

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 403 OF 2023**

WITH

INTERIM APPLICATION NO.160 OF 2023

IN

WRIT PETITION NO. 403 OF 2023

- 1. LOTUS REFINERIES PRIVATE LTD,**
Through its Managing Director,
Registered Address at 204, Boomerang
Building, Chandivali Farm Road,
Andheri (East), Mumbai.
- 2. ARUN KUMAR SHARMA**
Managing Director of Lotus Refineries
Pvt Ltd, Registered Address at 204,
Boomerang Building, Chandivali Farm
Road, Andheri (East), Mumbai

... PETITIONERS

~ VERSUS ~

- 1. STATE OF MAHARASHTRA,**
Through Home Secretary, Govt of
Maharashtra Second Floor, Mantralaya,
Mumbai – 400 032.

ARUN
RAMCHNDRA
SANKPAL

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by ARUN
RAMCHNDRA
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Date: 2023.02.07
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**2. DEPUTY COLLECTOR &
COMPETENT AUTHORITY
(NSEL),**

Under MPID Act 1999, Third Floor,
MPID Branch, Old Customs House,
Mumbai – 400 001.

... RESPONDENTS

WITH

WRIT PETITION (L) NO. 26896 OF 2022

**NAMDHARI RICE & GENERAL
MILLS**

Through its Partner Daljeet Singh S/o
Shri Mahender Singh, A Company
having its Office at Dabwali Road, Jiwan
Nagar, District Sirsa, Haryana.

... PETITIONER

~ VERSUS ~

1. STATE OF MAHARASHTRA,
Through Home Secretary, Govt of
Maharashtra Second Floor, Mantralaya,
Mumbai – 400 032.

**2. DEPUTY COLLECTOR &
COMPETENT AUTHORITY
(NSEL),**

Under MPID Act 1999, Third Floor,
MPID Branch, Old Customs House,
Mumbai – 400 001.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER IN BOTH WRIT PETITIONS	Mr VV Gautam, with Isha Vashisth & Dilip H Shukla.
FOR RESPONDENT-STATE IN WP/403/2023	Mr AL Patki, Addl GP with Mr SB Gore, AGP.
FOR RESPONDENT-STATE IN WPL/26896/2022	Ms Jyoti Chavan, AGP.
FOR APPLICANT/ INTERVENOR	Mr Arvind Lakhawat, with Nimeet Sharma, i/b MZM Legal LLP.

**CORAM : G.S.Patel &
Dr Neela Gokhale, JJ.**

DATED : 6th February 2023

ORAL JUDGMENT (Per GS Patel J): -

1. Writ Petition No. 403 of 2023 is filed by a corporate entity Lotus Refineries Private Limited (“**Lotus Refineries**”) and one Arun Kumar Sharma, its managing director. The reliefs sought are at page 29:

“(a) Issue a writ of mandamus or any other appropriate writ/s or orders/directions to quash the notifications dated 28.08.2014, 22.06.2015, 13.01.2016 and 02.01.2019, issued by the Respondent No.1, under Section 4(1), 5(1), 8 and 12 of Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999, qua petitioner (whereby the Respondent No.1 attached the movable and immovable properties of the Petitioner No. 1 & 2, by invoking section 4(1), 5(1) and 8 of the Act *ibid*), being *ultra vires* to the provisions of Article 246 read with Entry No. 48 of List-1 of

7th Schedule of Constitution of India, Article 300A of Constitution of India, provisions of sections 2(c), 2(d), 3, 4(1), 5(1), 8 & 12 of MPID Act, 1999 and section 2(12), 2(24) and 6 read with Entry No. 68 and 102 of Schedule-C of Maharashtra Value Added Tax Act, 2002.

(b) declare that the Petitioner No.1 is not Financial Establishment in terms of Section 2(d) of the MPID Act and the amount paid by buyers of goods at spot trading at electronic platform of National Spot Exchange Ltd, towards transaction to the Petitioner No.1, is not deposit in terms of Section 2(c) of MPID Act, 1999.

