

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

INTERIM APPLICATION NO. 186 OF 2021
IN
CRIMINAL APPEAL STAMP NO. 4767 OF 2020

Pari Estate Pvt. Ltd.

...Petitioners/Applicants

Versus

The State of Maharashtra & Anr.

...Respondents

...

Mr. Amit Desai, Senior Advocate a/w. Mr. Kevic Setalvad, Senior Advocate,
Mr. Vinay Bhanushali i/b. Vinay J. Bhanushali for applicants/appellant.

Mr. A.B. Avhad, Special PP for Respondent No. 1 and 2-State.

Mr. Chirag Shah a/w. Mr. Tanmay Gor i/b. Mansukhlal Hiralal for Intervener.

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**CORAM : S. S. SHINDE &
MANISH PITALE, JJ.**

DATE : 18th FEBRUARY, 2021.

P.C.:

. By this application the applicant has sought extension of time to make balance payment in terms of an earlier order dated 17.07.2020 passed by this Court.

2. The brief facts leading to filing of this application are that, the applicant herein had approached the Court of Special Judge under the The Maharashtra Protection of Interest of Depositors (in Financial

Establishments) Act, 1999 (for short MPID Act) by filing an application seeking permission of the said Court to purchase property situated at Khasra No. 468, Plot No. 7 Court Road, Civil Lines, New Delhi. The said application was allowed by the aforesaid Court on 07.01.2020 and the applicant was directed to make payments as per the following schedule.

- a. The applicant was to deposit Rs. 2 Crores on or before 13.01.2020;
- b. The applicant was to deposit a further sum of Rs. 11 Crores on or before 13.02.2020; and
- c. The applicant was to deposit an amount of Rs. 20 crores on or before 31.03.2020 and deposit the remaining amount of Rs. 97 crores on or before 13.07.2020.

3. It is an admitted position that while the applicant successfully made payments of the amounts of Rs. 2 Crores and 11 Crores in terms of the aforesaid timeline, but, as regards, 3rd installment of Rs. 20 Crores, which was to be paid before 31.03.2020, the applicant could not adhere to the timeline. The said amount was eventually paid by the applicant on 07.07.2020. Thereafter, since the applicant had failed to make deposit in terms of the timeline, the respondent no. 2 issued an e-auction notice dated 08.04.2020 and also on 20.05.2020.

4. The applicant then moved an application before the aforesaid Court challenging the said auction notice. The said application was only partly allowed whereby the auction notice dated 08.04.2020 was quashed, but the other notice dated 20.05.2020 was not quashed and a further condition was imposed on the applicant to pay balance amount of Rs. 97 Crores by 31.07.2020. The applicant filed Criminal Appeal Stamp No. 4767 of 2020 (earlier Criminal Appeal-ASDB-LD-VC No. 115 of 2020) challenging the said order of the aforesaid Court. By order dated 17.07.2020, a Division Bench of this Court disposed of the appeal accepting a fresh time frame submitted by the applicant on an undertaking to deposit balance amount in two installments. This Court recorded as an undertaking of the applicant that it would deposit Rs. 30 Crores by 30.11.2020 and remaining amount of Rs. 67 Crores by 31.12.2020.

5. It is also an admitted position that the applicant could not adhere to the said time frame also. It has come on record that on various dates in the month of December 2020, the applicant deposited amount of Rs. 7 Crores. The applicant failed to make any further deposit while the last date given by this Court for depositing the balance amount i.e. 31.12.2020 also expired.

6. After the expiry of the said date, on 14.01.2021 the applicant moved the present application with the following prayer.

a. Be pleased grant extension of time for making payment of the remaining amount of Rs. 90 crores till 31st March 2021 towards purchase of property situated at Khasra no. 468, 7 Court Road, Civil Lines, New Delhi;

b. Be pleased to exercise the inherent power of this Hon'ble Court and keep auction notice dated 4.1.2021 qua Khasra no. 468, 7 Court Road, Civil Lines, New Delhi issued by Respondent no. 2 in abeyance during the pendency of this application;

c. Be pleased to exercise the inherent power of this Hon'ble Court and restrain the Competent Authority, the Respondent No. 2 from proceeding further on the basis of action notice dated 4.1.2021 to auction sale property situated at Khasra no. 467, 7 Court Road, Civil Lines, New Delhi, in interest of Justice;

7. Since a copy of the application was served on the respondents, the Special Public Prosecutor appeared in the matter and on 10.02.2021 the application was adjourned for the learned Special Public Prosecutor to take instructions from the respondents. Thereafter, on 12.02.2021 this application was adjourned for today while the applicant was permitted to place affidavit on record.

8. Mr. Amit Desai, learned Senior Advocate appearing for the applicant submitted that this Court may exercise its inherent power and jurisdiction to grant extension of time to the applicant to deposit balance

amount with the Respondent No. 2. It was submitted that admittedly now the balance amount was Rs. 90 Crores and that a demand draft for the said amount dated 01.02.2021 was kept ready for deposit. It was submitted that it would be in the interest of justice and in furtherance of the object of the MPID Act that such extension of time is granted by this Court. It was brought to the notice of this Court that at least on 12 earlier occasions auction had been conducted for sale of said property, but none could fructify into a transaction, for the reason that the bidders who came forward did not actually put the money on the table.

9. It was submitted that in this backdrop when the money was kept ready by the applicant, it ought to be permitted to be deposited with Respondent No. 2, so that the transaction is completed and the money would be available with Respondent No. 2 to be distributed to the investors. It is thereafter submitted that despite an undertaking given to this Court recorded in the order dated 17.07.2020, the applicant had defaulted only because of the nation wide lockdown imposed due to the Covid-19 pandemic. It was further submitted that the respondent no. 2 was not justified in issuing fresh auction notice dated 04.01.2021 for auction sale of the said property and that the same was illegal because of the fact that the permission of the concerned Court was not taken. Even otherwise, it was pointed out that not a single bid

had been received in furtherance of the said auction notice. In these circumstances it was submitted that the present application deserves to be allowed.

