



\$~67 to 69

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 16598/2025**

Date of Decision: **23.03.2026**

IN THE MATTERS OF:

PANKAJ GUPTA

.....Petitioner

Through: Mr. Prashant Pandey, Ms Akshita
Chand, Mr Karan Kumar Advocates.

versus

ENFORCEMENT DIRECTORATE THR ADDITIONAL
DIRECTOR

.....Respondent

Through: Mr. Vivek Gurnani, Advocate.

+ **W.P.(C) 16631/2025**

SHASHANK SRIVATSAVA

.....Petitioner

Through: Mr. Prashant Pandey, Ms Akshita
Chand, Mr Karan Kumar Advocates.

versus

ENFORCEMENT DIRECTORATE THR ADDITIONAL DIRECTOR

.....Respondent

Through: Mr. Vivek Gurnani, Advocate.

AND

+ **W.P.(C) 16691/2025**

LATE DALIP SRIVATSAVA

.....Petitioner

Through: Mr. Prashant Pandey, Ms Akshita
Chand, Mr Karan Kumar Advocates.



versus

ENFORCEMENT DIRECTORATE THR ADDITIONAL
DIRECTOR

.....Respondent

Through: Mr. Vivek Gurnani, Advocate.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioners seek to challenge the order dated 01.07.2025 passed by the Appellate Tribunal, Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (“**SAFEMA**”), whereby the applications filed by the petitioners for waiver of pre-deposit of penalty amounts have been partly allowed.
2. For the sake of clarity, the name of the petitioner(s), penalty imposed, contravention amount and pre-deposit amount required to be deposited by the petitioners, as per Impugned Order, is extracted as under:

Petitioner name	Penalty imposed	Contravention amount	Pre-deposit amount as per impugned order
Pankaj Gupta	Rs.42,00,000/-	Contravention of Section 3(d) of FEMA, 1999 to the extent of Rs.82,37,000/-	Rs.4,20,000/-
Late Dalip Srivastava	Rs.72,00,000/-	Contravention of Section 3(d) of FEMA, 1999 to	Rs.7,20,000/-



		the extent of Rs.1,40,91,000/-	
Shashank Srivastava	Rs.74,00,000/-	Contravention of Section 3(d) of FEMA, 1999 to the extent of Rs.1,47,00,000/-	Rs.7,40,000/-

3. Mr. Prashant Pandey, learned counsel for the petitioners while placing reliance on the decisions passed by the Division Bench of this Court in the case of ***Nimesh Suchde vs. Union of India (UOI) and Ors.***¹ and ***Priya Shah vs. Enforcement Directorate***,² submits that the Appellate Authority under Section 19 of the Foreign Exchange Management Act, 1999 ('**FEMA Act**'), on being satisfied that there exists a *prima facie* case; and undue hardship, is fully empowered to grant an exemption from pre-depositing penalty amount.

4. He submits that in the instant case, the petitioners have been able to satisfy both the conditions. According to the petitioners, they have a *prima facie* case in their favour as they have not contravened any of the provisions of the FEMA Act, and the Adjudicating Authority, on the basis of cryptic findings, has wrongly imposed penalties upon them.

5. It is also his case that the business of the petitioners has already been closed down and they are undergoing a financial crisis.

6. The petitioners submit that they are the victims of fraud committed by Ms. V. Sundari of M/s Agna X-Port, Ramesh Kataria and Sunil Garg. They also submit that no action has been taken against said persons, who were

¹ MANU/DE/1266/2009, LPA 203/2009.

² MANU/DE/1235/2009, LPA 157/2009.



instrumental in commission of the said contravention. Additionally, the petitioners submit that they do not have sufficient financial resources to adhere to the directions for pre-deposit of the amount as is imposed in the Impugned Order.

7. Mr. Vivek Gurnani, learned counsel appearing on behalf of the respondent-Enforcement of Directorate ('ED') strongly opposes the submissions made on behalf of the petitioners. He submits that if the Impugned Order is perused carefully, the same would clearly justify the imposition of 10% penalty amount. He also submits that the Appellate Authority has already bestowed its due consideration in requiring the petitioners to deposit only the 10% of the penalty amount imposed on them by the Adjudicating Authority.

8. Additionally, Mr. Gurnani brings to the notice of the Court paragraph no. 5.8 of the order dated 20.02.2020 passed by the Adjudicating Authority, which reads as under:-