(c) stay the operation and execution of notifications dated 28.08.2014, 22.06.2015, 13.01.2016, and 02.01.2019, issued by the Respondent No.1, qua Petitioners, till the final disposal of the instant petition.”

2. Writ Petition (L) No. 26896 of 2022 is by another commercial entity, a partnership firm called Namdhari Rice and General Mills (“**Namdhari Mills**”). No individual is joined as the second Petitioner. This may have some bearing on the last submission made before us, noted below. Prayer clauses (a), (b) and (c) are virtually identical to those in the Lotus Refineries Petition. They read thus.

“(a) Issue a writ of mandamus or any other appropriate writ/s or orders/directions to quash the notifications Exhibit “EE” and Exhibit “FF”, dated 28.08.2014, 22.06.2015 and 02.01.2019, issued by the Respondent No.1, under Section 4(1), 5(1), 8 and 12 of Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999, qua petitioner (whereby the Respondent No.1 attached the movable and immovable properties of the Petitioner and their partners, by invoking section 4(1), 5(1) and 8 of the Act *ibid*), being ultra vires to the provisions of Article 246 read with Entry No. 48 of List-

1 of 7th Schedule of Constitution of India, Article 300A of Constitution of India, provisions of sections 2(c), 2(d), 3, 4(1), 5(1), 8 and 12 of MPID Act, 1999 and section 2(12), 2(24) and 6 read with Entry No.20 of Schedule-C of Maharashtra Value Added Tax Act, 2002.

(b) declare that the Petitioner is not Financial Establishment in terms of Section 2(d) of the MPID Act and the amount paid by buyers of goods at spot trading at electronic platform of National Spot Exchange Ltd., towards transaction to the Petitioner, is not deposit in terms of Section 2(c) of MPID Act, 1999.

(c) stay the operation and execution of notifications dated 28.08.2014, 22.06.2015 and 02.01.2019, issued by the Respondent No.1, qua Petitioner, till the final disposal of the instant petition.”

3. We do not understand why the Namdhari Mills Petition is as yet on a lodging number. All objections are to be removed by Friday, 11th February 2023. If not, for this reason alone, there will be an order of costs against Namdhari Mills in the amount of Rs.15,000/- payable to National Spot Exchange Limited (“NSEL”).

4. Interim Application No. 160 of 2023 is by the National Spot Exchange Limited. It seeks impleadment. This is opposed.

5. As the prayers themselves indicate, both Lotus Refineries and Namdhari Mills assail Notifications dated 28th August 2014, 22nd June 2015, 13th June 2016 and 2nd January 2019 under the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act 1999 (“**the MPID Act**”).

6. According to the Writ Petitioners, neither is a “financial establishment” covered by the MPID Act. They took no deposits within the meaning of that Act. No notification could therefore be issued against them.

7. A copy of the MPID Act is annexed to the Lotus Refineries Petition. A few provisions are relevant and may be extracted below.

8. Section 2(c) defines deposit thus.

“(c) “deposit” includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include—

(i) amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given, and regulations made, by the SEBI established under the Securities and Exchange Board of India Act, 1992:

(ii) amounts contributed as capital by partners of a firm;

(iii) amounts received from a scheduled bank or a co-operative bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;

(iv) any amount received from, —

(a) the Industrial Development Bank of India,

(b) a State Financial Corporation,

- (c) any financial institution specified in or under section 6A of the Industrial Development Bank of India Act, 1964, or
- (d) any other institution that may be specified by the Government in this behalf;
- (v) amounts received in the ordinary course of business by way of, —
 - (a) security deposit,
 - (b) dealership deposit,
 - (c) earnest money,
 - (d) advance against order for goods or services;
- vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the State; and
- (viii) any amount received by way of subscriptions in respect of a Chit.

