n) The Honâ?ble Adjudicating Authority, PMLA vide the Order dated 16-8-2017 confirmed the subject PAO in respect of the other Defendant Nos.

2, 3 & 4 viz., M/s. Antrix Corporation Ltd., M/s. DCT Telecommunications Pvt. Ltd., and M/s. DCT Networks Pvt. Ltd., involving Proceeds of Crime

totally amounting to Rs. 62,27,02,909/-

(o) The Honâ?ble High Court of Karnataka in the final order dated 6-10-2017 dismissed the writ petition No. 11544/2017 filed by DMPL and also

made clear that period taken in prosecuting the subject writ petition before the court shall be excluded for the purpose of time limit prescribed under

the Act, with regard to duration of the Provisional Attachment Order.

(p) Consequent up on the Honâ?ble High Court order dated 6-10-2017, the Honâ?ble Adjudicating Authority vide the Order dated 11-10-2017 in the

O.C. No. 2017 confirmed the PAO in respect of the attachment involved in the W.P. No. 11544/2017.

(q) As on date, entire Proceeds of Crime attached under Provisional Attachment Order No. 5/2017 dated 27-2-2017 amounting to Rs. 79,76,00,041/- +

the accumulated interest totally amounting to Rs. 80,50,12,484/- was already taken possession by the Directorate u/s 8(4) of the PMLA.

(r) Further, Prosecution Complaint for offence of Money Laundering u/s 3 punishable u/s 4 of the Act, was filed against DMPL and 9 others before

the Honâ?ble Principal City Civil & Sessions Judge, Bangalor City and Special

Court under the Prevention of Money Laundering Act, 2002 on 12-7-

2018 and Special CC No. 477/2018 has been allotted to the said case and same was made over to the Honâ?ble CBI Court/Spl, Court under PMLA,

Bengaluru.

7. After completing the formalities, the provisional attachment order was passed which was confirmed by the impugned order dated 11.10.2017.

8. When the appeal was listed for hearing, on the following issues, the same has been argued by Mr. Rajiv Nayar, learned Sr. Counsel appearing on

behalf of appellant:

(a) Failure to supply â??Reasons to believeâ?? has vitiated the entire PMLA proceedings.

(b) Complete non-application of mind at the time of issuance of SCN/No formation of opinion by the Adjudicating Authority.

(c) No Proceeds of Crime.

(d) The Arbitration Awards.

(e) Malafide actions of the Government of India.

(f) PMLA has no retrospective operation.

9. One of the main arguments of the learned Sr. Counsel who as referred the copy of charge sheet dated 11.08.2016, PAO dated 27.02.2017, original

complaint dated 12.03.2017 as well as impugned order dated 11.10.2017. It is evident that the PAO, the Original Complaint and the Impugned Order

have simply copy pasted the contents of the CBI Chargesheet. In the present, very serious issues are involved, those have to be decided legally. We

have examined the chart filed alongwith rejoinder as Annexure-A, which highlights the similarities between the Chargesheet, the PAO, the Original

Complaint and the Impugned Order. Shockingly, the contents of these documents are almost identical and which evidences that the Respondent No.1

i.e. the author of the PAO and Original Complaint and the AA i.e. the author of the Impugned Order, has not applied his mind. He who passed the

order was not the Judicial Member. The order was passed in very casual manner. In serious and complicated issues cut paste of pleadings and

documents is not acceptable. It is the approach of claimed that PMLA is an independent proceeding and it has own mechanism to decide the matter

on merit.

10. It appears to us that the reply, appellant has put its case in details issue-wise. No doubt, the contents of the reply was re-produced but the said

legal issues have not been decided.

11. In the light of above, the impugned order is set-aside on the reason that the impugned order has without assigning any reasons, and much less any

legally cogent reasons, independent mind has not been applied.

We allow the appeal and the matter is remanded back to Adjudicating Authority for fresh adjudication after considering the reply filed by the appellant

to the notice under Section 8 (1) of Act. The Adjudicating Authority shall hear the matter on all the issues and shall consider all the issue raised in the

reply.

12. The Adjudicating Authority is granted six months time from 21.10.2019 to decide the matter by the Member (Law) after hearing both side.

13. The parties to appear before Adjudicating Authority for direction on 21st October, 2019.

14. No costs.

