

ECIR/DLZO-I/01/2019 dt. 24.01.2019

Director of Enforcement vs. M/s OPG Securities Pvt. Ltd. and another

CT Case no. 34/2022

CNR no. DLCT11-000811-2022

20.01.2023

Present: Sh. Nitish Rana, Ld. Spl. PP for ED alongwith Sh. Ashish Kashyap, Sh. Ali Khan, Sh. Diwakar, Ld. Counsels for ED and Sh. Mayank, Assistant Enforcement Officer.

The present complaint U/s 45 r/w Section 44 of the Money Laundering Act, 2002 for commission of the offences U/s 3 of PMLA read with Section 70, punishable U/s 4 PMLA 2002 has been filed by the complainant who is the Assistant Director of Directorate of Enforcement, Ministry of Finance, Govt. of India.

The brief facts of the case as per FIR no. RCAC12018 A0011 dt. 28.05.2018 by CBI are that the said FIR was registered against Sh. Sanjay Gupta, Sh. Aman Kokrady, Sh. Ajay Narottam Shah, M/s OPG Securities Pvt. Ltd. and the unknown officers/officials of SEBI and NSE, on the allegations of criminal conspiracy, attempt to give and receive bribe, misuse of officials position and destroying evidence.

As per the aforesaid FIR, Sh. Sanjay Gupta, owner and promoter of M/s OPG Securities Pvt. Ltd. abused the server architecture of NSE in criminal conspiracy with some known and unknown officials of NSE and with the help of his brother in law Aman Kokrady and the said officials of NSE gave M/s OPG Securities Pvt. Ltd. access to the servers which were technologically latest and least crowded to help it in being mostly the first one to login on the exchange server of the NSE.

It is alleged that Sanjay Gupta had unfair access to the Co-location facility of NSE between 2010 to 214 which enabled his above named company to login first onto the secondary server and get the data

before anyone else which allowed a split second faster access to the data feed of NSE and even a split second faster access is considered a huge gains for a stock trader.

It is alleged that at that time, the NSE did not have system of Tick By Tick Server at a fixed time everyday and Sanjay Gupta with the help of unknown persons, managed the data centre staff of NSE to know the switching on time of NSE exchange servers.

It is stated that even during October, 2012, when NSE improved the system of imbalance load factor among different TBT Co-Location servers and introduced the load balancer among the various TBT Co-Location Server, accused Sanjay Gupta again managed the data centre staff of NSE to let OPG Securities Pvt. Ltd. connected to the backup server especially. The back up servers had zero load and therefore provided far better and fast access to M/s OPG Securities Pvt. Ltd. in comparison to other brokers who were connected to the primary server, which resulted into wrongly gain to M/s OPG Securities Pvt. Ltd. and wrongful loss to other brokers/investors.

Further, on receiving the complaints of exploitation of the TBT Architecture by M/s OPG Securities Pvt. Ltd., SEBI conducted an inquiry and as per the Technical Advisory Committee report of SEBI, M/s OPG Securities gained materially by exploiting the architecture of NSE. As per the TAC report as well as the Forensic Review of Deloitte Touche Tohmatsu, M/s OPG Securities was first to login in most cases during the trading sessions. Sanjay Gupta also bribed the unknown officials of SEBI to obtain favourable report, in respect of role of M/s OPG Securities, from SEBI in the ongoing inquiry. Sanjay Gupta also got deleted some of the important mails, messages and logs etc. related to the co-location controversy in order to destroy the electronic evidence.

It is alleged that Ajay Narottam Shah had been instrumental in exploitation of the TBT Server as he had collected the NSE data in the name of carrying out some research and passed the data to some private persons who developed a software called 'Chanakya', which was sold to selected brokers including M/s OPG Securities Pvt. Ltd. to exploit the TBT Architecture of NSE by using the said software. M/s OPG Securities illegally traded in various other countries and has also raised funds from abroad.