Explanation I.— “Chit” has the meaning as assigned to it in clause (b) of section 2 of the Chit Funds Act, 1982;

Explanation II.— Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be deposit for the purposes of this clause;”

9. Section 2(d) defines Financial Establishment in the following words.

“(d) “Financial Establishment” means any person

accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of section 5 of the Banking Regulation Act, 1949;”

10. Then there are Sections 3 and 4 which read as follows.

“3. Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter, partners, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extend to one lac of rupees and such Financial Establishment also shall be liable for a fine which may extend to one lac of rupees.

Explanation—For the purpose of this section, a Financial Establishment, which commits default in repayment of such deposit with such benefits in the form of interest, bonus, profit or in any other form as promised or fails to render any specified service promised against such deposit, or fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such default due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposits in such a manner as it involves inherent risk in recovering the same when needed

shall, be deemed to have committed a default or failed to render the specific service, fraudulently.

4. (1) Notwithstanding anything contained in any other law for the time being in force,—

(i) where upon complaints received from the depositors or otherwise, the Government is satisfied that any Financial Establishment has failed,—

- (a) to return the deposit after maturity or on demand by the depositor; or
- (b) to pay interest or other assured benefit; or
- (c) to provide the service promised against such deposit; or

(ii) where the Government has reason to believe that any Financial Establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them;

and if the Government is satisfied that such Financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the service against which the deposit is received, the Government may, in order to protect the interest of the of the depositors of such Financial Establishment, after recording reasons in writing, issue an order by publishing it in the *Official Gazette*, attaching the money or other property believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from out of the deposits, collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, director, partner or manager or member of the

said Financial Establishment as the Government may think fit.

(2) On the publication of the order under sub-sections (1), all the properties and assets of the Financial Establishment and the persons mentioned therein shall forthwith vest in the Competent Authority appointed by the Government, pending further order from the Designated Court.

(3) The Collector of a District shall be competent to receive the complaints from his District under sub-section (1) and he shall forward the same together with his report to the Government at the earliest and shall send a copy of the complaint also to the concerned District Police Superintendent or Commissioner of Police, as the case may be, for investigation.”

11. Section 5 deals with the appointment of Competent Authority. Section 6 has provisions for a Designated Court. Section 7 sets out the powers of the Designated Court regarding attachments and includes, inter alia, the issuance of a notice and the right of a person affected to show-cause or to object.

12. We consider now the respective position of NSEL vis-à-vis Lotus Refineries and Namdhari Mills. NSEL was incorporated under the Companies Act 1956 on 18th May 2005. It provided an electronic platform for a commodities exchange from 15th October 2008. There is a long history of trouble involving NSEL and its holding company now known as 63 Moons Technologies Limited. We need not enter into that. This has been the subject matter of many litigations and Government actions. In July 2013, NSEL suspended commodities trading on its platform following certain

directives by the Department of Consumer Affairs of the Government of India. By this time, it had outstanding contracts that required settlement. These were said to have been executed before trading was suspended. On that suspension, it seems that about two dozen trading members of NSEL failed to meet their pay-in obligations to NSEL. The total amount was roughly in the region of Rs.5400 crores towards their respective trading counterparts under various commodities purchase contracts. Two members paid up within a month without disputing their liability. The remaining 22, including Lotus Refineries and Namdhari Mills, failed to meet their payment obligations. NSEL declared them defaulters in accordance with its Bye-laws, Rules and Regulations.

13. Lotus Refineries was in default in an amount of over Rs.252 crores. Namdhari Mills had a pay-in obligation of about Rs. 10.39 crores.

14. Arbitration between Lotus Refineries and NSEZL commenced. Lotus Refineries was the claimant in arbitration. A sole Arbitrator made an award on 21st September 2018 in a sum of over Rs. 252 crores in favour of NSEL with interest at 15% per annum. There was in addition an award of arbitral fees and costs. Lotus Refineries challenged that arbitral award in this Court in Commercial Arbitration Petition No. 281 of 2019. That petition was admitted on 4th June 2019. There was no immediate stay following the amendment to the Arbitration and Conciliation Act, 1996, but Lotus Refineries was allowed to file an application for stay. Lotus Refineries did so, but unsuccessfully: its stay application was

dismissed on 19th June 2019. A Special Leave Petition from that order failed on 2nd December 2019. This means that the Section 34 Petition is still where it was. It has been so for nearly three years.

