

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 30014 of 2024 (O&M)

Vuenow Infotech Pvt. Ltd.
... Petitioner(s)

Versus

Union of India and Another
... Respondent(s)

AND

2. Civil Writ Petition No. 32476 of 2024 (O&M)

Vuenow Infotech Pvt. Ltd.
... Petitioner(s)

Versus

Directorate of Enforcement, Jalandhar Zonal Office, Punjab and Another
... Respondent(s)

Reserved On: 19.12.2024
Pronounced On: 17.01.2025

CORAM: Hon’ble Mr. Justice Sheel Nagu, Chief Justice.
Hon’ble Mr. Justice Anil Kshetarpal.

Present: Mr. Chetan Mittal and Mr. Bipin Ghai, Senior Advocates
with Mr. Akshay Kumar Dahiya, Mr. Arun Khatri,
Mr. Mayank Aggarwal and Mr. Nikhil Ghai, Advocates
for the petitioner(s).

Mr. Satya Pal Jain, Additional Solicitor General of India
with Mr. Premjit Singh Hundal, Senior Panel Counsel for
Union of India.

Anil Kshetarpal, J.

1. Factual Background

1.1 With the consent of the learned counsel representing the parties,

disposed of by this common order.

1.2 In Civil Writ Petition No. 30014 of 2024, the petitioner (company) seeks direction to the Enforcement Department (ED) to produce all the records as regards purported inquiry being conducted under the Foreign Exchange Management Act, 1999 (hereinafter referred to as “the 1999 Act”), the read down and/or read into Section 37 of the 1999 Act in tandem, sync and harmony with Section 132 of the Income Tax Act, 1961 (hereinafter referred to as “the 1961 Act”) and to also hold that the powers of search, seizure etc. vested in the 1999 Act are circumscribed, confined and limited to the contravention referred to Section 13 of the 1999 Act. Certain other connected reliefs have also been sought.

1.3 In Civil Writ Petition No. 32476 of 2024, the quashing of ECIR/JLZO/26/24, especially the search and seizure proceedings conducted by the ED on 26.11.2024 and the quashing of the illegal act of freezing of the bank account of the petitioner company have been sought.

1.4 In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed. The ED initiated inquiries/investigation under the 1999 Act in respect of the group companies, namely Ms/ Vuenow Infotech Pvt. Ltd. (M/s VIPL), M/s Vuenow Marketing Services Ltd. (M/s VMSL), M/s Zebyte Infotech Pvt. Ltd. (M/s ZIPL) and M/s Zebyte Rental Planet Pvt. Ltd. (M/s ZRPPL). Initial inquiries/investigations reveal that the above mentioned entities received foreign inward remittance. It was found from the financial statements that the aforesaid foreign inward remittances have not been

Similarly, the GSTR-I return of M/s ZRPPL was analyzed for the relevant period i.e. from February 2023 to July 2023 and it was found that M/s ZRPPL has not mentioned any export of service in their statutory GSTR-I return. Through discreet inquiry, it was found that M/s ZRPPL has shown nine export invoices valuing ₹8,75,97,027.80 during the month of August 2024. It appeared that there has been contravention of the 1999 Act which led to the competent authority to form an opinion on the basis of the aforesaid information. Thereafter, the ED conducted searches under Section 37 of the 1999 Act read with Section 32 of the 1961 Act. The amount lying in certain bank accounts was also freezed as the 1999 Act violations were suspected. There was a direction to debit freeze for a temporary period of 15 days with respect to certain accounts held by the petitioner company and others in order to protect the Indian Economy from a serious harm.

1.5 The promoters and major shareholders/directors of the companies were issued summons on 30.10.2024 and 19.11.2024 in order to offer them an opportunity of being heard and proceed with the investigation, however, none of the aforesaid persons joined the investigation.

1.6 Presently, the direction issued to bank for debit freeze of the bank accounts of the petitioner company under the provisions of the 1999 Act have turned ineffective since 02.12.2024 because the order of debit freeze has been lapsed and never extended. On 19.11.2024, the officials relating to the companies have been requested to join for monitoring the extraction of data from the digital devices recovered and seized during the search operation, however, none of them joined. Thereupon, the petitioner

1.7 During the course of inquiries, it was revealed that these companies have effected a huge banking transactions amongst themselves. It was also revealed that these companies have dishonestly induced around 25000 individuals/investors to invest in cloud particles by selling them non-existent and insubstantial particles and have, therefore, cheated and breached the trust of various investors and have also suspected criminal offence under the provisions of Bhartiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as “the BNSS”) which are the scheduled offences under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as “the 2002 Act”).

