IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 396 OF 2016

IN

COMPANY PETITION NO. 471 OF 2013

WITH

NOTICE OF MOTION (ST.) NO. 191 OF 2016

IN

APPEAL NO. 396 OF 2016

Mr. Dinesh Jajodia ...**Appellant**
Versus
Citi Bank & Ors. ...**Respondents**

Mr. Kevic Setalwad, Senior Counsel, a/w Mr. Madhav Jamdar and Ms. Vrushali U. Kabare, for the Appellant.

Mr. Janak Dwarkadas, Senior Counsel, a/w Mr. Rohan Cama, a/w Ms. Swati Singh, i/b AZB & Partners, for the Respondent No. 1.

Ms. Uma Palsule-Desai, AGP for the Respondent No. 3.

Mr. Mihir Mody, i/b M/s. K. Ashar & Co., for the Respondent No. 5.

Mr. Parag Vyas, for the Union of India.

CORAM : A.S. OKA &
A.A. SAYED, JJ.
DATE : 28th June 2016

P.C. :

1. The submissions of the learned Counsel appearing for the parties were heard yesterday. This Appeal takes exception to the order dated 22nd December 2015 passed by the learned Company Judge in Company Petition filed by the HDFC Bank Limited. The operative part of the impugned order is in paragraph 7, which reads thus :-

> *"In view of what is stated above, SEBI as well as the Enforcement Directorate are directed to forthwith take action against the Directors of the Respondent Company as well as Shri Dinesh Jajodia under the appropriate provisions of law, including attachment of their properties as permissible in law. The Company Registrar of this Court shall forward a copy of the Affidavit of Shri Dhananjay Kamalakar dated 22nd December, 2015, to SEBI as well as the Enforcement Directorate along with a copy of this Order. E.O.W. shall render all assistance required by SEBI and the Enforcement Directorate for effective compliance of this Order."*

2. We must note here that a preliminary objection raised by the learned Counsel appearing for 1st Respondent is that the impugned order dated 22nd December 2015 is not a Judgment within the meaning of the Letters Patent. The objection is that on the basis of earlier orders passed by the learned Company Judge from time to time starting from the order dated 8th May 2015, all that the learned Company Judge has done is to direct the Securities and Exchange Board of India ("**SEBI**") and the Enforcement Directorate to take action against the Directors of the Company under winding up (M/s. Geodesic Limited) and the present Appellant in accordance with law. The submission is that in view of the law laid down in the Apex Court in the well known decision in the case of **Shah Babulal Khimji Vs. Jayaben D. Kania & Anr**.[1], the Appeal is not maintainable.

3. The learned Senior Counsel appearing for the Appellant has taken us through earlier orders passed by the learned Company Judge from time to time. His first submission is that the impugned order is a Judgment within the meaning of the Letters Patent inasmuch as the order is virtually a final order directing a very stringent action to be taken against the present Appellant and others.

1 **(1981)4 SCC 8**

Inviting our attention to the order of the learned Magistrate by which the bail was denied to the Appellant, he urged that the learned Magistrate has been influenced by the conclusions drawn by the learned Company Judge and in particular in the impugned order. His next submission is that the impugned order has been passed in breach of the principles of natural justice as no opportunity of being heard was afforded to the Appellant by the learned Company Judge. His second submission is based on the provisions of Prevention of Money Laundering Act, 2002 (for short "**said Act of 2002**"). He submitted that under the provisions of the said Act of 2002 and in particular under Section 41 thereof, the Jurisdiction of Civil Court has been ousted in respect of any matter which the Director or an Adjudicating Authority or the Appellate Tribunal is empowered by or under the said Act of 2002 to determine. He submitted that though the power of the Civil Court to grant injunction is also taken away by virtue of the said Act of 2002, by the impugned order, learned Company Judge has in fact, granted mandatory injunction directing SEBI and Enforcement Directorate to take action against the Appellant. He also invited our attention to the provisions of Section 15Y of the Securities Contracts (Regulation) Act, 1956 as well as Section 20A thereof. He submitted that under both the Sections, the jurisdiction of the Civil Court has been ousted and in view of the specific provision of Section 20A, the Civil Court is powerless to grant any injunction. In support of his submissions, he relied upon the decisions of the Apex Court in **National Organic Chemical Industries Ltd. Vs. Miheer H. Mafatlal & Anr**.[2] as well as **Padam Sen and Anr. Vs. The State of Uttar Pradesh**[3]. He submitted that the Appellant has been condemned unheard and he has suffered irreparable prejudice. He submitted that the direction has been given to initiate proceedings on the basis of pleadings in the Company Petition for winding up though the Appellant is not a party to the said proceedings and in that sense, he had no opportunity to even know what is stated in the proceedings. He, would, therefore urge that the impugned order being an order without jurisdiction needs to be quashed and set aside.