15. Now that there was no stay on execution of the arbitral award against Lotus Refineries, NSEL filed a Commercial Execution Application No. 468 of 2019 to enforce that award. Some properties were outside Mumbai in Chandigarh and NSEL moved against those properties as well. In the meantime, Lotus Refineries' claim against NSEL was rejected by a separate arbitral order dated 30th September 2021. Lotus Refineries has challenged that rejection in another Commercial Arbitration Petition no. 710 of 2021. That has not been moved at all.

16. The scene now shifts to the Supreme Court. On 4th May 2022, the Supreme Court had before it an Article 32 Petition Writ Petition (C) No. 995 of 2019. The order made that day is in two parts. First there is the dismissal of certain Interim Applications. Then in the Writ Petition itself, there is a detailed order following a request by the Supreme Court to work out a protocol for a solution regarding investors' funds and in respect of which decrees had been passed. Some groundwork was done by the opposing side. Most issues were agreed before Supreme Court. In exercise of its power under Article 142 to achieve a holistic solution for the speedy recovery of outstanding amounts to be distributed to investors — and this phrasing is important — the Supreme Court fashioned a detailed order with as many as 19 separate points. Chief Justice Pradeep Nandrajog, former Chief Justice of this Court, had agreed

to serve as the high-power committee constituted under that order. Paragraph (vii) of the Supreme Court order is important for our purposes. It is at pages 23 and 24 of the NSEL' Interim Application and it reads thus:

“(vii) In execution of the above decrees/orders/arbitral awards, the Supreme Court Committee shall be entitled to sell the properties of the judgment-debtors notwithstanding the attachment thereof by respondent No.2 (ED) under the PMLA and/or by respondent No.3 (State of Maharashtra) under the MPID Act, to the extent of recovering the amount of the decree/order/arbitral award.”

(Emphasis added)

17. To summarize: NSEL has an award against Lotus Refineries. There is a challenge pending but there is no stay on execution. Against Namdhari Mills there is a decree of Rs. 10.39 crores, also not stayed. Lotus Refineries' claim against NSEL has been dismissed in arbitration. A challenge is pending. No relief has yet been obtained. Execution has been pursued by NSEL both in this Court and in Haryana but now everything is consolidated before the Supreme Court Committee of Chief Justice Pradeep Nandrajog in view of the Supreme Court Order of 4th May 2022.

18. The argument before us is with reference to the four MPID Notifications in question from 2014 to 2019. They are more or less identical in the operative portion. The listing of properties may be different but that does not matter significantly. We will take the 28th August 2014 Notification at Exhibit “U” at page 354. The operative portion reads thus:

“ NOTIFICATION

MAHARASHTRA PROTECTION OF INTEREST OF
DEPOSITORS IN FINANCIAL ESTABLISHMENT
ACT, 1999

No.MPI. 2014/CR-541/Pol 11.—Whereas, complaints have been received from number of depositors against National Spot Exchange Ltd., LT Tower, C.T.S. No. 256, and 257, Suren Road, Chakala, Andheri (East), Mumbai – 93, (hereinafter referred to as “the said Financial Establishment”), had collected the Fund and have defaulted to return the said deposits made by the depositors, on demand;

And whereas, the State Government is satisfied that the said Financial Establishment and it’s Chairman/Directors not likely to return the deposits to the depositors and hence the Government has to protect the interests of the depositors;

And whereas, the properties specified in the Scheduled appended hereto are alleged to have been acquired by the said Financial Establishment and it’s Chairman/Directors from and out of the deposits collected by the said Financial Establishment;

Now, therefore, in exercise of the powers conferred by sub-section (1) of the Section 4 and Sub-section (1) of Section 5 of the Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999 (Mah. XVI of 2000) (hereinafter referred to as “the said Act”) the Government of Maharashtra hereby attaches the properties of the said Financial Establishment and in the name of it’s Chairman/Directors and in the name of Sashikant Sadashiv Kulkarni’s wife as specified in the Schedule.”

