IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1119 OF 2018

Ashish Ramesh Mahendrakar.]
Add : 102, Mayekar Park,]
Near Jain Society, Santoshi Mata Road,]
Kalyan (W), Thane - 421 301.] ... Appellant

Versus

1. State of Maharashtra.]
Through Economic Offences Wing,]
Unit VII, GB CB CID, Mumbai.

2. The Competent Authority]
Office of the Deputy Collector]
(Encroachment / Removal) & Competent]
Authority, Colaba Division, Mumbai]
Old Customs House, 4th Floor, D.D.Building]
Shahid Bhagat Singh Road, Fort,]
Mumbai - 400 001.] ... Respondents

3. Ajaykant Ruia.]
Age - 58 years, Occu. : Business,]
Having office at 901, Maker Chamber-V,]
Nariman Point, Mumbai - 400 021.]

4. Ramesh Mittal.]
through Power of Attorney of Ashwin Mittal]
Age - 67 years, Occu. : Business,]
Residing at 171-B, Mittal Towers,]
Nariman Point, Mumbai - 400 021.]

5. Amol Motiram Ghosalkar.]
Age : 55 years, Occ. : Retired,]
R/at : 1304, A-Wing, Janseva CHS Ltd.]
CTS No.26, New Siddharth Nagar,]
Near Vivek College, Goregaon (West),]
Mumbai - 400 104.]

6. Gopinath Bhaurao Patil.]
Age : 74 years, Occ. : Retired,]
Patil House, 40J, Bhagwantrao Parelkar]
Road, Parel Village, Mumbai - 400 012.] ... Interveners / Original Depositors

Mr. Mahesh Jethmalani, Senior Advocate a/w Mr. Ayaz Kan, Ms. Gunjan Mangla & Ms.Zehra i/b Mr. Dubey for Appellant.

Mr. A. A. Kumbhakoni, A.G. a/w Mrs. S. V. Sonawane, APP for State.

Mr. Sandeep R. Karnik for Respondent Nos.3 & 4.

Mr. Rohit Pandey i/b Ms. Tanvi Parekh for Respondent Nos.5 & 6.

Investigating officer Mr. Shivaji Phadtare, Sr.P.I. attached to Colaba Police Station, present.

CORAM :- INDRAJIT MAHANTY & SARANG V. KOTWAL, JJ.
RESERVED ON :- FEBRUARY 20, 2019
PRONOUNCED ON :- FEBRUARY 27, 2019

P. C. :-

1. This is an Appeal is preferred by the Appellant under the provisions of Section 11 of the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 (hereinafter

referred as the 'MPID Act') against the order dated 13/07/2018 passed below the application Exh.117 in MPID Special Case No.4 of 2014 in Criminal Case No.168 of 2013, by the learned Special Judge, MPID Act & Additional Sessions Judge, City Civil & Sessions Court, Mumbai.

2. The Appellant is the original accused no.4 in the said case. The charge-sheet is filed against 15 accused out of which, 4 accused are the companies incorporated under the Companies Act, 1956. All these companies are connected with each other. The individual accused are related to these companies in different capacities. These companies are Birla Power Solutions Ltd. (accused no.11), Zenith Birla (India) Limited (accused no.12), Birla Cotsyn (India) Ltd. (accused no.13), Birla Shloka Edutech Limited (accused no.14) and Birla Edutech Ltd. (accused no.15). The Appellant is a shareholder and a Director of the accused no.15 Birla Edutech Ltd.

3. The relevant facts mentioned in the Appeal memo and the documents annexed thereto are as under :

On 30/12/2013, an FIR vide C.R.No.187 of 2013 was registered at Marine Drive Police Station. It was subsequently transferred to the Economic Offences Wing, Unit IV, Mumbai and was registered as C.R.No.168 of 2013 for the offences punishable under Sections 409, 420, 477(a) and 120B of the IPC and under Sections 3 and 4 of the MPID Act against M/s. Birla Power Solutions Ltd. The offence was related to the huge deposits collected between August 2009 to December 2013 by these companies. The deposits and promised returns were never given to these depositors and hence, there were allegations of commission of these offences. It is the case of the Appellant that the accused no.15 Birla Edutech Ltd. had never accepted any fixed deposits from public and had not taken any loan from any financial institution.

