Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 89 OF 2018

IN

SUIT NO. 1512 OF 2009

Shapoorji Pallonji & Co Ltd …Plaintiffs
Versus
Jignesh Shah & Ors …Defendants

WITH

CHAMBER SUMMONS (L) NO. 223 OF 2018

IN

EXECUTION APPLICATION NO. 1150 OF 2014

IN

SUIT NO. 1512 OF 2009

WITH

CHAMBER SUMMONS (L) NO. 224 OF 2018

AND

CHAMBER SUMMONS (L) NO. 225 OF 2018

WITH

CHAMBER SUMMONS (L) NO. 226 OF 2018

WITH

CHAMBER SUMMONS (L) NO. 290 OF 2018

WITH

CHAMBER SUMMONS (L) NO. 294 OF 2018

Mr Janak Dwarkadas, Senior Advocate, *with Dr Biendra Saraf, Karl Tamboly, Sonam Mhatre & Tejas Gokhale, i/b Dhaval Vussonji & Associates, for the Plaintiffs.*
Mr Pradeep Sancheti, Senior Advocate, *with Mr Mayur Khandeparkar, Minal Chandnani, i/b JS Chandnani, for Defendants Nos. 1 to 5.*
Mr Sharan Jagtiani, *with Mr Hemant Shah & Jugal Kanani, i/b IC Legal, for the Applicant in CHS/223/18, 224/18, 225/18, 226/1/8 & 294/18.*
Mr Javeed Hussein, *with Mubashir Hussein, Munibah Imra, Saba Shaikh, Reshma Khatre, Firdous Khan, i/b Hussein & Co., for the Applicant in CHS/290/2018.*
Mrs KY Ambekar, *Ist Assistant to the Court Receiver, is present.*

CORAM: G.S. PATEL, J
DATED: 23rd March 2018

PC:-

1. In Suit No. 1512 of 2009, the Plaintiff and Defendants Nos. 1 to 5 entered into Consent Terms on 4th September 2013 in Appeal (L) Nos. 289, 290, 291 and 292 of 2013. These Consent Terms were recorded in Minutes of the Order of that date. The suit was decreed in accordance with those Consent Terms.

2. The Consent Decree provided that, on a default by Defendants Nos.1 to 5 in terms of clauses 3, 4 and 5 of the consent terms, the Court Receiver, High Court, Bombay would stand appointed as a Receiver in execution of the said Consent Decree. The Plaintiff was to stand appointed as an agent of Court Receiver to complete the balance construction of the sale building in the

Crescent Tower Project ("**the Project**"). The Court Receiver was to sell the flats to satisfy the money decree in favour of the Plaintiff, and to pay from the funds in his (the Court Receiver's hands), the cost of construction as well.

3. The Consent Terms were concerned only with the Project and no other. Further, the sale of the flats was *not* in pursuance of any original agreement to which the suit related but only with the arrangement conceived under the Consent Decree. The flat sales were, thus, required in payment of the decretal debt owed by Defendants Nos. 1 to 5 to the Plaintiff; and to achieve these sales, the Project had to be taken to be completion (i.e., the flats to be sold were required to be built). The Court Receiver's role was therefore to facilitate the timely completion of the Project and the necessary sales of flats to ensure payment of the decretal debt. The fact that the construction was to be done by the Plaintiff is entirely irrelevant and must be delinked from the flat sales, for these sales were not 'on behalf of the Plaintiff' from any legally tenable perspective. To put it another way: if the judgment debtors simply paid off the decretal debt due to the Plaintiff, the decree holder, no question would ever have arisen of Project completion or flat sales with or without the Receiver. The Receiver, it must be noted, was appointed *in execution*, and that execution was of a money decree. It is, therefore, not possible to accept the submission that the 'seller' or 'deemed seller' of any of the flats is the Plaintiff, or that the Receiver sold any flats 'on behalf of the Plaintiff'.

4. To give effect to this, the Plaintiff formed a new artificial juridical person ("**AJP**") named "**SPCPL—AGENT OF THE**

COURT RECEIVER". This was done to comply with direct and indirect tax laws. The remaining construction work of the sale building has been completed under this registration.

INCOME TAX

5. It was in this capacity that the AJP obtained a Permanent Account Number **(PAN: AAAJS5697R)** under Section 139A of the Income Tax Act, 1961 in its name, viz., SPCPL—AGENT OF THE COURT RECEIVER.