As per the charge-sheet filed by CBI in the aforesaid FIR, investigation established that Ms. Chitra Ramkrishna and Sh. Anand Subramanian had entered into a criminal conspiracy, and in pursuance to the same, Ms. Chitra Ramkrishna abused her official position as the Joint Managing Director (JMD) as well as Managing Director (MD) of NSE to illegally and arbitrarily appoint Sh. Anand Subramanian as the Chief Strategic Advisor to MD, raised his compensation and re-designated him as the Group Operating Officer without the approval of the Nomination and Remuneration Committee of NSE Board. She also exercised undue influence on the concerned departments while sending replies to SNACO and SEBI.

Supplementary charge-sheet has already been filed against Sanjay Gupta, Aman Kokrady, Abhilashi Kukreja @ Abhilash Thakur, Vikas Goenka & M/s OPG Securities Pvt. Ltd. on 18.08.2022.

It is stated that SEBI had received complaint dated 08.01.2015 and 10.08.2015 regarding the co-location facility provided by NSE wherein it was alleged that preferential access was given by NSE to M/s OPG Securities for TBT data feed and in pursuance to that investigation was initiated by SEBI. A copy of the complaint was also forwarded to NSE with an advise to examine the matter and give pointwise reply. NSE in their response submitted that the exchange is fully satisfied and the

issue raised in the complaint are completely baseless, devoid of facts and imaginary, whereas, the SEBI enquiry revealed otherwise.

It is stated that in order to analyze the matter, an Expert Committee headed by Prof. OM Damani was set up by SEBI which collected data from NSE and submitted its findings to SEBI on 02.03.2016. The committee pointed out the flaws in the NSE architecture and the role of OPG Securities. However, NSE under Ms. Chitra Ramkrishna did not cooperate with Prof. Om Damani, Expert Committee of SEBI.

As per the present complaint, the brief facts of the scheduled offence are that an investigation under PMLA was initiated vide F. No. ECIR/DLZO- 1/01/2019 in Enforcement Directorate, Delhi Zone-I and is under investigation in Delhi Zone-1. The LEA case of scheduled offence vide RC AC1 2018 A0011 dated 28.05.2018 under Sections 120-B & Section 204 of IPC & Section 7, 8 & 13(2) r/w 13(1)(d) of PC Act, 1988 was under investigation. However subsequently, CBI filed charge sheet for commission of offences U/s 120B r/w 201, 204, 420 IPC and Section 85, 66 r/w 43 of IT Act 2000 and 13(2) r/w 13(1)(d) PC Act, 1988 against Sanjay Gupta, Aman Kokrady, Vikas Goenka, Ms. Abhilasha Kukreja @ Abhilasha Thakur, M/s OPG Securities Pvt. Ltd. (through its Authorised representative) and Ms. Chitra Ramkrishna, for criminal conspiracy, cheating and criminal misconduct.

It has further been stated that as the offences for which the impugned FIR dated 28.05.2018 was registered by CBI are covered under the definition of Scheduled Offence under Prevention of Money-laundering Act, 2002 (PMLA), Directorate of Enforcement had initiated investigations under the provisions of Prevention of Money-laundering Act, 2002 in respect of the said offences covered under the above CBI FIR dated 28.05.2018 vide F. No. ECIR/DLZO-1/01/2019 on 24.01.2019.

The present complaint has been filed against M/s. OPG Securities Private Limited, OPG House, 4/10, Asaf Ali Road, Delhi and Sanjay Gupta, R/o E-24, Preet Vihar, New Delhi.

As per the complaint, various movable and immovable properties were provisionally attached vide PAO 03/2021 dt. 31.03.2021 issued under Section 5 of PMLA, 2002 and the same were confirmed vide order dt. 22.12.2021 in OC 1466/2021 by the Ld. Adjudicating Authority under Section 8 of PMLA, 2002.