4. The charge-sheet filed in this case; mentions that the Chairman and other Directors of Birla Power Solutions Ltd. advertised their scheme of accepting deposits and promising high returns. The charge-sheet dated 20/10/2016 mentions that 8894 depositors invested Rs.57,03,66,000/- in Birla Power Solutions Ltd. However, the promised returns were not paid to the investors. The other companies namely Zenith Birla (India) Limited (accused no.12), Birla Cotsyn (India) Ltd. (accused no.13) and Birla Shloka Edutech Limited

(accused no.14) also accepted fixed deposits, inter-corporate deposits and bills of exchanges and misappropriated huge amounts.

5. According to the Appellant, the accused no.14 Birla Shloka Edutech Limited is promoter of accused no.15 Birla Edutech Ltd., Zenith Birla (India) Limited (accused no.12) is also a sister concern of accused no.15 Birla Edutech Ltd. Accused no.15 Birla Edutech Ltd. was the sole and absolute owner of plots of land bearing CTS Nos.737/9/12A/1, 737/9/12E and 737/9/12F at Oshiwara, Andheri (West), Mumbai. According to the prosecuting agency, these plots were purchased form the crime proceeds and therefore, the competent authority i.e. Respondent No.2 attached these properties.

6. It is the Appellant's case that accused no.15 Birla Edutech Ltd., vide resolution dated 16/10/2016, without prejudice to their rights and contentions, gave no objection for the said plots to be put for auction sale so that the sale proceeds could be utilized to first pay off the liability of the fixed deposit holders of accused no.15's holding company Birla Shloka Edutech Limited (accused no.14) and residual amount towards repayment of fixed deposit holders of accused no.12

Zenith Birla (India) Limited. The Roznama of the trial Court dated 20/10/2016 mentions thus :-

> "*Adv. Gaur for FE's made statement that, one property at Sr.no.5 the notification be put to auction cell as the FE have no objection for the purpose of disbursement of amount of sale proceeds to the depositors. In view of the statement made by Adv. Gaur the attachment in respect of Sr.no.5 in the name of FE is made absolute. CA is directed to liquidate the property by auction cell. Adv. Gaur consented to fetch market valuation of the property from any High Court approved valuer on the cost of FE and also to bear the expenses of paper publication of the auction cell in 2 news papers 1. Times of India and 2. Loksatta.*"

7. On and around 20/04/2017, the auction proceedings were completed and the best bid offer price of Rs.24 Crores was accepted. The said amount was realized and was deposited in a fixed deposit with the State Bank of India, Mumbai Main Branch, at the interest rate of 4.25% p.a. The compliance report indicating this fact was filed by the Respondent No.2 before the trial Court.

8. In this background, the Appellant filed an application vide Exh.117 in MPID Special Case No.4 of 2014 making the main prayer as follows :

> "*A. To pass an appropriate order and / or direction for utilization of the sale proceeds of the said plot i.e. Rs.24,00,00,000/- (Rupees Twenty Four Crores Only) presently deposited with State Bank of India, Mumbai Main Branch under FDR No.36885158791 dated 17th May 2017 to first pay off the liability of fixed deposit holders of Accused No.15's holding company i.e. Accused No.14 - Birla Shloka Edutech Limited and residual amount towards repayment of fixed deposit holders of another group company viz. Accused No.12 - Zenith Birla (India) Limited;*"

To this application, the Senior P.I., Economic Offences Wing, Unit IX, Mumbai filed his reply. It was mentioned in reply that Birla Power Solutions Ltd. and its connected companies accepted deposits to the tune of around Rs.300 to 400 Crores. The last line of this reply mentions that the investigating agency did not have any objection if the aforesaid amount (which was kept in the fixed deposits of State Bank of India, Mumbai Main Branch) was distributed amongst the fixed term depositors in the offence.

9. The Respondent no.2 filed his own say wherein it was mentioned that he had no objection if the said amount was distributed amongst the fixed term depositors of Birla Shloka Edutech Limited.

Thus, the investigating agency had given their no objection for distributing the amount amongst the fixed term depositors in the offence and the Respondent No.2 had specifically given no objection for such distribution to 'fixed term depositors' of Birla Shloka Edutech Limited.

