IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 788 OF 2021

Navnath Dattatray Lokhande ..Appellant.
Versus
Balasaheb Bhapkar & Ors. ..Respondents

Mr. R. S. Bade for Appellant.
Mr. Y. M. Nakhwa, APP for State/Respondent No.4.
Mr. V. M. Rathod i/b. Ms. Sabina Ansari for Respondent No.5.
Ms. Lalita Savekar i/b. Kulkarni & Associates for Respondent Nos.1 to 3.

CORAM : S. S. SHINDE AND
SARANG V. KOTWAL, JJ.
DATE : 8th APRIL 2022.

PC :

1. This is an Appeal U/s. 11 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short ‘ MPID Act’). The Appellant has challenged the order dated 20/08/2021 passed by the designated court under the MPID Act, City Civil & Sessions Court, Mumbai, in Miscellaneous Application No.51 of 2021 in MPID Special Case No.7 of 2016 in C.R.No.83 of 2015. The Respondent Nos.1, 2 and 3 are the original accused. The Appellant is interested in purchasing one of the

properties of the accused which was attached under the provisions of MPID Act. By the impugned order the learned Special Judge rejected the appellant's application for permission to purchase the said property for Rs.1,21,00,000/-. The amount deposited by the applicant was directed to be returned to him by the Registry of the Sessions Court.

2. The brief background of this Appeal as mentioned in the police report filed before the MPID Court in the proceedings preferred by the present applicant are as follows:

The representative authorized by the Securities and Exchange Board of India (for short 'SEBI') had lodged an F.I.R. with the Economic Offences Wing, Mumbai against M/s. Sai Prasad Food Ltd. and other associate companies and their Directors for cheating about 39 lakhs investors to the tune of Rs.4700 crores. The accused were arrested. Three notifications were issued U/s.4 of the MPID Act on 23/03/2016, 28/06/2016 and 31/03/2017. In the first two notifications, properties of the accused were attached and the attachment was made absolute vide third notification.

The subject matter of this Appeal is the property at third floor, Trade Tower, Plot No.59, Gut No.215/1, 215/2, 218, 219, 277/1 and 277/2, Pune-Solapur road, opposite Akashwani and Tekawade petrol pump, Hadapsar, Pune. (for short 'said property'). The appellant had showed his willingness to purchase that property for Rs.1,21,00,000/-. By previous orders her was permitted to deposit Rs.60,50,000/- with the Registry of the Sessions Court. However, by the impugned order the application for permission to purchase the property was rejected and his amount was directed to be refunded back to him as mentioned earlier.

3. Before the Appellant, one Ghanshyam Zanwar had showed his interest in purchasing the said property for Rs.1,20,00,000/-. However, he had not deposited the complete EMD amount. The Special Judge under MPID Act vide his order dated 09/07/2019 directed the SEBI to accept the bid of said Ghanshyam Zanwar. In the meantime, the accused also brought two prospective buyers to purchase the said property for Rs.1,40,00,000/-. But neither Ghanshyam Zanwar nor those buyers brought by the accused could purchase the said property.

Therefore, the Special Judge passed an order on 07/08/2019 in M.A.No.1120 of 2019 in the said case and directed the SEBI to conduct fresh e-auction of the property within two weeks from the date of order by issuing e-auction notice.

4. The case of the appellant is that the SEBI had tried to auction the property for 5 times in the past i.e. on 04/09/2017, 20/04/2018, 14/06/2018, 17/01/2019 and 22/11/2019 for the reserved price ranging from Rs.1,17,00,392 to Rs.1,71,00,000/-, but the auction was not successful. The applicant preferred M.A.No.51 of 2021 in the said case showing his willingness to purchase the said property for Rs.1,21,00,000/-, as mentioned earlier. To show his bonafides, the appellant had deposited Rs.60,50,000/- with the Registry of the Sessions Court. The Investigating Officer objected grant of that application by filing his say. It was contended by him that the reserved price was Rs.1,71,00,000/- and the appellant's offer was much less. The SEBI also opposed the appellant's application and contended that the recovery officer was not empowered to enter into the private sale with the appellant. It was further contended by SEBI that, he can

participate in the next auction where all the prospective bidders would get a fair chance to participate.

Learned Special Judge considered those submissions and rejected the appellant's application.

5. We have heard Mr. Bade, learned counsel for the Appellant, Mr. Nakhwa, learned APP for the State, Ms. Lalita Savekar, learned counsel for the Respondent Nos.1 to 3 and Mr. Rathod, learned counsel for the Respondent No.5.

6. Learned counsel for the Appellant submitted that, in the past the SEBI had repeatedly failed to complete the auction. The property has remained unsold despite some serious efforts having been made by SEBI. Therefore, it would be in the interest of all the parties concerned that the property is allowed to be purchased by the Appellant for the price which he had quoted. He submitted that, at the first instance, the learned Special Judge had permitted the appellant to deposit aforesaid amount of Rs.60,50,000/-. The Appellant had thus established his bonafides. Therefore, instead of asking him to participate in the bid process at a much higher price,

with the background of the case, it would be appropriate and in the interest of investors also that the property is allowed to be purchased by the Appellant.

7. We have considered these submissions and we have also considered the reasons given by the learned Special Judge. Learned Special Judge has observed that the appellant had not participated in the auction dated 17/01/2019 when the reserved price was at Rs.1,17,00,392/- which was lesser than the price which he had offered. Now when the SEBI had fixed the reserved price at Rs.1,71,00,000/- in the auction dated 22/11/2019, the appellant had showed his willingness to purchase the said property only for Rs.1,21,00,000/-. Learned Special Judge accepted SEBI's contention that, once the property is put to auction inviting bidders, the recovery officer was not empowered to enter into private sale with the appellant and the same principle would apply to the Special court.

8. It was also observed that the special court is empowered to attach the property but it cannot bypass it's own order of

directing auction of the property. The appellant was given liberty to participate in the next auction. With these reasons the application was rejected.

9. We find that the price offered by the appellant is much lesser than the reserved price fixed by SEBI in the auction which was to be held on 22/11/2019; which was at Rs.1,71,00,000/-. It is obviously in the interest of investors if the property is sold at a reasonably higher price. The amount of misappropriation is huge and the number of investors is also huge. Therefore, the court will have to take steps in the interest of investors. The appellant cannot claim that the property be sold to him at a much lesser price mainly on the ground that, on the past five occasions the auction was not successful. It would be an endeavor of SEBI to obtain reasonable price for the property, so that, more number of investors can be satisfied with the amount obtained from the auction. Learned Special Judge has rightly rejected the appellant's application. The appellant is also given a fair chance to participate in the auction process. His amount deposited with the Registry is directed to be refunded to him. Deposit of such amount was only

to show his bonafides. That deposit did not bind the court to pass an order in his favour permitting him to purchase the property at lower price.

10. Considering all these aspects, we do not find the case where the impugned order calls for any interference.

11. The Appeal is accordingly dismissed.

(SARANG V. KOTWAL, J.) **(S. S. SHINDE, J.)**