6. In parallel, the Court Receiver also obtained a PAN card (**PAN: AAAJC0939L**) in the name of "**COURT RECEIVER — IN THE CASE OF SPCPL — SUIT NO.1512 OF 2009**" (hereafter, "**the CR Tax Registration Name**") This was required since it was the Court Receiver who was actually selling the flats.

SERVICE TAX & GST COMPLIANCE

7. Similarly, the AJP obtained a service tax registration number (**AAAJS5697RSD001)** under Chapter V of the Finance Act, 1994 read with the Service Tax Rules, 1994 i.e. under the Service Tax regime in its name, **SPCPL—AGENT OF THE COURT RECEIVER**, effective as on 26th February 2016. This was needed for the purposes of the reverse charge mechanisms since there were services obtained for completion of construction from other service providers.

8. To avail the benefit of service tax already paid, the Court Receiver also obtained service tax registration number **AAAJC0939LSD001** in the CR Tax Registration Name.

SERVICE TAX, CENVAT CREDIT AND GST

9. In the course of the Project's construction completion, Service Tax was periodically reimbursed to the various service providers/suppliers of various services, in the aggregate of Rs.51,54,453/-. This has been deposited under the service tax registration number AAAJC0939LSD001 that the Court Receiver obtained in the CR Tax Registration Name.

10. Under the relevant provisions of the Finance Act, 1994, as in force at the relevant time, credit for the service tax paid accrues to the seller of the flats to be constructed in the said sale building. The Court Receiver is/was selling the flats on behalf of Defendant Nos.1 to 5. Therefore, it is Defendant Nos. 1 to 5 who would be entitled to this tax credit ("**CENVAT Credit**").

11. The Central Goods and Services Tax Act, 2017 ("**CGST Act**") was introduced on 1st July 2017. Under Chapter XX of the CGST Act ('*Transitional Provisions*') and the relevant rules made thereunder, 'FORM GST TRAN 1' must be filed to avail any CENVAT Credit benefits accrued during the Service Tax regime.

12. On 26th September 2017, the AJP obtained GST registration number **27AAAJS5697R1ZX** in the name of "**SPCPL—Agent of**

Court receiver" on account of migration under Section 24 of the CGST Act, 2017.

13. After GST implementation (with effect from 1st July 2017), GST has been reimbursed to suppliers of various material & services, between the period 1st July 2017 to 31st December 2017, aggregating to Rs.43,77,420/-. The benefit of the CENVAT Credit to the extent of the aforesaid amount of Rs.51,54,453/- could have been availed. As noted earlier, it is Defendants Nos. 1 to 5 who are actually entitled to this CENVAT Credit and its adjustment or benefit in the successor CGST regime. This benefit of CENVAT credit accrued to the extent of Rs.51,54,453/- can only be obtained when Defendant Nos. 1 to 5 file 'Form GST TRAN-1'.

14. Thus, upon Defendant Nos.1 to 5 obtaining the required GST registration, as stated above, Defendant Nos.1 to 5 would become entitled to obtain the transitional benefit of the CENVAT Credit for a sum of Rs.51,54,453/- *plus* the GST Credit for a sum of Rs. 43,77,420/-, aggregating to Rs. 93,32,691/-, by deducting or setting off this amount from sales made of the flats and GST to be collected from flat purchasers.

15. While this is true, it is also necessary that the Plaintiff, Defendants Nos. 1 to 5 and the Court Receiver should be safeguarded from any coercive or punitive action from the revenue on any account. This is essential because all this activity has been under supervision of this Court, and has been regularly and routinely subject to judicial oversight to ensure that there are no lapses. Any delays in revenue filings or payments are thus beyond the control of these parties/entities. Without specific orders and directions, including those I propose to pass today, none could have obtained the necessary adjustments and credits.

ORDER AND DIRECTIONS

16. It is with this background and in this view of the matter that the following directions are issued:

(a) Defendant nos. 1 to 5 are directed to apply within three weeks from today for separate registrations under all relevant laws, including without limitation, the Maharashtra Value Added Tax Act, Service Tax Act, and the Goods and Services Tax Act relating to direct and indirect taxes but only in respect of the said Project and as an agent of the Court Receiver.

(b) The Income Tax, VAT, Service Tax and GST authorities will grant registrations under their respective tax laws to Defendants Nos. 1 to 5 upon such applications being made.