As per the complaint, evidence was collected as result of action u/s 50 of PMLA to prove that all the conditions as stipulated u/s 3 of the PMLA r/w Section 2(1)(u) of the PMLA are satisfied. Statements of various persons were recorded. Documentary evidence was collected. The documents corroborate the factual position stated by various persons under Section 50 of PMLA.

As per the complaint, after initiation of investigation vide F. No. ECIR/DIZO-1/01/2019 in Enforcement Directorate, Delhi Zone-I in respect of the scheduled offence and criminal activity related to scheduled offence vide CBI- RC /AC-1/2018/A0011 under sections 120-B & 420 of IPC & Section 13(2) r/w 13(1)(d) of PC Act, 1988, statements of many persons were recorded and various documents were collected during the course of investigations.

It has been alleged that accused Sanjay Gupta was also examined during investigation and on being asked about the Co-location scheme of the NSE, he submitted that as a trader, all he knows is that NSE had introduced a Co-location scheme long back to facilitate member brokers/institutions to put their servers in Co-location and there were monthly & yearly charges to rent the server space. Further, on being asked about the gain of M/s OPG Securities Pvt. Ltd from Co-location scheme,

he submitted that all the gains were mentioned in balance sheets of M/s OPG Securities Pvt. Ltd and there were no undue gains made from Co-location scheme by M/s OPG Securities Pvt. Ltd.

It is alleged in the complaint that in terms of Section 70 of PMLA, 2002 where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Furthermore, as admitted by Smt. Sangeeta Gupta in her statement dated 02.07.2019, the factual position is that the corporate structure was nothing but a platform exploited by Sh. Sanjay Gupta to carry out his nefarious designs and Smt. Sangeeta Gupta was merely carrying out his directions and signing documents as per his bidding without any regard for the actual role the director of a company is expected to play.

It is further alleged that the corporate structure of accused is a camouflage and sham deliberately created to avoid liability in fraudulent matters and the movable and immovable properties held in the name of individual directors/shareholders are to be treated at par with the properties in the name of M/s. OPG Securities Private Limited for proceeds of crime. The movable/immovable properties collectively valued at Rs. 39,26,72,946/- are proceeds of crime as defined under Section 2 (1) (u) of Prevention of Money-Laundering Act, 2002.

It is further contended that the investigation so far has revealed siphoning of funds amounting to Rs. 50.40 Crore by M/s. OPG Securities Private Limited which is related to criminal activity of scheduled offence. Such proceeds of crime were laundered by way of projecting the same as

business income from genuine activities and were integrated into the mainstream as such business income and was used for acquisition of properties as well as in meeting business expenses.

It is alleged that investigation till date revealed quantification of such POC to the tune of Rs. 50.40 crore which had been used by M/s. OPG Securities Private Limited and a part of the same had dissipated. As such, properties having value of Rs. 39,26,72,946/- in the hands of various persons as explained are nothing, but proceeds of crime as defined under Section 2 (1) (u) of PMLA, 2002. Further acquisition of proceeds of crime by way of criminal activity related to scheduled offences which is layered and integrated into mainstream economy leading to its projection as untainted money has led to commission of offence of money laundering under section 3 of PMLA, 2002. Therefore, the said properties are involved in money laundering.

It is further alleged that this amount of Rs. 50.40 Crore (quantified as on date) is nothing but proceeds of crime as defined under Section 2 (1) (u) read with 2 (1) (v) of PMLA, 2002 and it can be safely concluded that the profits made by M/s. OPG Securities out of the criminal activity relating to the scheduled offence are nothing but the 'Proceeds of crime' as defined under Section 2 (1) (u) of PMLA, 2002 inasmuch as that the same have been derived by way of criminal activity related to the scheduled offences for which CBI has registered the said FIR dated 28.05.2018 and had filed the Charge Sheet dated 18.08.2022.