1.8 On sharing of the information, FIR No. 463 dated 21.11.2024, was registered at Police Station Sector 58, Gautam Budh Nagar (Noida), under Section 318(4), 61(2), 316(2) of the BNSS. The investigation and searches further revealed that the companies are offering customers the investment opportunities to buy data center assets or cloud particles (servers) through **sale and lease back model** whereby once a customer buys a data center asset or cloud particle, it will immediately lease back on the long term basis by M/s VMSL marketing affiliates such as M/s ZIPL, M/s ZRPPL for a minimum guaranteed rent. It was revealed that the total storage capacity of currently active servers at Mota Data Center is 553 TB out of which only 1.9 TB space is presently consumed and the storage capacity of 551.1 TB is available or empty. The consumed 1.9 TB data pertains to Test Open Stat cloud data and no data pertaining to any customer is available in these working servers. As many as 1119 servers at the premises were not connected with any power source (active) and therefore, these servers were

not in working condition. It was found that a show cause notice has been issued by SGST raising a demand for inadmissible ITC taken by M/s ZRPPL by purchasing goods/services from google suppliers. The total invoice value of such purchase transaction is ₹66,23,58,209/-. During the course of inquiry, the balance sheets pertaining to M/s VMSL found that the company has received an amount of ₹5,33,38,06,158/- for the period from 2016-17 to 2022-23.

1.9 It has been revealed from entries in the HDFC and ICICI banks that M/s VMSL has received a total sum of ₹2236.07 crores which is suspected to have been received from the individuals/investors in lieu of sale of cloud particles/storage space. It has further been observed that M/s VMSL has sold the cloud particles to the individuals/investors way beyond their actual capacity as it has total active server capacity of 2701 cloud particles or 2701 TB of cloud space, whereas they have sold particles 1029294 TB (as per MCA data) or 542274 TB (as per bank account credits).

1.10 Ultimately, it is suspected that M/s ZIPL or M/s ZRPPL instead of receiving rental amount from the customers, is receiving money from M/s VIPL which is subsequently being paid to the investors in the form of rent. In summary, the money collected from the new individuals/investors is being rotated and paid to them as monthly assured rental income. As per the statement of Nitin Srivastava, assured rentals to the previous individuals/investors were being paid from the investments received from the new investors. It is suspected that a fraudulent investment scheme where returns are paid to the previous investors using the capital from the new investors rather than the profits earned by the operation is being carried out.

After the registration of FIR, an ECIR bearing No. ECIR/JLZO/26/2024 dated 25.11.2024 was recorded for investigation under the provisions of the 2002 Act. The preliminary investigation revealed that more than 25000 gullible investors have been sold data particles which had resulted in proceeds to the tune of ₹2236.07 crores which may further increase during the course of investigation.

1.11 During the search proceedings, the various incriminating documents were recovered and seized which revealed that 67 bank accounts relating to the said group of companies and the other related entities were used for rotating the money and hence, the accounts were ordered to be freezed under Section 17(1A) of the 2002 Act. For further investigation, the summons were sent to the major shareholders/promoters on 30.10.2024 and 19.11.2024 for recording their statements were issued but none of them joined investigation.

2. Arguments Put Forth by the learned counsel representing the parties

2.1 Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

2.2 The learned counsels representing the petitioners submit that while carrying out search and seizure, the ED has not followed the procedure and no prior notice before conducting search and seizure was issued to the petitioner company. It is further submitted that no intimation notice or opportunity was given to the petitioner to explain their position and seizure memos failed to disclose the reasons behind the search and seizure. The

learned counsel representing the petitioners relies upon the judgment passed

in *Opto Circuits (India) Limited v. Axis Bank* (2021) 6 SCC 707, *Arvind Kejriwal v. Directorate Enforcement* (2024) SCOnline SC 1703 and *Radha Krishan Industries v. State of Himachal Pradesh* (2021) 6 SCC 771 and contends that this Court should not only quash the ECIR but also grant declaration that the search and seizure was illegal. It was also contended that the reasons to believe which are *sine qua non* for initiating proceedings have not been disclosed in the search and seizure memos.

2.3 Per contra, the learned counsel representing the ED contends that the investigation is in progress and the matter is required to be placed before the Adjudicating Authority within a period of 30 days from such attachment as per Section 5(5) of the 2002 Act. It is submitted that the petitioner would have an opportunity to represent and explain its position. It has further been disclosed that the petitioner and its sister concerns have been indulging in forum shopping as they have filed various petitions in different High Courts as a petition has been filed in the Allahabad High Court for quashing the FIR and the sister concern of the petitioner, namely M/s Zebyte Infotech has filed a petition i.e. Writ Petition (Civil) No. 15400 of 2024 in the Delhi High Court. The promoters/major stockholders of the petitioner company have not come forward to join the investigation.

