

IN THE COURT OF SESSION FOR GREATER BOMBAY

MISC. APPLICATION NO.452 OF 2016

IN

MISC. APPLICATION NO.98 OF 2014

IN

M.P.I.D. CASE NO.1 OF 2014

1. The State of Maharashtra
Through EOW, Special Investigation
Team, having office at 3rd Floor,
New Building, Police Commissioner
Office Compound, Mumbai – 400 001.

2. The Competent Authority
Office of the District Collector,
Mumbai City

...Applicants

Vs.

1. Mohan India Private Limited
Company registered under the Companies
Act, 1956 and having registered office at
354, Tarun Enclave Pitampura,
New Delhi – 110 034.

2. Tavishi Enterprises Private Limited
A Company registered under the Companies
Act, having registered office at
1A/101, Rangrasyan Apartment,
Sector 13, Rohini, New Delhi.

3. Brinda Commodity Private Limited
A Company registered under the Companies
Act, having registered office at 406,
D Mall, Pritampura, New Delhi – 110 008. ...Respondents
(Orig. accused)

Ms. Kalapana Chavan, Ld. SPP for State EOW/ applicant.
Mr. Vijay Singh, Ld. Advocate for respondent Nos.1 to 3.
Mr. Karnik, Ld. Advocate for 1st informant / Intervenor.

**CORAM : H.H.THE SPECIAL JUDGE
SHRI. MILIND V. KURTADIKAR
(C.R. No.33)**

DATE : 20th December, 2017

(Dictated and Pronounced in Open Court)

ORDER

The Competent Authority has filed this application for making the attachment absolute regarding the properties of respondents.

2. It is submitted that respondent No.1 Mohan India Pvt. Ltd is a Company dealing in real estate and commodity trading. Respondent No.2 Tavishi Enterprises Pvt. Ltd and respondent No.3 Brinda Commodity Pvt. Ltd. are the sister concerns of Mohan India Pvt. Ltd. Mr. Jagmohan Jaikishan Garg and Mr. Jai Shankar Shrivastav are the Directors of respondent Companies. The respondent Companies together have received payments to the extent of Rs.929.40 Crores.

3. Respondent Nos.1 to 3 have filed MA No.98/2013 before this Court for various reliefs on the ground that they on one hand and NSEL on the other hand have entered into settlement agreement whereby present respondents have agreed to repay an amount of Rs.771 Crores. Previously, respondent Nos.1 to 3 have filed undertaking before this Court for auctioning their land and farm land situated at Delhi and Bikaner having value of Rs.450 Crores. Pursuant to said undertaking the lands were put for public auction but there was no response from the bidders.

4. Now one of the Director of respondent Company Mr. Jagmohan Garg has offered to surrender properties mentioned in para No.6 of the application which are previously attached by the State and Directorate of Enforcement. By said application he has shown his willingness to make the attachment made by the State under MPID Act absolute. In view of said offer it is prayed that said attachment of the properties of respondents mentioned in para No.6 of the application be made absolute under the MPID Act.

5. Respondent Nos.1 to 3 have filed their reply at Exh.4. It is not denied that one of its Director Mr. Jagmohan Garg has offered no objection by letter dated 16/12/2016 for making the attachment of its properties absolute. However, it is its further contention that the provision of MPID Act cannot be applicable against the respondents for the reason that neither they are financial establishment nor they have accepted deposits within the meaning of MPID Act. As per order in MA No.506/16 filed by NSEL against these respondents, this Court has already passed order for auction sale of vehicle at Serial No.2 of application para No.6. Moreover, certain properties mentioned in para No.6 of the application are yet to be notified and therefore said attachment cannot be made absolute under the MPID Act. Similarly, some properties in para No.6 of the application are already attached under the PMLA Act. Therefore, application to the extent of those properties is premature one. Besides it, there is ad-interim order passed by Hon'ble High Court Mumbai against these respondents regarding subject matter properties. As such, considering over all factual matrix,

Court may pass appropriate orders for making the attachment absolute.

6. The first informant Pankaj Saraf through his Ld. Counsel Adv. Mr. Karnik has file intervention application at Exh.3. Said application is allowed. It is argued on behalf of first informant that as the respondents have given consent or no objection for making attachment absolute, this Court can make said attachment absolute and the properties can be put to auction sale for disbursement of the sale proceed amongst the investors.

7. I have heard Ld. SPP appearing on behalf of EOW, Ld. Counsel for respondents as well as Ld. Counsel appearing on behalf of intervenor / first informant and Ld. Counsel for NSEL.

8. It is the submission of applicant / EOW that there is liability to the tune of Rs.929.40 Crores against the respondent Companies. During the course of investigation their properties mentioned in para No.6 of the application are attached. At the time of making application, major properties were notified by the Government Gazette while proposal of attachment of some properties was sent for notification and the notification was awaited. However, during pendency of this application, the proposals are accepted and those properties are also notified under Government Gazette.

