



Government of India



Fair Competition
For Greater Good

Process and procedure in inspection/dawn raids



Preparation of dawn raid

- ❑ Study of the entire material
 - Identification of key persons and their profile
- ❑ Data collection from independent sources
 - Information in public domain
 - Call Record of key persons
 - Emails of key persons from email service providers
- ❑ Identification of the targets by reconnaissance
 - Location, topography, surroundings, ease of access
 - Size of premises, no. of officials
- ❑ Preparation of the route maps



Search & Seizure Warrant

- ❑ Powers of search & seizure vested with DG u/s 41(3) of the Act, read with Section 240A of the Companies Act, 1956.
- ❑ Warrant of search required from Chief Metropolitan Magistrate, New Delhi
- ❑ The application for warrant for the Court of CMM includes:
 - Summary of *prima facie* order of the Commission
 - Nature of violation, details of OPs,
 - Scope of investigation -nature of documents/evidence intended to be gathered
 - Necessity of search & seizure warrant- specifying that the incriminating evidence are likely to be in possession of OPs & employees and that there is a reasonable ground to believe that if a notice under Section 41(2) r/w Section 36(2) of the Competition Act, 2002 is issued, there is every likelihood that the evidences could be altered, hidden, destroyed, mutilated, falsified, secreted and tampered with by the concerned party.



Search & Seizure Warrant...

Each warrant of search & seizure in the format prescribed u/s 93 of the CrPC, 1973 authorises the search party to-

- *Enter and search the premise with such assistance as shall be required;*
- *Break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers in case the keys thereof are not available or not made available;*
- *Search any person who is present or has got out of, or is about to get into the aforesaid premises;*



Search & Seizure Warrant...

- *Place marks of identification on any books of account or other documents or make or cause to be made extracts or copies of physical records and/or make copies/clones of data stored in any computer/laptop/server/ electronic storage device including CDs, DVDs, tapes and pen drives, personal communication devices such as Mobile Phones, iPad, Pager, electronic diaries etc. of the key persons, which are necessary for the purpose of investigation and are found as a result of the search at such premises; and*
- *Seize any such books of accounts and other documents necessary for the purpose of investigation, available either in physical form or in electronic/digital form*

Prior to dawn raid

- Preparation of briefs: common and specific to each premises
 - Landline numbers
 - Photograph of key persons
 - Adequate no. of copies of brief so that all teams may peruse in limited time
- Logistics: Stay, cash, search kits
- Police arrangements: Likelihood of resistance
- Forensic experts
- Manpower planning and deployment
 - Size of premises
 - No. of employees and key employees
 - Complexity of the case
 - Capabilities of the team members
- Ticket bookings and local transport arrangements



At the beginning

- Team members to maintain absolute secrecy
- Pick-up point for police
- Gaining entry into the premises
 - Watchmen at the entrance of the outer perimeter of the premises
 - Manner of gaining entry: Entire team or few members or entire vehicle
- Gaining entry into the office: Few members or entire team
- Securing key persons and the key areas to search
- Liaison with representatives of company: Encourage cooperation
- Two independent witnesses
- Execute the search warrant (signed by the Party & witnesses along with date, time & designation)
- Offer personal search of search team member before commencement of search of premise



During the dawn raid

- ❑ Presence of Advocates
- ❑ Obstruction
 - Remain patient and calm, be polite but firm
 - Resolve with the senior officers /Company secretary of the company
 - Explain consequences
 - Obstructing public officer in discharge of functions-IPC sec. 186
 - Assault or use of criminal force-IPC sec. 353
 - Aggravating factor at the stage of levy of penalty
- ❑ Ensure safety of the team members
- ❑ Selection of physical data
- ❑ Selection of digital data including archived data
 - Carefully take mirror image of laptops, relevant desktops, relevant server data and documents & messages stored in mobile phones
 - Fragmentary evidence of cartel is useful to make inroads in investigation
 - Recovery of deleted data: must for mobile and e mails of key persons



During the dawn raid (contd)

- ❑ Recording of statement of the key persons
 - Non-cooperation by saying 'do not recollect' or 'do not know' –
Obligation of active cooperation by the company
 - Take signature of witnesses on each page of the statements
- ❑ Legally privileged correspondence: Client-attorney privilege
 - Communications between a professional legal adviser and their client for the purpose of giving or receiving legal advice or in contemplation of legal proceedings
 - Privileged does not mean confidential
 - Don't seize clearly privileged BUT in case of doubt, seal separately
- ❑ Seizure of original documents
- ❑ Manner of sealing of documents
- ❑ Manner of sealing of the cloned discs and working copy



Preparation of Seizure Memo (Panchnama)

- Seizure Memo (Panchnama) is the most important documentation of conduct of search proceedings and should be prepared very carefully.
- Panchnama along with the annexures: Should be prepared in *triplicate*, one for Party, one for DG's office, one for the Court.
- Details of authorised officer, premise being searched, name & address of witnesses to search, details of software experts needs to be mentioned very meticulously.
- Strike time (when search actually commenced in presence of independent witnesses) and time of conclusion of search need to mentioned properly.
- Any incident occurred during search maybe mentioned in Panchnama.



Preparation of Panchnama (contd)

- Mention of presence of Advocate, if any, of the party in Panchnama
- Separate annexure should be made for:
 - Seized documents and
 - Hard disc containing mirror image.
 - Each annexure should be properly signed by the Party and Witnesses
- Ensure 2 sets of mirror images of electronic data are taken by the software experts
 - one set to be sealed & seized, and
 - other is seized as working copy and it is mentioned in Panchnama.
- Before drawing Panchnama, certificate u/s 65B of Evidence Act, authenticating the electronic document extracted should be drawn.



Preparation of Panchnama (contd)

- Date and time of conclusion of search action should be mentioned properly.
- Receipt of Panchnama by the Party should be clearly noted.
- Before leaving the premises:
 - the AO should ascertain that all formalities are complete
 - offer personal search of all team members

After conclusion of search

- Compliance report to CMM within time specified in his order
- Return of original seized records upon conclusion of investigation i.e. submission of report to the Commission in the case



सत्यमेव जयते

Government of India



THANK YOU

Presentation by -

Alok Tripathi, Jt.DG

Navin Kumar Kanaujia, Jt.DG &

Pranay Kumar Soni, Jt.DG