3. Analysis and Discussion

3.1 Though the jurisdiction under Article 226 of the Constitution of India is plenary, however, there are self imposed limitations which are required to be followed before exercising the power of judicial review.

Ordinarily, interference at the stage of investigation carried out by the law

investigation techniques include coercive as well as covert techniques.

3.2 The method of search and seizure is coercive as it is used to carry out the investigation/inquiry into the affairs if violation of a statutory provision is suspected. The search and seizure is a well known tool in the investigation which enables the law enforcement agencies to come to a conclusion. Though the Constitutional Courts are the sentinels of justice, however, this power is required to be exercised with due care and caution and interference at the stage of investigation is made in rare and exceptional cases.

3.3 As far as Civil Writ Petition No. 30014 of 2024 is concerned, the petitioner, in substance, wants this Court to call for all the records with respect to the purported inquiry being carried out under the 1999 Act. The principles of reading down or reading into a statutory provision are interpretive tools that must be applied based on specific facts and circumstances of the present case. They cannot be invoked as abstract propositions of law. It simply means that these interpretation tools are to be used only to ensure that law is interpreted in a manner that aligns with its intent and purpose. In substance, the petitioner claims that the prior notice before conducting search and seizure has not been issued to the petitioner. Section 37 of the 1999 Act does not envisage any prior notice before conducting the search and seizure. The ED under Section 37(1) and (2) of the 1999 Act is entitled to take up for investigation the contravention referred to in Section 13. Whereas Section 37(3) of the 1999 Act authorizes the officers to exercise the like powers which are conferred on the income tax authorities under the Income Tax Act, 1961. Section 13 of the 1999 Act

provides for the imposition of penalties upon any person who contravenes any provision of this Act, or contravenes any rule, regulation, notification or direction. As per Section 13(1A) of the 1999 Act if any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A, penalty to the extent of three times the sum involved in the contravention and confiscation of the value equivalent is permissible.

3.4 Similarly, under Section 5 of the 2002 Act the attachment of the property involved in money laundering is permissible where the Director or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of this section, has reasons to believe, on the basis of material in his possession, that any person is in possession of any proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner. Section 17 of the 2002 Act enables the Director or any other officer not below the rank of Deputy Director authorized by the Director to conduct search and seizure if on the basis of an information in his possession, the competent authority has a reason to believe that any person has committed any act which constitutes money-laundering or is in possession of any proceeds of crime involved in money-laundering or is in possession of any property related to crime. Section 17 also does not provide for a prior notice before conducting search and seizure.

3.5 It is evident that while carrying out search, proper information was supplied to the petitioner. Moreover, the petitioner has not attached the

freezing orders sent by the ED to the various banks. In the freezing orders, it has been stated that the Assistant Director, Unit-III(2) ED has reasons to believe from the documents in his possession that the proceeds of crime might have been diverted to the above said bank account maintained with that particular bank. Moreover, as already noticed, these orders were passed on 26.11.2024, whereas on the date when the arguments are heard, 30 days are yet to be completed.

3.6 As regards the requirement of reasons to believe, this Court in *Dilbagh Singh @ Dilbag Sandhu v. Union of India and Others (Civil Writ Petition No. 22688 of 2024)* has held that in para 287 of the *Vijay Madanlal Choudhary & others v. Union of India & others 2022 SCC Online SC 929*, the Supreme Court has held that the authorized officer can order provisional attachment only upon recording satisfaction regarding two requirements. The officer has to form his opinion and provide written reasons for such belief, which must be based on material in his possession rather than on mere assumptions. The judgment passed in *Radha Krishan Industries's case (supra)* was also considered and explained.

3.7 As already noticed, Section 5 (5) of the 2002 Act mandates the ED to file a complaint stating the facts of such attachment before the Adjudicating Authority within a period of 30 days. The Adjudicating Authority is entitled to adjudicate the matter on receipt of a complaint. Before the Adjudicating Authority all the stakeholders are entitled to participate and explain their position. The Adjudicating Authority is required to decide the matter in a time bound manner. Against the final

Appellate Tribunal. Once the 2002 Act itself provides for sufficient safeguards, it is not found appropriate for this Court to interfere at this stage.

4. Decision

4.1 Keeping in view the aforesaid discussion, the writ petitions are disposed of with the liberty to the petitioners to present their case before the Adjudicating Authority under the 1999 Act as well as the 2002 Act.

4.2 The miscellaneous application(s) pending, if any, in both the writ petitions shall stand disposed of.

(Anil Kshetarpal)
Judge

(Sheel Nagu)
Chief Justice

January 17, 2025
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No