4. We have given careful consideration to the submissions. We have perused the impugned order. In the operative part of the impugned order, learned Company Judge has made a reference to the order dated 8th May 2015 passed by him which has attained finality. Under the said order, the learned Company Judge held that the

2 (2004)12 SCC 356
3 AIR 1961 SC 218

matter required investigation by SEBI in exercise of the specific powers of the Securities And Exchange Board Of India Act, 1992 ("**SEBI Act**"). There is a reference to further order dated 6th August 2015 passed by the learned Company Judge by which Joint Director, Enforcement Directorate was directed to remain present. There is also a reference to the further order passed by him directing the Joint Commissioner of Police, Economic Offence Wing to enquire in the case and to ascertain whether criminal offences are made out. Thereafter, a First Information Report was registered on 15th December 2015 for the offences punishable under Section 409, 420, 477(A) and 120(B) read with Section 34 of the Indian Penal Code vide C.R. No. 760 of 2015. The learned Company Judge in paragraph 6 of the impugned order has quoted the relevant paragraphs of Affidavit of Shri Dhananjay Kamalakar, Joint Commissioner of Police, Economic Offences Wing (EOW), Mumbai. The paragraph 6 of the impugned order quotes the Affidavit of Shri Kamalakar in which he has stated thus :-

> *"15. I say that prima facie it is evident the said 3 Directors of the Respondent hatched a criminal conspiracy with the said Dinesh Jajodia, the purported Tax Consultant of*

the Respondent to cause wrongful gain for themselves and wrongful loss to the shareholders and the FCCB holders, siphoned off funds of the shareholders to the tune of Rs. 250 crores by showing bogus purchases of software and failed to redeem Foreign Currency Convertible Bonds worth US$ 125 million (approx.Rs. 812 crores) to FCCB holders by creating a web of shell companies in various countries with the mala fide intention to siphon off the money through fictitious dealings.

16. *I say that the said Accused in furtherance of their common intention, hatched a criminal conspiracy to defraud the shareholders as well as FCCB holders in order to receive wrongful gains to themselves and committed several acts of falsification of accounts, cheating and criminal breach of trust and thereby committed offences punishable under sections 409, 420, 477 (A), 120 (B) read with 34 IPC.*

17. *I say that on 15th December, 2015, a complaint was registered by Shri Milind Manohar Desai, Police*

Inspector attached to the EOW, Unit-V who was also the Enquiry Officer in the said Preliminary Enquiry under Sections 409, 420, 477 (A), 120 (B) read with 34 IPC at the MIDC Police Station, Mumbai vide C.R. No. 760/15. I say that thereafter the said case was transferred to the Economic Offences Wing, Mumbai, and was renumbered as C.R. No. 88/2015."

(Underline added)

5. Hence, it was clear from the Affidavit of Shri. Kamlakar that the said Officer found that there is a *prima facie* case of commission of cognizable offence made out against the Appellant. It was *prima facie* found by him that the Appellant along with other Accused had hatched a criminal conspiracy to defraud the shareholders as well as FCCB holders of M/s. Geodesic Limited (the company under winding up) in order to receive wrongful gains to themselves. All that is done by the learned Company Judge by the impugned order is to direct SEBI as well as the Enforcement Directorate to initiate action against the Directors of the said Company and the Appellant under the appropriate provisions of law and including the attachment of their properties as permissible in

law. The learned Company Judge in the impugned order has made a reference to his earlier orders including the order dated 8th May 2015 which have become final as of today and after finding that an offence has been registered by the Economic Offence Wing against Appellant and others, directed Enforcement Directorate to initiate action strictly in accordance with law. He has left the action, if any, which can be taken to the SEBI as well as Enforcement Directorate as there are specific observations that the action will be taken under the appropriate provisions of law. Therefore, we agree with the submissions canvased by the learned Counsel appearing for the 1st Respondent that the present Letters Patent Appeal will not be maintainable as nothing has been decided by the learned Company Judge by the impugned order and it is not a judgment.

