IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [APPW] No.32 of 2016
and
Criminal Application [APPW] No.43 of 2016
in
Criminal Writ Petition No.961 of 2015 (D)

(Smt. Bhagyashree w/o Prashant Wasankar
vs.
State of Maharashtra, through Additional Commissioner of Police, Economic Offence Wing, Nagpur and another)

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

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Shri D.V. Chauhan, Advocate for the Applicant/Original Petitioner in APPW No.32/2016.
Shri R.M. Daga, Advocate for the Applicant in APPW No.43/2016.
Shri T.A. Mirza, A.P.P. for the Non-Applicant/State.

CORAM : S.B. SHUKRE, J.
DATE : 26th AUGUST, 2016.

Heard the learned Counsel for the applicants, the learned A.P.P. for the State and learned Sub-Divisional Officer, Nagpur, who is personally present in the Court.

By a detailed order passed on 21/07/2016, this Court had indicated a course, which could have been adopted by the investigating agency for securing the interest of the depositors. It appears that in spite of ample time and sufficient opportunities having been given to the investigating agency, nothing has been done so far. No steps for getting the shares in question attached have been taken. The learned Sub-Divisional Officer, the competent authority for ordering attachment of shares, submits that he is helpless in the matter, because the shares in question came to be deposited directly in the custody of the M.P.I.D. Court and that there has been no formal seizure of these shares by the investigating agency. This Court, by order dated 21/07/2016, had suggested that necessary steps in this regard should be taken by the investigating agency. It seems that it was all in vain. At that time, the then Additional Public Prosecutor had submitted that the prosecution would have no objection in principle to sell the shares and the objection was only to the extent of permitting the sale of the shares by offsetting the investment of Rs.22,50,000/- made in the company of the applicant. It was submitted by the learned Additional Public Prosecutor that the sale proceeds of shares in stead of being applied towards liquidation of the investment made by the applicant be directed to be deposited in the Court so that they could be available for distribution amongst all the distributors equitably subject, however, to the orders of the Court. However, as stated earlier, nothing fruitful has emerged after 21/07/2016. The difficulty arising out of non-attachment of the shares is still there. It is preceded by another difficulty - investigating agency having not seized these shares in a formal way. No application, admittedly, in this regard has been made to the concerned M.P.I.D. Court. This is the scenario in this case.

The other aspect relates to diminishing of the value of the shares and there being no certainty, what price these shares will fetch and at what point of time. The learned Counsel for the original petitioner and the learned Counsel for the applicant in APPW No.43/2016 submit that this is because, according to the prosecution, value of those shares is “zero” in the market and there is a finding recoded in this regard by the learned Special Judge of the designated M.P.I.D. Court in his order passed on 19/11/2015 rejecting the prayer to deposit the shares in Misc. Criminal Case No.2555/2015. They submit that today at least there is a person available, who is ready to offer price of Rs.300/- per share and the original petitioner apprehends that tomorrow the same may not be the situation. So possibility of shares fetching much lower value in future is not ruled out. So this is the other side of the story.

This Court thus has to take into account what has been so far done by the investigating agency and what may happen in this case, if no decision on these applications is taken within a reasonable period of time. In the latter case, I have already noted, what could probably be the situation. So, the result of this discussion would be that in spite of giving ample opportunities to the investigating agency, nothing has been done and now, this Court cannot remain silent to the pleas raised by the original petitioner and the applicant and accordingly this Court is inclined to allow both the applications.

In fact, by the order passed on 28/01/2016 in the Criminal Writ Petition No.961/2015, this Court had already indicated that the transfer of shares was possible, but found that it would not be fruitful if no customer was willing to come forward and purchase the shares in part or full. That was the reason, why the opportunity to get the clarificatory order was granted by this Court, in case a concrete proposal for purchase made by somebody is placed on record. Now that concrete proposal is available.

In view of above, the original petitioner-Bhagyashree Prashant Wasankar is permitted to process the offer of purchase of 7500 shares given to her by the applicant in the Criminal Application [APPW] No.43/2016 and the Criminal Application [APPW] No.43/2016 stands allowed in terms of its prayer clause (i).

The learned A.P.P. at this stage has suggested that the transfer of shares be permitted at the price determined in terms of the present market value of the shares. I do not think that the suggestion can be accepted for the reason that these shares are not the subject matter of the controversy in this case. They are not forming the part of charge-sheet and that when the shareholder is willing to accept a particular price of the share, no other person, who has no *locus standi* or interest in the shares in any manner could impose his or her view of price of the shares on the shareholder.

In the result, both the applications are allowed and disposed of in aforesaid terms.

Criminal Application [APPW] No.33/2016 :

Heard Shri D.V. Chauhan, leanred Counsel for the applicant.

Since the figure of Rs.2,00,000/- in line No.2 of paragraph 2 and page No.2 of the order dated 28/01/2016 has been mentioned due to clerical error and it could have been actually stated as Rs.5,58,00,000/-, the application deserves to be allowed and it is allowed accordingly.

The figure of Rs.2,00,000/- be substituted by the figure of Rs.5,58,00,000/-.

JUDGE

**sdw*

<u>C E R T I F I C A T E</u>

I certify that this order uploaded is a true and correct copy of the original signed order.

Uploaded by: S.D. Waghmare Uploaded on : 1/9/2016
P.A. to the Hon'ble Judge.