IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4217 OF 2015

BRIZO REALITY COMPANY PRIVATE LTD.)...PETITIONER

V/s.

ADITYA BIRLA FINANCE LTD. AND ORS.)...RESPONDENTS

Mr.Girish Kedia a/w. Ms.Urvashi Nayak, Advocate for the Petitioner.

Mr.Niranjan Mundargi a/w. Ms.Anuja Jhunjhunwala and Ms.Saloni Sulakhe, Advocate for NSEL.

Mr.Manoj Agre, Advocate for Respondent No.1.

Mr.Sandeep R. Karnik, Advocate for the Intervenor.

Mr.Avinash Avhad, Special Public Prosecutor, a/w. Mrs.M.M.Deshmukh, APP, for Respondent Nos.5 and 7.

Ms.Rebecca Gonsalvez, Advocate for Respondent Nos.2 to 4.

CORAM : RANJIT MORE &
A. M. BADAR, JJ.

DATE : 19th DECEMBER 2016.

P.C. :

1 Heard Mr.Girish Kedia, the learned counsel for the petitioner, Mr.Avinash Avhad, the learned counsel for respondent no.5 and 7, Ms.Rebecca Gonsalvez, learned counsel for respondent

nos.2 to 4, Mr.Karnik for the First Informant and Mr.Niranjan Mundargi, learned counsel for National Stock Exchange Limited (NESL).

2 Petition is filed for following reliefs :

b) Issue Writ of Certiorari or any other writ, order or direction in the nature of certiorari for quashing and setting aside (i) Order dated 30/7/2014 passed by the Adjudicating Authority of Respondent No.3 and (ii) consequential notice dated 11th September 2014 issued by the Respondent No.3 pertaining to the said premises and (iii) notice dated 20/5/2015 issued by the Respondent No.6, upon the deposit of Rs.6.50 Crores before this Hon'ble Court by the Petitioner;

b1) This Hon'ble Court may be pleased to permit the Petitioner to deposit Rs.6.50 Crores with The Registrar, High Court Bombay accrued interest against the claims made by the Enforcement Department, the Respondent No.3 and the Respondent No.5 in

C.R.No.89 of 2013 and attachment order passed by the State Government of Maharashtra under Sec.4 of the MPID Act and be pleased to direct that the attachment order passed by both these Authorities may be lifted on payment of Rs.6.50 Crores accrued interest as directed by this Hon'ble Court.

3 Petitioner is a Private Limited Company duly registered and incorporated under the Companies Act 1956, on 13th November 2010. At the time of inception of the Company, the capital of the Company was 10,000 equity shares, which was held by the following persons :-

Mr.Ayush Goenka	-	3300 Shares
Mr.Shantanu Rane	-	3300 Shares
Mr.Jawaharlal Purohit	-	3300 Shares
Mrs.Ranjana Ayush Goenka	-	100 Shares

On 8th December 2011, the petitioner negotiated and finalized the deal to purchase an office premises i.e. Office No.1102 admeasuring 10258 sq.ft. on the 11th floor in the building known as Tower-B, Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai, along with 15 car parking space. On 9th April 2012, Mr.Mohit Agarwal and Mrs.Shilpa Agarwal purchased 5000 equity shares from erstwhile shareholders, and therefore, the share pattern of the Company became as follows :

Mr.Ayush Goenka	-	4900 Shares
Mrs.Ranjana A. Goenka	-	100 Shares
Mrs.Shilpa Mohit Agarwal	-	5000 Shares

On 3rd May 2012, Mrs.Shilpa Agarwal arranged loan of Rs.6.50 Crores. The petitioner arranged loan from one of the sister-company. On 11th September 2012, M/s.Regus agreed to take Office premises on lease basis. On 23rd October 2012, respondent no.1 Aditya Birla Finance Ltd. Agreed to grant Rs.18 Crores loan to the petitioner for purchase of the said office. On 26th November 2012, under a registered Agreement for Sale, the petitioner purchased the said office premises against the payment of total consideration of Rs.27,04,27,500/- and paid stamp duty of Rs.1,35,21,700/-, and gave the said premises on lease to M/s.Regus on leave and license basis.