6. However, considering the detailed submissions made by the learned Senior Counsel appearing for the Appellants, we have even considered the merits of the Appeal. The learned Senior Counsel for Appellant has placed a compilation on record of orders passed by the learned Company Judges from time to time. In the earlier Appeal preferred by the Appellant, he has annexed a copy of the Company Petition for winding up and other documents on record. He is aware

of the Company Petition and orders passed therein. He was examined in open Court by the learned Company Judge. He has attended the proceedings before the learned Company Judge.

7. We have carefully perused the orders passed by the learned Company Judges. What is recorded in paragraph 5 of the order dated 3rd April 2014 has been reproduced in the order dated 7th April 2014. Paragraph 1 of order dated 7th April 2014 reads thus :-

> *"1. On 3rd April 2014, on instructions, a statement was made that was recorded in paragraph 5 :*
>
> *5. Leaving aside the issue of inspection for the moment, the more pressing concern is whether the Company actually has retained the amounts that it was required to do. Mr. Khandeparkar states that his clients will place complete information on affidavit by tomorrow, i.e., 4th April 2014 and furnish a copy of that affidavit to the applicant / petitioner. In the meantime, on instructions from Mr. Prashant Mulekar and Mr. Kiran Kulkarni, Executive Directors of the Company, who are personally present in Court, he makes the following statement :*

(a) In the account of Emiloto Associated Inc, with HSBC Zurich, there is an amount of US $ 29.056 million;

(b) In the account of Zomo Technologies Limited with Credit Suisse Zurich, there is an amount of US $ 92.597 million; and

(c) In the account of Geodesic Technology Solutions Limited, with Clariden Leu Zurich, there is an amount of US $ 82.01 million.

All these amounts, Mr. Khandeparkar says, are held not in cash, but in investment accounts with the Bank's named above. Mr. Khandeparkar undertakes to fully and adequately explain these investments on affidavit in detail including as to when these investments were made, from what sources, and whether the amounts in these accounts are realizable or encashable, and if so, by when. It goes without saying that Mr. Khandeparkar's client would also state on affidavit whether there are any other claims in respect of these investments."

8. Thus, what was represented before the learned Company

Judge by the Directors of the Company named in the aforesaid order was that the amounts recorded therein were lying deposited with the Banks which are named in the said statement. In the said order dated 7th April 2014, the learned Company Judge referred to the Affidavit tendered across the bar on the very day, which reveals that in July 2012, the amount of US $ 29.06 million stated to have been deposited with HSBC Zurich was actually given on loan to one Audrain Commercial Corp, Belize. In the detailed order passed by the learned Single Judge on 7th April 2014, he recorded as to how the Court was misled on 3rd April 2014 by the Directors of the Bank by stating that money was invested in three banks. Therefore, by the said order, the learned Company Judge directed the Company to deposit a sum of US$ 162 million in a no-lien account with a Citibank Branch in London or Hong Kong as nominated by the Company Petitioner before closing of business hours at Zurich time on 28th April 2014. We may note here that the claim of the Petitioner in the winding up Petition is in excess of Rs. 1,000 Crores. Under the order dated 8th July 2014, the learned Company Judge made a specific observation that the Directors of the Company are not honest with their Creditors but are also not honest to the Court. The said order records that earlier orders were not complied with. Thereafter, there is an order dated 9th July 2014 passed by the learned Company Judge by which after recording the conduct of the Company, the learned Single Judge admitted the Company Petition. Thereafter, there is a detailed order passed on 27th August 2014 against the Directors of the Company directing disclosure of several facts including disclosure of current receivables of the Company as well as offshore subsidiaries, namely, Emiloto, Zomo, Geodesic Technology Solutions Limited ("GTSL") and Geodesic Holdings Limited ("GHL"). A direction was also given to confirm whether the bank statements of Zomo, Emiloto and GTSL, which were annexed to letter dated 22nd February 2013 addressed by the Company to ICICI Bank Limited were authenticated and true. Thereafter, several orders were passed by the learned Company Judge from time to time. The order dated 8th May 2015 has become final as of today. Paragraph 2 of the said order reads thus :-