9. One of the Director of respondent Companies by his letter

dated 16/12/16 has given consent / no objection for making the attachment of their properties absolute under MPID Act. In order to corroborate said contention, Ld. Counsel invited my attention towards alleged letter at Exh.A attached with the application. On perusal of said letter, it can be seen that the respondent Companies has given no objection for making attachment of their properties absolute under the MPID Act.

10. As per MPID Act, the Government may attach the properties under Section 4(1) of the Act by publishing in the official Gazette. Pursuant to publication in official Gazette, the properties forthwith vest in the Competent Authority pending further orders from the Designated Court. Powers of Designated Court regarding making attachment absolute are given under Section 7 of the MPID Act. Sub Section 5 and 6 deals with the properties where there are objections while sub Section 4 deals with the properties of which no cause is shown or no objection are made. Sub Section 4 says that if no cause of action is shown or no objections are made, the Designated Court shall forthwith pass an order making order of attachment absolute. Considering the no objection / consent given by respondent Companies in letter dated 16/12/16, the matter falls under sub Section 4 of Section 7 of the MPID Act by which the Designated Court can forthwith pass orders of making attachment absolute. Moreover, the properties in the name of Mohan India Pvt. Ltd. at Serial No.1 and property in the name of Jayshankar Shrivastava at Serial No.1 (both in para No.6 of the application) are not attached under Section 4(1) of the MPID Act. However, in view of consent / no

objection by those Companies for attachment and making absolute of those two properties the recourse can be taken of Section 9 of the MPID Act. As per Section 9 any Financial Establishment or person whose property has been attached or is about to be attached under this Act at any time apply to the Designated Court for permission to give security in lieu of attachment. Therefore, in view of Section 9 of the MPID Act, orders can be made against above mentioned two properties though those are not attached under Section 4(1) of the MPID Act.

11. Therefore, considering above discussion, I am of the opinion that there is no any difficulty in passing order for making attachment of the property mentioned in para No.6 of the application absolute except property No.2 of Mohan India Pvt. Ltd. It is a movable property i.e. one vehicle of which order of auction sale is already passed by this Court in MA No.506/15. So, there is no necessity to pass order again regarding property at Serial No.2 of Mohan India Pvt. Ltd in para No.6 of the application.

12. No doubt, as per letter dated 16/12/16 Exh.A, respondent Companies have given consent / no objection for making attachment of their properties absolute under the MPID Act. The only apprehension expressed on behalf of respondent Companies is the prohibitory order passed against them by the Hon'ble High Court in a case filed by NSEL. Regarding said ad-interim prohibitory order against respondent Nos. 1 to 3 passed in the matter before Hon'ble High Court either parties have invited my attention towards the observations made by this Court in the

order in MA No.432/15 disposed on 17/10/15. I have gone through the order in MA No.432/15. In said order it is observed by My Ld. Predecessor that the order of sale of properties of Mohan India Pvt. Ltd. and its group Companies will in no manner affect or prejudice the prayer or relief sought by NSEL before the Hon'ble High Court. So also, at the time of argument Ld. Counsel appearing on behalf of NSEL, who has filed said suit against respondents in Hon'ble High Court submitted that in view of order of this Court in MA No.432/15 NSEL has no objection for the prayer made in this application.

13. To conclude, in view of above discussion, it is necessary to pass order for making attachment absolute of the properties of respondents mentioned in para No.6 of the application except property at Serial No.1 of Mohan India Pvt. Ltd. With this observations, I proceed to pass the order.

ORDER

1. MA No.452/16 is hereby allowed.
2. In view of consent given by the Director of respondent Companies, the attachment of the properties mentioned in para No.6 belonging to respondent Nos.1 to 3 is hereby made absolute in view of Section 7(4) of the MPID Act except property at Serial No.1 of Mohan India Pvt. Ltd.
3. The Directorate of Enforcement, Mumbai is directed to hand over the original title deeds of properties mentioned in application para No.6 to

the Competent Authority.

Dt.20/12/2017

(Milind V. Kurtadikar)
Special Judge,
City Civil & Sessions Court,
Gr. Bombay.

Order Dictated on : 20/12/2017
Transcribed on : 20/12/2017
Signed on

“ I affirm that the contents of this PDF file order are the same, word to word, as per the original order.”

Name of Steno with post : Mrs. M. A. Kale
(Stenographer H.G.)

Name of the Judge (with Court No.) : H.H.J. Shri. M. V. Kurtadikar, Court No.33

Date of pronouncement of order : 20/12/2017

Order signed by the P.O. on : 20/12/2017

Order uploaded on : 20/12/2017

"Certified to be true and correct copy of the original signed Judgment / Order."

Upload date and time
20/12/2017 4.52 p.m.

Name of Stenographer
Mrs. M. A. Kale