**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 393 OF 2024**

Ashish Ramesh Mahendrakar .. Appellant

**Versus**

M/s. Kunal Impex And Ors. .. Respondent

...

Mr. Subodh Desai, Senior Counsel a/w Mr. A.S. Pal, Mr. Siddhartha Puthoor i/b Mehta & Padamsey, for the Appellant.

Mr. Sandeep Karnik, for the Respondent No.1.

Mr. Gaurav M. Parkar, Special P.P. a/w Mr. D. J. Haldankar, A.P.P. for the State/Respondent.

Mr. Pradeep A. Jagekar, for the Respondent-EOW.

Mr. Pawar, for the Competent Authority.

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**CORAM : BHARATI DANGRE &**
**MANJUSHA DESHPANDE, JJ.**
**DATED : 2nd SEPTEMBER, 2024**

**P.C:-**

1. Being aggrieved by the order dated 08.02.2024 passed by the Special Court, Greater Mumbai, thereby allowing the Application filed by M/s. Kunal Impex, a partnership firm, who is permitted to make oral and written submissions, in connection with the Application at Exh-186 of 2019 in MPID Special Case 4 of 2014. Pertinent to note that the Applicant arraigned as accused No.4, is a shareholder and the Director of

Birla Edutech Ltd., moved an application before the MPID Court, seeking the following directions :

> *"A. Pass an appropriate order and/or direction for disbursement of Rs.24,00,00,000/- (Rupees Twenty Four Crores) alongwith the interest presently deposited with State Bank of India, Mumbai Main Branch under FDR by Respondent No.2 to the Fixed Deposit Holders of*
>
> *(i) Accused No.14 – Birla Shloka Edutech Limited,*
>
> *(ii) Accused No.13 – Birla Cotsyn (India) Ltd.,*
>
> *(iii) Accused No.12 – Zenith Birla (India) Ltd.,*
>
> *(iv) Accused No.11 – Birla Power Solutions Ltd*
>
> *(Now in Liquidation)*
>
> *On such terms, conditions and in the Order as this Hon'ble Court may deem fit and proper."*

2. It is in this Application, M/s. Kunal Impex filed an Application for intervention on the ground that he is one of the investor, enlisted in the list prepared for the purpose of recovery and distribution of money as per the provision of MPID, and therefore, has a right to recovery and distribution. When the Application was filed by the accused for distribution of the amount of Rs.24 Crores from sale of unencumbered property in the name of Birla Edutech and when it sought necessary orders for disbursement of this amount, the grievance of the intervenor is the disbursement is restricted only to the fix depositors, and not to the normal investors.

The learned senior counsel Mr. Desai has strongly objected the impugned order by contending that since Birla Power Solutions Ltd. is under liquidation from 2014, any claim of the Intervenor/Applicant must be listed before the Liquidator and he must stand in queue while the amount in liquidation proceedings is disbursed and he has no right to stand here before the MPID Court. It is worth to note that in the earlier round, when the Division Bench decided Criminal Appeal No. 1119 of 2018 filed by the same Appellant, raising the challenge to the order dated 13.07.2018, passed below the Application Exh-117 in the MPID Special Case, the contention of the Intervenor, arraigned as Respondent Nos.3 and 4 was specifically recorded that the amount could not be distributed only amongst the fix depositors of the company but should be distributed equally amongst the depositors, who have invested large amount and which are termed as Inter Corporate Deposits. While rejecting the Appeal, the Division Bench had specifically observed thus :

> *" 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."*

3. The impugned order has allowed the Applicant to intervene since in the first round of the litigation as well as in the present round the objection of the Intervener is to the disbursement of the amount only in favour of a particular class of Depositors by keeping out the other class of investors, which has no reasonable nexus with the object which is sought to be achieved.

We do not find any illegality in permitting the intervention Application with a limited scope of an intervenor to advance submissions before the Court, when the Application (Exh-186) filed by the Accused No.4 is taken up for consideration as admitted it will not entitle for any relief therein.

We expect the learned MPID Judge, to be conscious of the fact that the Birla Power Solutions Ltd. is presently under liquidation and it shall also be pronounced upon the entitlement of any person who is an investor in the said company, in which, the amount if at all to be disbursed must come through the said proceedings.

With the aforesaid clarification, the Appeal is disposed off.

**(MANJUSHA DESHPANDE,J.)** **(BHARATI DANGRE, J.)**

Chaitanya