> *"The Petitioner, being the Trustee for the bondholders, has filed the present Company Petition. The Petitioner filed Company Application (L) No. 645 of 2013 and moved this Court by way of a praecipe on 12th December 2013 seeking interim reliefs. This Court (N.M.*

Jamdar, J.) passed an order recording the statement on behalf of Geodesic that sums in the accounts of its subsidiary companies were being kept in deposit pursuant to orders of the Debt Recovery Tribunal ("DRT"). This order was subsequently modified by an order passed on 19th December 2013 in which it was recorded on behalf of Geodesic, on instructions, that a sum of more than Rs.1,000 crores in the accounts of the overseas subsidiaries of Geodesic, i.e. Emiloto Associated Inc. ("Emiloto"), Geodesic Technology Solutions Ltd. ("GTSL") and Zomo Technologies Ltd. ("Zomo"), was being kept in deposit pursuant to an order of the DRT dated 5th April 2013 in a proceeding instituted by ICICI Bank Ltd. Geodesic, through its counsel, undertook to inform the Petitioner in case the order of the DRT was to be modified. It was represented that the above funds were held as under:

(i) Emiloto, in HSBC Private Bank, Zurich;

(ii) GTSL, in BSI Bank Ltd., Singapore; and

(iii) Zomo, in Clariden Leu, Zurich."

9. Paragraph 4 refers to appointment of M/s. Grant Thornton India LLP ("Grant Thornton") to undertake inspection of the books of accounts of the Company and its subsidiaries. Paragraph 6 refers to the Affidavit dated 4th April 2014 filed by Mr. Prashant Mulekar on behalf of the Company. Thereafter, in paragraph 8, there is a reference of the order dated 7th April 2014 which records as to how the Court was taken for a ride by the Directors of the Company. It is pointed out that an Appeal was preferred by the Company against the order of the learned Company Judge dated 7th April 2014 in which there was no ad-interim relief granted. It is pointed out that on 13th May 2014, the Official Liquidator took possession of the office of the Company and ultimately the Appeal was withdrawn on 2nd September 2014. It is recorded that notwithstanding the assurance given by the Company, only a limited inspection was given to Grant Thornton and the said agency was informed that books in respect of the overseas subsidiaries were not in the registered office of the said Company. Thereafter, there is a detailed discussion of the assurances given and statements made by the Directors of the Company before the Company Court. In paragraph 26, the learned Company Judge has observed that various documents which will show the trail of the monies which are claimed to have been invested

by the overseas subsidiaries, have been suppressed from the Court. Paragraph 29 refers to the Report dated 5th May 2015 filed by Avista. Paragraph 29 reads thus :-

> *"On 5th May 2015, Avista filed a report, on the basis of inspection of documents and electronic records collected/recovered from the SEEPZ office of Geodesic. The said report highlights various disturbing facts, not least of all the obvious link between Emiloto, Audrain and Quadris (the managing agent of Emiloto), in all of which entities there is a common Director/senior staff member, one Francesco Castellazzi. Thus the lender (Emiloto), the borrower (Audrain), and the party who is to facilitate the recovery of the loan (Quadris) are all controlled and run by the same person, which is an obvious conflict of interest."*