19. Lotus Refineries is mentioned in the Schedule that follows. So are other companies and entities. Lotus Refineries is not singled out. Eight of its properties, including a motor car, are listed.

20. The argument before us is that Lotus Refineries itself was not the 'financial establishment'. It had no depositors. Therefore, it fell entirely outside the MPID Act. Consequently, no notification could have been issued against its properties. But this argument overlooks the indebtedness of Lotus Refineries (and Namdhari Mills) to NSEL. Even in 2014, NSEL had settlement claims against Lotus Refineries and Namdhari Mills. Neither of them met their pay-in obligations (although two other entities did without protest) NSEL already had claims against both these entities and therefore was entitled to recovery even under the very Bye-Laws, Rules and Regulations under which Lotus Refineries and Namdhari Mills had traded. There arose the question of moving against all available assets and this was done by the State Government to protect *the interest of depositors*, an interest that the Supreme Court order now demonstrably seeks to achieve, i.e., a public purpose that has not ever been questioned and cannot be questioned. . In any case, we note that, after a fuller investigation, and there are proceedings against both even under the Prevention of Money Laundering Act, there has been a tracing to Lotus Refineries and Namdhari Mills. After 2017, Lotus Refineries and Namdhari Mills are both held to be financial establishments under the MPID Act. These are Notifications dated 31st March 2017 and 24th May 2018 and they are not challenged before us.

21. The next argument is that the Notification under the MPID Act and indeed all the Notifications from 2014, do not provide a mandate for attachment of the properties. No such mandate can be inferred. On the face of it, this submission is incorrect and has only to be stated to be rejected.

22. There is another issue that stares one in the face. The Lotus Refineries Petition was filed only in March 2022. The Namdhari Mills Petition was filed in August 2022. Without a word of explanation as to the delay, they now raise a challenge to Notification issued as long as ago as 2014, 2015, 2016 and 2019. In itself this is sufficient reason to reject both these Writ Petitions. No explanation is indeed possible for this kind of delay. The reason we say this is that at least of these entities, Lotus Refineries, has taken steps under Section 7 of the MPID Act and raised objections as contemplated by that Section. Paragraph 7 of the Lotus Refineries Petition at page 27 says, to our great surprise, that there is no other alternative and equally efficacious remedy. It does not even mention the Section 7 objections. It says that on 16th March 2022, the Supreme Court had granted Lotus Refineries liberty in its separate Article 32 Petition challenging these very Notifications to approach this Court. In fact, that order shows that Lotus Refineries sought to *withdraw* its Article 32 Writ Petition with liberty to seek appropriate remedies. This is not the same as saying that the Supreme Court had 'directed' Lotus Refineries to approach this Court. In any case, there is no direction that this Court is bound to accept any petition Lotus Refineries files challenging the MPID Notifications.

23. We see no merit at all in these Petitions.

24. An oral application is made for amendment to challenge the Maharashtra Government collection of Value Added Taxes or VAT on various transactions. There is no such prayer in the Petition before us. We say nothing in that regard. It is open to the Petitioners to take whatever steps they are advised in that respect.

25. On behalf of the two corporates, and we had this clarified, a submission is made that the impugned Notifications are also a violation of the *corporate entities*' alleged fundamental rights **under Article 21** of the Constitution of India. A company and a partnership firm are, we are told, are being deprived of their 'life and personal liberty' without following the procedure established by law. That submission has only to be stated to be rejected.

26. The Petitions are devoid of merits. They are rejected.

27. In light of this, the Interim Application for intervention or impleadment is infructuous and does not survive.

28. No costs.

(Dr Neela Gokhale, J)

(G. S. Patel, J)