10. Mr. A.B. Avhad, learned Special Public Prosecutor appearing for respondents submitted that in the present case the applicant had failed to abide by an undertaking given to this Court and that therefore, the application deserves to be dismissed. On specific query put to him as regards, the number of bids received in pursuance of auction notice dated 04.01.2021, it was submitted that no bid had been received as on date. It was then submitted by the learned Special Public Prosecutor that even if this Court was inclined to consider the prayer of the applicant for extension of time, appropriate conditions may be imposed, including payment of interest for delayed deposit of amount.

11. We have considered the contentions raised on behalf of rival parties. There is no dispute of the fact that the applicant failed to adhere to the time frame given by the applicant itself to this Court, which was recorded as an undertaking in the order dated 17.07.2020. Neither could the applicant deposit an amount of Rs. 30 Crores by 30.11.2020 nor could it deposit remaining balance amount of Rs. 67 Crore by 31.12.2020. The application for extension of time was also not filed before the last date i.e. 31.12.2020.

12. Yet, a significant aspect of the matter is that despite fresh auction notice issued on 04.01.2021, not a single bid has been received till date. The entire purpose of the aforesaid exercise of auction of property by the respondent no. 2 is to collect amount towards payment of the investors who were duped and due to which the proceedings stood initiated in the first place before the Court of Special Judge under the MPID Act. Therefore, it is important that amount now kept ready by the applicant is allowed to be deposited in the interest of justice.

13. At the same time, we cannot ignore the fact that solemn undertaking given to this Court was violated by the applicant and appropriate application for extension of time was not filed before expiry of the last date. Hence, even if the prayer for extension of time to deposit balance amount of Rs. 90 Crore is to be accepted, appropriate condition needs to be imposed.

14. We are of the opinion that the applicant ought to pay further amount towards interest for delayed payment of the balanced amount. Even if the amount of Rs. 7 Crores paid by the applicant on different dates in December 2020 is to be taken into account, there has been delay in payment of amounts towards the aforesaid two installments directed to be paid on 30.11.2020 and 31.12.2020.

15. When this aspect was considered and it was put to learned Senior Advocate appearing for the applicant, a submission was made that if interest @ 10% p.a. was to be imposed on the balance amount, on a rough and ready calculation a further amount of Rs. 6 Crores would have to be paid by the applicant.

16. We are of the opinion that it would be in the interest of justice that the applicant is directed to deposit aforesaid additional amount of Rs. 6 Crore towards interest for delayed payment of the balance amount. At this stage, learned Senior Advocate appearing for the applicant submitted that since TDS as per applicable provisions of Income Tax Act would have to be deducted from the total amount of Rs. 130 Crores, the applicant would deduct such amount from the interest component of Rs. 6 Crore and pay balance amount to the respondent no. 2 within a period of one week from today. It was further submitted that TDS certificate in this regard would also be submitted by the applicant to the respondent no. 2.

17. Learned Senior Advocate appearing for the applicant handed over the demand draft of Rs. 90 Crore dated 01.02.2021, bearing no. 517973 in favour of Respondent No. 2 to Mr. A.B. Avhad, learned Special Public Prosecutor appearing for respondents. Therefore, now only the amount

towards interest as aforesaid needs to be paid by the applicant for delay in deposit of balance amount.

18. At the culmination of arguments this Court indicated that the applicant should contribute towards noble cause by way of costs. At this stage, learned Senior Advocate appearing for the applicant on instructions of representative of the applicant who is present in the Court, submitted that the applicant would voluntarily deposit an amount of Rs. 11 lacs for the noble cause.

19. In view of above, this application stands disposed of in the following manner:-

ORDER

- A) The applicant having handed over demand draft of Rs. 90 Crore today to the Respondent No. 2, shall now pay further amount towards interest for delayed payment. This amount is fixed at Rs. 6 Crore.
- B) The applicant is permitted to deduct amount towards TDS to be deposited on the entire amount of Rs. 130 Crore for the transaction, from the said amount of Rs. 6 Crore

towards interest and the applicant is further directed to pay balance amount to Respondent No. 2 within a period of one week from today.

- C) The applicant shall also deposit TDS certificate in respect of the deduction of the said amount towards TDS, with the Respondent No. 2.
- D) Upon compliance of the aforesaid directions within the stipulated time by the applicant, the respondents shall ensure that the transaction is completed within a period of three weeks from the date of deposit of said balance amount by the applicant, including execution of documents and handing over possession of property to the applicant.
- E) As noted above, since the applicant voluntarily came forward to deposit amount towards noble cause, we direct the applicant to deposit the amount of 11,00,000/- (Rupees Eleven Lakhs only) in the account mentioned herein below, within one week from today.

**Name of Bank of Account: : Children Aid Soc
Donation**
Bank Account No. : 02370100005612
Bank Name : UCO Bank
Branch : Matunga Mumbai
IFSC Code : UCBA0000237

- F) We further direct the Children Aid Society, Mumbai, that from the aforesaid amount Rs. 5.5 lakhs to be utilized for New Children Home & Additional Children Home (Navin & Atirikt Balgrah) and Rs. 5.5 lakhs for Additional Children Home Girls Section 3-12 years Girls and 3 to 6 years boys, Mankhurd, Mumbai.
- G) Actual utilization of such amount to be reported to Mr. Prashant C. Kale (Deputy Registrar, Legal & Research, High Court of Bombay).
- H) Accordingly, the application stands disposed of on above terms.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)