4 On 30th September 2013, MRA Marg Police Station registered a FIR No.216 of 2013 at the instance of one Pankaj Saraf against NESL and the same was later on transferred to EOW-II and renumbered as C.R.No.89 of 2013 under the MPID Act. On 26th November 2013, the EOW pasted a public notice on the subject premises preventing the petitioner from dealing with the said premises. On 31st January 2014, respondent no.2 issued provisional Attachment Order No.2 of 2014 under Section 5(1) of PMLA Act and on 30th July 2014, the provisional Attachment Order issued under Section 5(1) of PMLA Act came to be finalized. Subsequently, on 12th May 2015, the Government of Maharashtra issued Notification under Section 4(1) of the MPID Act. Thus, the subject premises was attached by both the enforcement agencies – Economic Offences Wing (EOW) under the MPID Act and Enforcement Directorate (ED) under the PMLA Act.

5 Admittedly, the petitioner is not shown as an accused in the offence registered against National Stock Exchange Limited (NESL) and Astha Alloys Steel Private Ltd. and others. It is the

case of the EOW and the ED that an amount to the tune of Rs.6.50 Crores is utilized for purchase of the subject premises and this amount is contributed by Mr.Mohit Agarwal and Mrs.Shilpa Agarwal, Directors of Astha Alloys Steel Pvt. Ltd., and therefore, the subject property is attached. Mr.Girish Kedia, the learned counsel for the petitioner makes a statement that the petitioner is ready and willing to deposit the alleged crime proceeds utilized in purchasing the subject premises along with interest. He submits that petitioner will deposit a total amount of Rs.8.50 Crores in this court within the time stipulated and he also submits that in the event it is found that any other amount is found to be transferred from Astha Group to the petitioner, the petitioner is ready and willing to deposit the same amount also. Statement accepted.

6 Mr.Karnik, learned counsel for the intervenor and Mr.Mundargi, learned counsel for NESL, have no objection if the subject property is released from attachment on payment of Rs.8.50 Crores by the petitioner in this court.

7 Ms.Rebecca Gonsalvez, learned counsel for respondent nos.2 to 4 submitted that the present order be restricted to the subject premises only and the attachment of the other premises with which petitioner has no concern, may not be disturbed. She also submits that the finding recorded by the authorities below also should not be disturbed. She further submits that petitioner has alternative remedy to approach the authority concerned, which he has already availed.

8 Mr.Avhad has no objection to raise the attachment under the MPID Act, if the petitioner deposits an amount of Rs.8.50 Crores.

9 Having considered the submission, we find that as of today, case of the Economic Offences Wing and Enforcement Directorate is that crime proceeds of Rs.6.50 Crores is utilized in purchasing of the subject premises. The petitioner has shown willingness to deposit this amount along with additional amount of Rs.2.50 Crores with interest in this court. The petitioner is not

an accused in the crime registered against the NSEL, Astha Group and others by the Economic Offences Wing and Enforcement Directorate. In these circumstances, despite the fact that petitioner has alternate remedy, we are inclined to exercise our jurisdiction under Article 226 of the Constitution of India, in as much as, no purpose would be served by directing the petitioner to approach the authorities under the PMLA Act and MPID Act.

10 We, accordingly, dispose of this petition by passing the following order :

i) Attachment of the subject premises namely Office No.1102 admeasuring 10258 sq.ft. on the 11th floor in the building known as Tower-B, Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai, along with 15 car parking space, by the State under Section 4 of the MPID Act, by notification dated 12th March 2015, and attachment by the Enforcement Directorate under Section 5 of the PMLA Act by order dated 30th July 2014, is quashed and set aside and the subject property is released from the attachment subject to the petitioner depositing the amount of Rs.8.50 Crores in this court in the following manner :

An amount of Rs.6.50 Crores shall be deposited on or before 28th February 2017 and the balance amount of Rs.2.50 Crores on or before 31st March 2017, after deducting TDS.

ii) In view of the above said order, the order of the MPID Court passed on 3rd October 2016 below Exhibit 185 directing petitioner to deposit an amount of Rs.6.50 Crores will not survive.

iii) It is made clear that we have not gone into the merits of the matter and this order is passed on concession and merely because petitioner has shown willingness to deposit an amount of Rs.8.50 Crores in this court.

iv) If it is found at later stage that petitioner has received any amount from Astha Group, then the said amount shall be deposited by the petitioner, after receipt of notice to that effect, within a period of 30 days.

v) Once the amount is deposited, Registrar (Judicial) is directed to invest this amount in any nationalized bank for a initial period of 6 months and thereafter go on renewing the same.

(A. M. BADAR, J.) **(RANJIT MORE, J.)**