(c) The Income Tax, VAT, Service Tax and GST authorities will accept payment of taxes by or on behalf of Defendants Nos. 1 to 5 without levying penalties, late fees, or interest.

(d) The registrations already obtained are for the limited purpose of implementing the consent decree dated 4th September 2013. They will not be valid thereafter for any other business carried on by the Defendant nos. 1 to 5 (either individually, collectively or in any combination). The fact that these registrations have been obtained does not constitute or amount to a modification of the Consent Terms or the Consent Decree.

(e) Defendant nos. 1 to 5 are hereby directed to apply within three weeks from today for GST registration under the CGST Act and discharge all tax obligations under the relevant provision of the CGST Act, 2017.

(f) The GST authorities will permit the amounts lying to the credit of the AJP to be transferred to the credit of the Defendants Nos. 1 to 5 and will accept such form when filed without any late fee/penalty/interest.

(g) The authorities concerned will accept GSTR 3B and GSTR-1, being the monthly return after payment of GST, if any, without any late fee/penalty/interest.

(h) Defendant nos. 1 to 5 are hereby directed to take the necessary steps to avail the deduction/set-off against the CENVAT Credit as well as credit under the provisions of CGST Act and to avail and adjust the same against the liability of service tax/GST from flat sales made by Court Receiver and GST to be collected from the flat purchasers.

(i) In respect of the sales effected during the time when Service Tax regime was in place, Defendant Nos.1 to 5 (with the assistance of the Court Receiver, where necessary), shall collect Service Tax to the extent of Rs.4,19,97,111/- from purchasers of 18 flats (as per the list of details of the said flat purchasers which is with the Court Receiver) already sold by the Court Receiver and to pay this amount to the revenue authority concerned.

(j) The Service Tax Registration No. obtained by the Court Receiver in the name of "**Court Receiver in case of SPCPL — Suit No.1512 of 2009**" is to be cancelled, and the revenue authority in question is not to levy any penalty for not filing returns under the statute in question.

(k) In respect of the sales effected during the time when VAT regime was in place, in accordance with the circular dated 26th May 2017 of Maharashtra Value Added Tax Act, Defendant Nos. 1 to 5 (with the assistance of the Court Receiver, where necessary) are directed to first collect from the purchasers of the 18 flats (as per the list with the Court Receiver) the amount of Rs.93,32,691/-and to pay this to the MVAT Authority. Should it not be possible to pay into MVAT, then an application will be made by Defendants Nos. 1 to 5 to embed this amount in the GST regime.

(l) For the period after 1st July 2017, i.e., after the GST regime came into effect, Defendants Nos.1 to 5, with the assistance of the Court Receiver where necessary, shall—

(i) In respect of sales already effected during the GST regime, raise bills or demands for and collect the balance instalment of purchase consideration and the aggregate amount of GST due on these from the 18 flat purchasers in the list maintained by the Court Receiver; and will deposit the GST so collected with the authorities concerned after adjusting all credits accrued.

(ii) In respect of sales to be made hereafter, Defendants Nos. 1 to 5 shall, with the assistance of the Court Receiver where necessary, continue to collect and deposit the GST with the authority or authorities concerned after adjusting all credits already accrued, if any.

(m) Defendants Nos. 1 to 5 shall, within six weeks from today, and taking the assistance of the Court Receiver where necessary—

(i) Obtain a Permanent Account Number and Tax Deduction and Collection Account Number;

(ii) Comply with the provisions of the TDS to be deducted from the stipulated payment under Chapter XVII-B of the Income Tax Act, 1961;

(iii) Take all steps necessary to call upon the 18 flat purchasers of the flats already sold and where 1% TDS under Section 194A of the Income Tax Act is already deducted on the part-consideration already paid to file a revised return quoting the Permanent Account Number (“**The New PAN**”) now to be obtained by Defendant nos. 1 to 5; or, alternatively, to place this order before the Income Tax Authorities with a request to credit the 1% TDS already paid to The New PAN;

(iv) In respect of flats to be sold hereafter, call upon the flat purchasers in question to deduct TDS on the balance amount, as well as any amount towards sale consideration, under The New PAN.