"5.8 With regard to the contention of the noticees - 2, 3 and 4 that, they had been engaged in normal, commercial activity of bill discounting through proper banking channel within India which is not a violation under FEMA, I find from the voluntary statement dated 10.11.2017 of Shri Pankaj Gupta, on behalf of noticees - 2, 3 and 4 given before the Assistant Director of Enforcement, wherein he, inter alia, stated that one Shri Sunil Garg from Delhi was importing goods from China and intended to send advance remittances for the said imports; that on his (Sunil Garg) request he (Noticee-2) opened a bank account in the name of his firm and he further requested Noticee - 3 and Noticee - 4 to open bank accounts in their respective firm names for remitting amounts abroad; that he would be paid a commission of 20 paise per Rs. 1000 and he accepted the offer as he was financial difficulties. Noticee-2, vide the said statement further stated that all these three noticees (Noticee-2, 3 & 4) had given signed blank cheques, signed RTGS forms and credentials to a person named as Shri Sunil Garg in order to make the



said remittances. Noticee-2 is clearly aware that the said transactions were for outward remittances in the guise of imports and had accepted the offer of Shri Sunil Garg for a commission. It is thus evident that the said noticees are aware that the said transactions are towards outward remittances and they had given signed blank cheques to a person named as Shri Sunil Garg for the same, as evident from their voluntary statement and now the contention of the noticees that the said transactions are part of bill discounting business is self-contradicting. Further, Noticees - 2, 3 and 4 had not furnished any details of the buyer and the seller and the invoices pertaining to them and even they had not disclosed the commission they earned out of the said bill discounting business. Further, the noticees had not disclosed any details/ whereabouts of the so called Shri Sunil Garg.

Whether he is a real person or fictitious person is also not known.

Accordingly, I find that it is an afterthought and they are using the term Bill Discounting to escape from the clutches of the law.”

9. Section 19 of the FEMA Act reads as under:

“19. Appeal to Appellate Tribunal

(1) Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal:

Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.”

10. A bare perusal of the aforementioned provision would reveal that pre-deposit of the entire penalty amount is the rule and the relaxation of the deposit requirement can only be made by the Appellate Tribunal in “any particular case”, upon being satisfied of undue hardship being caused, and



“subject to such conditions as it may deem fit to impose”.

11. In the instant case, the Appellate Tribunal after considering the entirety of the facts and circumstances, decided to exercise its discretion provided for under the second *proviso* to Section 19. In doing so, the terms to which it subjected the petitioners was—a deposit of 10% of the penalty amount. It is, therefore, the case that the powers vested with the authority were exercised by it, and upon a satisfaction of “*undue hardship being reached*”, conditions that it deemed fit were imposed.

12. The present petition, in exclusion to claims such as non-performance or dereliction of statutory duty, can only assail the terms i.e., 10% of penalty amount being required to be pre-deposited (or in other words, 90% and not a 100% waiver of pre-deposit of penalty amount being given), before this Court. *Qua* this aspect, two considerations may be borne in mind.

13. ***First***, *qua* the claim of the petitioners that they have a clear *prima facie* case in their favour, it may be noted that the provisions of FEMA, including Sections 3(b) and 10(6) read with Regulation 6(1) of the Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2000, may get attracted once the petitioner knowing well that the amount, with which is it is dealing, is being remitted abroad, continues to engage in a offending transaction.

14. When the petitioners were contacted by one Mr. Sunil Garg, they were very well knew, as per their own statements, of the fact that the amount will be remitted abroad, and necessary permissions in relation thereto ought to have been obtained. The aforesaid is also finding recorded in paragraph



no.5.8 of the order dated 20.02.2020 passed by the Adjudicating Authority.

15. **Second**, *qua* the claim pertaining to hardship. It be noted that the Appellate Tribunal, by weighing and bestowing due consideration to the facts, granted a 90% waiver of the penalty-amount. There is nothing on record, that would allow this Court to arrive at the conclusion that the direction in the Impugned Order is perverse, unreasonable, or owing to non-application of mind. While it needs no repetition, it may briefly be stated that the scope of scrutiny under Article 227 of the Constitution is narrow. The High Court under this jurisdiction does not act as a Court of Appeal, and cannot step into the shoes of the specialised tribunal/authority to displace the findings rendered by it.

16. The decision of this Court in **Nimesh Suchde** (supra) would have no application as, in that case the Appellate Authority has dismissed *in toto* the application of the petitioner therein, for a waiver of pre-deposit of penalty amount. Further, in the said case, the original order passed by Adjudicating Authority, was found to be *prima facie* unsustainable by this Court. Similarly, the decision in **Priya Shah** (supra) was also rendered on completely different facts. The judgments relied upon by the petitioners would, thus, not have any application.

17. Having considered the overall facts and circumstances, the Court finds that there is no infirmity in the impugned order, however, in the interest of justice, the direction of pre-deposit of 10% of the penalty amount is modified to the extent of 5%. With respect to the remaining 5% of the penalty amount, the petitioners will have to either produce the bank



guarantee or to furnish a surety of the said amount to the satisfaction of the Appellate Tribunal.

18. With the aforesaid directions and modification, the instant petitions stand disposed of along with all pending applications.

19. It is, however, clarified that the merits of the findings of the Adjudicating Authority, and the reasons for assailing them, will be subject to the adjudication of the Appellate Tribunal.

20. Nothing stated hereinabove shall however amount to any expressions on the merits of the case. The Court has only dealt with the argument made by the parties *qua* the Impugned Order.

PURUSHAINDRA KUMAR KAURAV, J

MARCH 23, 2026

Nc