10. In paragraph 30, the learned Company Judge referred to the said Report in which a reference was made to various documents signed by the present Appellant. In paragraphs 32 and 33, the learned Company Judge has referred to the examination of the present Appellant before this Court including observations on the

demeanor of the Appellant. The learned Company Judge has recorded reasons for coming to the conclusion as to why the Appellant has not been honest with the Court. There was no explanation given by the Appellant as to why he is shown as a beneficial owner of Geodesic and/or Zomo. Moreover, the Appellant was called upon to produce certain bills and invoices in respect of work allegedly done by him as a Chartered Accountant for the Company and its overseas subsidiaries. On perusal of documents produced by the Appellant, the learned Company Judge held that documents produced by the Appellant do not include any bills raised by the Appellant for the work done for incorporating the overseas subsidiaries. The learned Judge held that the Directors and the Appellant have made false statement on oath. Therefore, in the Order 8th May 2015 a direction was issued to SEBI to carry out a detailed investigation to determine the status of investments/loans of the overseas subsidiaries of the Company and the trail of investments/loans from the initial source till the present holder and the value of investments and loans. A direction was issued by the Company Court against the Directors of the Company not to leave India without prior permission. Though an Appeal was preferred by the Appellant against the order dated 8th May 2015, the same was withdrawn with liberty to file appropriate Application before the Company Court. There was a separate order passed on the very day i.e. 8th May 2015 by the learned Company Judge directing the Appellant to handover to the representative of the Official Liquidator all records including hard as well as soft copies of the documents of M/s. Geodesic Limited and its subsidiaries available at his office.

11. Thereafter, there were various orders passed by the learned Company Judge from time to time. In the order dated 31st August 2015, learned Judge referred to the Affidavit of SEBI which states that Directors of the Company failed and neglected to furnish full details pertaining to utilization of proceeds from the issuance of Foreign Currency Convertible Bonds (FCCBs). A *Prima facie* conclusion was recorded by SEBI that the Company did not have sufficient funds to buy back its shares and/or to issue dividend to its shareholders. A conclusion was reached by the SEBI that the Company made fraudulent announcements to its shareholders with an intention of manipulating the price of the scrip. As pointed out earlier, ultimately an offence was registered by the Economic Offences Wing against the Directors of the Company and the Appellant with an allegation that they have made a conspiracy to

defraud the shareholders as well as FCCB holders of the Company in order to receive wrongful gains to themselves. The EOW found that they committed several acts of falsification of accounts and criminal breach of Trust.

12. We must record here that under the impugned order, learned Company Judge has not recorded any specific findings against the Appellant. The learned Judge has referred to the findings recorded in the earlier orders including the detailed findings recorded in the order dated 8th May 2015. In the order dated 8th May 2015, on the basis of the report of Avista filed on 8th May 2015, the learned Company Judge recorded that various documents signed by the Appellant in his capacity as a Director of one Yvette Investment Limited to whom a loan of US$ 7 million appears to have been given by one Enterprise Emerging Markets Fund (EEMF) in which GTSL is claimed to have invested the money. In fact in the order dated 8th May 2015, the Company Judge noted that there are documents placed on record to show that the present Appellant claimed to be the beneficial owner of Geodesic and Zomo. On the basis of his examination in open Court, the learned Company Judge recorded a finding that the Appellant has not been honest with the

Court and he has been lying on oath. It is in the light of the findings recorded in the earlier orders, the stand taken by SEBI, the stand taken on oath by the Joint Commissioner of EOW and the registration of the offence that the learned Company Judge by the impugned order has directed SEBI and Enforcement Directorate to initiate appropriate proceedings in accordance with law.

13. Now we may make a reference to the decisions relied upon by the learned Senior Counsel appearing for the Appellant. In the case of **Padam Sen** (supra) an appointment of Court Commissioner by exercising powers under Code of Civil Procedure, 1908 was made to seize account books in possession of the Plaintiff. It is in this context that the observations in the Judgment have been made. In the case of **National Organic Chemical Industries** (supra), the matter before the Apex Court arose out of the proceedings for approval of the scheme under Section 391 of the Companies Act, 1956. We have perused the findings recorded by the Apex Court. The Apex Court considering the scope of Application for approval of the scheme under Section 391 of the Companies Act observed that the question whether the transfer of shares to the Appellant was in contravention of the interim order of

the Civil Court was not required to be decided in the proceedings arising under Section 391. The said decision has no application to the facts of the present case.