(n) The Income Tax authorities shall, acting on production of an authenticated copy of this order—

(i) Allot a new PAN number in the name of Defendant nos. 1 to 5 as an agent of Court Receiver;

(ii) Accept Income Tax Returns for Assessment Year 2017–18 if filed after 31st March 2018;

(iii) Allow the credit of TDS deducted under section 194A by the purchasers of the 18 flats mentioned above;

(iv) Not levy any penalty/late fee/interest or take any other action under the Income Tax Act for any delay in filing Income Tax Return for Assessment Year 2017–18;

(v) Accept TDS return without levying any late fee under section 234E;

(vi) Authorize Defendants Nos. 1 to 5 to file Income Tax Returns and TDS returns using The New PAN and TAN obtained by the Defendants as per the orders of this Court;

(vii) Cancel the PAN number allotted to the Court Receiver in the name of **COURT RECEIVER IN CASE OF SPCPL – SUIT NO.1512 OF 2009**.

CLARIFICATIONS AND FURTHER DIRECTIONS

17. These directions and orders are to safeguard the interest of the parties and the Revenue as also the flat purchasers. They are without prejudice to the respective rights and contentions as between the Plaintiffs and Defendants Nos. 1 to 5 in regard to their respective rights and obligations under the Consent Decree including as to cost of construction (incurred by the Plaintiff and reimbursed by the Court Receiver).

18. Further clarifications and directions are necessary in the following terms.

(a) **Tax Liability is that of Defendants Nos. 1 to 5.**—All liabilities, or responsibilities for discharge of statutory liabilities arising from the provisions of the Service Tax Act, under the Finance Act, 1994 or CGST or Maharashtra Value Added Tax (MVAT) or Income Tax Act will be solely the responsibility and obligation of Defendant No.1 to 5 as it is they who are the Judgement Debtors and it is therefore on their behalf that sales were/are being conducted by the Court Receiver.

(b) **Regarding completing sales of 18 Flats, RERA documentation and further Court Receiver's Report.**— In respect of the 18 flat purchase transactions, only 70% of the sale consideration has been called for and received by the Court Receiver. The remaining 30% has not been called for by the Court Receiver, pending directions of this Court. Those 18 flat purchase transactions have, therefore, not been completed before 31st March 2018 on account of the pendency of these proceedings.

(i) The Court Receiver will proceed to finalize the RERA documents in respect of all 18 flat transactions and finalize the amount to be called for, including all applicable taxes, levies, whether for service tax, VAT or GST.

(ii) The Court Receiver will place a further Report before this Court with the finalized amounts before calling for these amounts through the flat purchasers.

(iii) This is to ensure that there is no error in this regard and no prejudice is caused to any of the parties.

(iv) Consequently, no question of penalty, interest, or coercive or punitive action can lie against either of the parties in respect of any taxes or other dues to the Revenue in regard to these 18 transactions.

(v) The Revenue, whether in the Income-tax Department or any indirect taxes department will not raise any demand in regard to these 18 transactions on any of the parties without prior leave of this Court obtained at least after two weeks' written notice to the Advocates for the Plaintiffs, Defendants and the Court Receiver.

(vi) The Court Receiver to place a Report regarding the RERA-agreement and finalized amounts after three weeks.

(c) **Regarding sales of six flats.**—There are RERA-compliant agreement for these six flats already in place.

(i) Hence, Court Receiver will in three weeks call upon the purchasers of the six flats to deposit the balance purchase price.

(ii) The statement handed over on behalf of five of these six purchasers is taken on record and marked "X" for identification with today's date. A copy is given to the Court Receiver. The Court Receiver will verify the statement.

(iii) Against deposit of the entire amount and all applicable taxes, those flat purchasers will be put into actual physical possession of their flats.

(iv) The Court Receiver will proceed to pay out the taxes collected.

(v) The balance consideration for the five flats will be kept by the Court Receiver in a separate account and will not be intermingled with the funds received / to be received for the 18 flats.

(vi) As regards the tax payment, the Court Receiver will issue instruments or transfer the funds to the account communicated by Defendants Nos. 1 to 5 for payment into Revenue.

(vii) The TDS to be deducted by the five flat purchasers is to be credited to the account of Defendant No. 5, whose PAN Number will be provided.

(d) **Architects' and Chartered Accountants' bills.**—The bill of Architects and Chartered Accountants will be paid out with the funds in the hands of the Court Receiver.

19. The Notice of Motion and all Chamber Summonses are disposed of in these terms.

20. Liberty to all parties, including all revenue authorities, to apply.

(G. S. PATEL, J)