10. The learned Special Judge, after hearing the present Appellant, the investigating agency, the competent authority and the other Advocates for the investors, rejected the application filed vide Exhibit.117 in MPID Special Case No.4 of 2014. From the order, it appears that the investigating agency and the competent authority gave no objection to allow the application but the learned SPP objected for allowing the application and submitted that the amount was liable for equitable distribution amongst the depositors / investors. The learned Counsel for the investors also supported this stand and submitted that the properties were purchased from the funds of the depositors and therefore, the amount realized from auction proceedings was liable for equitable distribution; whereas the learned Counsel for the present Appellant had submitted that the accused no.15 had given no objection for auction of its properties so

that the sale proceeds could be distributed amongst the fixed deposit holders of accused no.12 and accused no.14. The learned Judge observed that sub-section (4) of Section 7 of the MPID Act provided that the Court was empowered to issue directions for realization of assets attached and for equitable distribution of the amount realized amongst the depositors / investors. The learned Judge further observed that the allegations against the accused were that they had accepted Rs.300 to Rs.400 Crores from the depositors and had committed fraudulent default. The learned Judge further observed that the amount recovered in the offence is only a small amount for equitable distribution and that there were other fixed deposit holders besides deposit holders of accused no.12 and accused no.14. The learned Judge further observed that the application was only for distribution of amount amongst the fixed deposit holders of accused nos.12 and 14. The learned Judge thereafter observed that the application was not tenable at that stage. The application was thus rejected. The Appellant has challenged this order in the present Appeal.

11. We have heard Mr. Mahesh Jethmalani, learned Senior Advocate for the Appellant, Mr. A. A. Kumbhakoni, learned A.G. for State as well as Mrs. S. V. Sonawane, learned APP for State and Mr. Sandeep R. Karnik, learned Counsel for Respondent Nos.3 & 4.

12. Mr. Jethmalani submitted that the resolution was passed on 16/10/2016 with the idea that the sale proceeds of the said plots of land could be utilized to pay off the liability of fixed deposit holders of accused no.15's holding company namely Birla Shloka Edutech Ltd. (accused no.14) and the residual amount could be paid to the fixed deposit holders of another sister concern i.e. accused no.12 Zenith Birla (India) Limited. It was never intended by the resolution that the consent was to be given for distribution of money to the deposit holders of all other companies namely Birla Power Solutions Ltd. (accused no.11) and Birla Cotsyn (India) Ltd. (accused no.13). He submitted that the accused no.11 Birla Power Solutions Ltd. is facing winding up proceedings in this Court on the original side and the major part of the amount covering the fixed depositors' liability for that company is already lying in those proceedings and therefore, it

was not necessary to distribute the sale proceeds of the afore-mentioned plots to the fixed depositors of Birla Power Solutions Ltd.

13. On the other hand, Mr. A. A. Kumbhakoni, learned A.G. for the State as well as Mrs. S. V. Sonawane, learned APP for State, submitted that the plots of land were purchased from the money derived from the crime proceeds. All the companies were connected with each other and it was not proper to separate depositors or investors of these companies in separate categories. The reply before the trial Court filed by the investigating agency clearly mentions that they had no objection if the sale proceeds were distributed amongst the fixed depositors in respect of the said offence, though the competent authority had filed a reply giving his no objection for such distribution to the fixed depositors of Birla Shloka Edutech Ltd. The learned trial Judge has considered all the submissions and has observed that there were other fixed deposit holders other than those of accused nos.12 and 14. Taking this fact into account, the learned Special Judge has rejected the Appellant's application.

14. Mr. Sandeep R. Karnik, learned Counsel for Respondent Nos.3 & 4, submitted that the amounts could not be distributed only amongst the fixed depositors of these companies but it should be distributed equitably amongst other depositors who have invested large amounts and which are termed as inter-corporate deposits.

15. As mentioned earlier, the application at Exh.117 was filed for a limited purpose for directions for distribution of the sale proceeds of the said plots of land to the fixed deposit holders of accused nos.12 and 14. There was no occasion for the learned Judge to consider as to who were eligible for being paid out of the sale proceeds. The learned Special Judge has rejected the said application thereby meaning that the distribution of sale proceeds was not restricted to the fixed deposit holders of accused nos.12 and 14. Therefore, in this case, at this stage, it is not necessary to decide the rights and eligibility of various depositors under the MPID Act. At an appropriate stage, the designated Court undoubtedly shall consider the issue of eligibility of the persons claiming to be the depositors within the meaning of the MPID Act by exercising his powers under Section 7(4) of the said Act. Considering the limited purpose for

which the application Exh.117 in the said proceeding was filed, we do not find fault in the impugned order. Consequently, the Appeal stands dismissed.

(SARANG V. KOTWAL, J.) **(INDRAJIT MAHANTY, J.)**