14. As far as setting the criminal law in motion is concerned, the law is well settled. Unless there is a prohibition or restriction in the specific provisions of a statute, any person can set criminal law in motion. The learned Senior Counsel for the 1st Respondent relied upon the decision in case of **A.R. Antulay Vs. Ramdas Sriniwas Nayak & Anr**[4]. He also relied upon a decision of Division Bench of this Court in the case of **Re: Nilesh Lalit Parekh**[5]. Lastly he relied upon the decision of the Division Bench of Madras High Court in the case of **R. Vijaykumar Vs. The Anubhav Plantations Limited, T.Nagar, Chennai-17**[6]. Paragraphs 11 of 14 of the said decision reads thus :-

> *"11. When prima facie case has been made out against the persons who alleged to have committed the offences punishable under the Indian Penal Code, the Court cannot shut its eyes and simply keep the Report for*

4 **(1984)2 SCC 500**
5 **2002(1) Mh.L.J. 785**
6 **2002(2) CTC 68**

record purpose.

12. *What all the learned Judge has thought fit is that the C.B., C.I.D. Report has made out a prima facie case that certain persons have committed criminal offences punishable under the Indian Penal Code and hence they should be prosecuted. This is nothing but setting the criminal law in motion. It is a direction given to the appropriate authority to proceed against those persons who alleged to have committed the offences. If the Report itself can be acted upon, there is no need for the learned Judge to direct the prosecution, but straight away find the persons mentioned in the Report as guilty of the offences mentioned therein and convict them and impose the punishment.*

13. *When that has not done and the prosecution has been directed to be initiated, it is nothing but setting the law in motion, which is essential in order to proceed further pursuant to the Report. Otherwise there is some possibility that because of the pendency of the company petition the police authorities may think that till the*

company petition is over they may not be in a position to initiate the criminal proceedings against those who have been found to have committed the offence. The mere direction to prosecute a person will not amount to an order of imposing the punishment. It is for the concerned person to establish his innocence in the trial before the criminal court.

14. *In our view, the company court is empowered to issue such direction under Rule 9 of the Companies (Court)Rules. Hence we do not find any merit in the appeal and accordingly the same is dismissed."*

15. We have already extensively quoted the findings recorded by the learned Company Judge. His finding is that the Appellant has not been honest to the Court. The said finding has attained finality as of today. The Economic Offences Wing found *prima facie* material against the Appellant and the Directors of the Company to register a First Information Report as regards the criminal conspiracy to defraud the shareholders as well as FCCB holders in order to receive wrongful gains to themselves. We may note here that the Petitioner in the Company Petition for winding up

is claiming to be a trustee in respect of the FCCBs of a value in excess Rs.1,000 Crores which were due in the year 2013. We fail to understand as to how the learned Company Judge exceeded the jurisdiction vested in him by passing the impugned order. In fact in our view, in the light of the findings recorded by the learned Company Judge himself, there was no option but to issue a direction to the statutory authorities to initiate action in accordance with law. The learned Company Judge could have not shut his eyes to the conduct of the Appellant especially when the Economic Offences Wing came to *prima facie* conclusion regarding his involvement in conspiracy to defraud shareholders as well as FCCB holders. In our view, no fault can be found with the directions contained in paragraph 7 of the impugned order even on merits also.

16. At one stage, this Court has granted time to the Appellant to take instructions as regards withdrawal of the Appeal inasmuch as if the Appellant is aggrieved by the action initiated by the SEBI and the Enforcement Directorate, he always has remedies available.

17. In our view, considering the conduct of the Appellant which is reflected from the orders which have become final

and even otherwise, considering the material on record against the Appellant, this is a fit case where Appellant will have to be saddled with costs quantified at Rs. 1,00,000/-. Hence, we pass the following order:-

(i) Appeal is dismissed;

(ii) The Appellant shall deposit a sum of Rs. 1,00,000/- (Rupees One Lakh only) by way of costs within a period of eight weeks from today which will be payable to the Company Petitioner;

(iii) Place the Appeal under the caption of Directions on 2nd September 2016 for considering the compliance.

(iv) Pending Notice of Motion does not survive and is disposed of.

[A.A. SAYED, J.] **[A.S. OKA, J.]**