As per the complaint, the role played by accused M/s OPG Securities Private Limited is as follows : -

“M/s. OPG Securities Private Limited had made illegal gain of Rs. 50.40 Crore (quantified as on date) by misusing the scheme of Co-Location facilities devised by

NSE. Investigations established that TCP/IP TBT system was designed to send TBT data feed sequentially in the sequence in which the trading members were connected/logged-in to the application. The said sequence remained unaffected even if the trading member disconnected during the day and then reconnected and TCP/IP TBT was prone to manipulation. OPG through its director or other employee(s) was in close touch with NSE/NSEIT employees which reflected from the preferential treatment extended to OPG, completely ignoring the negative recommendations made by junior employees. There were direct e-mail exchanges between the employees of OPG and NSE without involving COLO support team which indicates a conspiracy to make unlawful gains by utilizing rather misutilizing the TCP/IP TBT architecture with a criminal intent. Analysis of Login data revealed that OPG logged in first on 87.25% of the number of trading days during the year 2012 on TBTCOLO26, on 96.80% of the number of trading days on TBTCOLO23, 99.20% on TBTCOLO26 and 97.2% on TBTCOLO27 during the year 2013 and during the period from January 1, 2014 to April 6, 2014 (i.e. prior to introduction of MTBT), OPG had managed to login first 100% of number of trading days on TBTCOLO 27 (Backup server). In the year 2010, 2011 & post year 2014, the percentage of first login by OPG was disproportionately less in comparison to the year 2012, 2013 & 2014 (upto 06.04.2014). OPG was logging into secondary server on almost all the trading days in the year 2013 & 2014. That too, in view of the fact that in the normal course, a member can connect to secondary server only if no data is available from primary server, is highly irregular and points to a concerted effort to gain unlawfully by getting the first/early log in advantage through primary as well as secondary server in utter disregard of the prevalent COLO guidelines and without any oversight by the persons who were supposed to stop such illegal practices. OPG was logging into secondary server in the beginning of the day itself without logging into primary

servers first. These facts reveal the concerted action on part of OPG acting through its director to make unlawful and illicit gains (Rs. 50.40 Crores) with a criminal intent. During the course of investigations, unlawful gains of first login pertaining to M/s. OPG Securities Private Limited by early login to both primary as well as secondary servers and also by login to secondary servers (even if it was not early) have been taken into account. Since the investigations were restricted to Proprietary trade of OPG, the amount gained by "first login" in the "proprietary trade" is the quantum of unlawful gains made by OPG by misusing the COLO Facility by first login. The said amount after deduction of securities transaction tax comes to as Rs. 50.40 crores.

Further in terms of Section 70 of PMLA, 2002, where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and shall be punished accordingly. Thus, in terms of Section 70 ibid M/s. OPG Securities Private Limited is liable to be proceeded against and be punished. Section 70 (2) of PMLA 2002 provides that notwithstanding anything contained in subsection (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

It is alleged that M/s. OPG Securities Private Limited is

guilty of offence of money laundering as defined in Section 3 of the PMLA, 2002 read with Section 70 ibid as it was directly or indirectly indulging in or knowingly assisting in and was actually involved in all or any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property”.

As per the complaint, the role of accused Sanjay Gupta is as follows :-

“Sanjay Gupta, being the director of M/s. OPG Securities Private Limited was instrumental in generation/acquisition of proceeds of crime by way of making illegal gains and abusing the server architecture of NSE. Sanjay Gupta intentionally disregarded the rules and regulations/circular/ guidelines of NSE issued for co-location and took advantage of the absence of any load balancer and randomizer in the F&O Segment by accessing data first ahead of others on the secondary servers. That colocation was already giving an advantage of time and knowledge of price ahead of other traders. To take the advantage of several steps ahead by logging-in first to the secondary server, Sanjay Gupta clearly demonstrated his intent of cheating NSE, other trading members and gaining undue advantage (illegal gains) at the cost of other brokers.

M/s. OPG Securities Private Limited had made illegal gain of Rs. 50.40 Crore(quantified as on date) by misusing the scheme of Co-Location facilities devised by NSE. Investigations established that TCP/IP TBT system was designed to send TBT data feed sequentially in the sequence in which the trading members were connected/logged-in to the application. The said sequence remained unaffected even if the trading member disconnected during the day and then reconnected and TCP/IP TBT was prone to manipulation. OPG through its director or other employee(s) was in close touch with NSE/NSEIT employees which reflected from the preferential treatment extended to OPG completely ignoring the negative recommendations made by junior employees. There were direct e-mail exchanges between the employees of OPG and NSE without involving COLO

support team also indicates a conspiracy to make unlawful gains by utilizing rather misutilizing the TCP/IP TBT architecture with a criminal intent. Analysis of Login data revealed that OPG logged in first on 87.25% of the number of trading days during the year 2012 on TBTCOL026, on 96.80% of the number of trading days on TBTCOLO23, 99.20% on TBTCOL026 and 97.2% on TBTCOLO27 during the year 2013 and during the period of January 1, 2014 to April 6, 2014 (i.c. prior to introduction of MTBT). OPG had managed to login first 100% of number of trading days on TBTCOLO 27 (Backup server). In the year 2010, 2011 & post year 2014, the percentage of first login by OPG is disproportionately less in comparison to the year 2012, 2013 & 2014 (upto 06.04.2014), OPG was logging into secondary server on almost all the trading days in the year 2013 & 2014. That too, in view of the fact that in the normal course, a member can connect to secondary server only if no data is available from primary server, is highly irregular and points to a concerted effort to gain unlawfully by getting the first/early log in advantage through primary as well as secondary server in utter disregard of the prevalent COLO guidelines and without any oversight by the persons who were supposed to stop such illegal practices. OPG was logging into secondary server in the beginning of the day itself without logging into primary servers first. These facts reveal the concerted action on part of OPG acting through its director to make unlawful and illicit gains (Rs. 50.40 Crores) with a criminal intent. During the course of investigations, unlawful gains of first login pertaining to M/s. OPG Securities Private Limited by early login to both primary as well as secondary servers and also by login to secondary servers (even if it was not early) have been taken into account. Since the investigations were restricted to Proprietary trade of OPG, the amount gained by "first login" in the "proprietary trade" is the quantum of unlawful gains made by OPG by misusing the COLO Facility by first login. The said amount after deduction securities transaction tax comes to as Rs. 50.40 crores.

Further in terms of Section 70 of PMLA, 2002, where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the

time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and shall be punished accordingly. Thus, in terms of Section 70 ibid Sh. Sanjay Gupta is liable to be proceeded against and be punished. Section 70 (2) of PMLA 2002 provides that notwithstanding anything contained in subsection (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Thus, Sanjay Gupta is guilty of offence of money laundering as defined in Section 3 of the PMLA, 2002 read with Section 70 ibid as he was directly or indirectly indulging in or knowingly assisting in and was actually involved in all or any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property.”

I have heard the submissions made by the Ld. Spl. PP for ED/complainant and have carefully perused the record.

After perusal of the complaint, the statement(s) of the witnesses and the other relevant documents relied upon by the prosecution, **I hereby take cognizance of the offence(s) U/s 3 of PMLA read with Section 70, which is punishable U/s 4 of PMLA, 2002 (as amended upto date) against accused no. 1 M/s OPG Securities Pvt. Ltd. and accused no. 2 Sanjay Gupta as there are sufficient grounds to proceed against the accused persons arraigned in the present complaint.**

Since the present complaint has been filed through a public

servant, therefore, examination of the complainant is dispensed with.

Let the above named accused persons **M/s OPG Securities Pvt. Ltd. (A-1) and Sanjay Gupta (A-2)** be summoned for **17.02.2023**.

IO is also directed to appear on the NDOH along with copies of the complaint and relied upon documents.

(Rakesh Kumar-III)
Special Judge (PC Act)(CBI)-02
Rouse Avenue District Court
New Delhi/20.01.2023