

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

CRIMINAL APPEAL NO.698 OF 2024

NSEL Investors Action Group .. Appellant

Versus

The State of Maharashtra and others .. Respondents

WITH

CRIMINAL APPEAL (STAMP) NO.13212 OF 2024

63 Moons Technologies Ltd. .. Appellant

Versus

NSEL Investors Action Group and others .. Respondents

...

Cr.Appeal No.698 of 2024

Mr.Piyush Raheja a/w Advocates Bhushan Shah, Akash Jain, Aakash Mehta and Mohammed Lokhandsala i/b Mansukhlal Hiralal & Co. for appellant.

Mr.Avinash B.Avhad, SPP for respondent nos.2 and 3.

Ms.S.S.Kawshik, APP for respondent-State in Cr.Appeal No.698/2024.

Cr.Appeal (Stamp)No.13212 of 2024

Mr. Arvind Lakhawat a/w Advocates M.Bajpai, Vrushabh and Vikrant Nalawade i/b M/s.Crawford Bayley and Co.for the appellant.

Ms.Rebecca Gonsalves, SPP for the respondent nos.2 and 3.

Mr. S.V.Gavand, APP for respondent-State.

CORAM : NITIN W. SAMBRE & MANJUSHA DESHPANDE, JJ.

DATE : 03/10/2024.

P.C.:

- Both these Criminal Appeals are under Section 11 of the Maharashtra Protection of Interest of Depositors (in Financial

Establishments) Act, 1999 (for short, "the MPID Act") questioning the orders dated 16th March, 2024 passed by the Designated Court constituted under the aforesaid Act, below Exhibit 17 in Misc. Application No.520/2018, below Exhibit 15 in Misc. Application No.559/2018, below Exhibit 15 in Misc. Application No.618/2018, below Exhibit 14 in Misc. Application No.619/2018, below Exhibit 18 in Misc. Application No.1288/2018 and below Exhibit 18 in Misc. Application No.761/2018 in MPID Case No.1 of 2014 pending on the file of the Special Judge, MPID for Greater Bombay.

2. The facts necessary for deciding the present Criminal Appeals are as under:-

National Spot Exchange Limited (hereinafter shall be referred as "NSEL" for the sake of brevity) was operating an Exchange offering into "Commodities Spot Contracts". Said NSEL defaulted in repayment of approximately Rs.5600 crores to approximately 13000 depositors, resulting into an FIR being lodged on 30th September, 2013.

3. The Economic Offences Wing of Mumbai Police investigated the said matter and MPID Special Case No.1 of 2014 came to be registered. Vide various notifications, the assets of the Promoters, Directors, Partners and Managers of NSEL were attached.

4. The appellant in Criminal Appeal (Stamp) No.13212 of 2024 questioned the said attachment, which was set aside by the High Court, however, the Apex Court reversed the same.

5. The appellant in Criminal Appeal No.698 of 2024 claiming to be ultimate beneficiaries of the proceeds, which are likely to be recovered approached the MPID Court with a prayer for intervention in pending Misc. Applications referred above. The appellant in Criminal Appeal No.698 of 2024 claims to be a registered Association formed to protect the interest of those traders/depositors, who have lost their moneys while carrying out trade on the exchange platform of NSEL.

6. As stated herein before, vide Notification dated 4th April, 2018, 7th April, 2018, 11th April, 2018, with corrigendum to the notification dated 19th April 2018, 19th April, 2018, 15th May, 2018, 19th September, 2018, with corrigendum to the notification dated 27th September, 2018, movable and immovable properties worth about Rupees Two thousand five hundred crores belonging to 63 Moons Technologies Ltd. came to be attached, which also includes money lying in the bank accounts and fixed deposits.

7. In Writ Petition bearing Nos.508 of 2017 and 1181 of 2018, the said notifications were questioned by 63 Moons Technologies Ltd., which was allowed vide judgment dated 22nd August, 2019 and as a sequel of which, Notifications referred above were quashed thereby holding that

the 63 Moons Technologies Ltd., which is subsidiary of NSEL was not a financial establishment, as defined under Section 2 (d) of the MPID Act.

8. As a sequel of above, pursuant to the Pursis filed by 63 Moons Technologies Ltd., the Misc.Applications preferred by it were disposed of.

9. The judgment delivered by the High Court on 22nd August, 2019 in the Writ Petition Nos.508 of 2017 and 1181 of 2018 was set aside in Civil Appeal Nos. 2748-49 of 2022 and 2750-51 of 2022 by the Apex Court vide judgment dated 22nd April, 2022 and the judgment of the High Court came to be reversed.

10. The NSEL Investors Action Group preferred Application (M.A.)No.1002/2022 before the Designated Court seeking revival of the aforesaid Misc. Applications, which was disposed of by the Designated Court, vide order dated 26th August, 2019, which prayer was allowed vide order dated 21st February, 2023. The NSEL Investors Action Group accordingly moved intervention applications before the Designated Court, which were partly allowed vide impugned orders, as such these appeals.

11. The operative part of all the orders impugned, which is similar, read thus:

"1. Exh.17 in Misc. Application No.520 of 2018 in MPID Special Case No.1 of 2014 is partly allowed.

2. The intervener is permitted to assist the Ld.Special PP in following manner:

(a) The intervener may file its final written notes of arguments with limited oral arguments on facts and law.

(b) The intervener is also permitted to make oral submissions at crucial and critical stage of the proceedings under section 7(3) of the MPID Act What will be the crucial and critical stage will be decided by the Court.

(c) The intervener is not permitted to lead any evidence. They are not permitted to cross examine or re-examine any witnesses of the either side.

(d) The intervener shall not pressurize the Ld.SPP to plead their case in particular mode or manner and it will be sole discretion of Ld.SPP to plead the case of the competent authority as per record and instructions received by him from the competent authority and/or investigating officer.

3. Exh.17 is disposed off accordingly."

12. The 63 Moons Technologies Ltd. has questioned the aforesaid order alleging that the interveners are neither a victim nor has disclosed details of its members and as such the intervention ought not to have been allowed. According to Mr. Arvind Lakhawat, the interveners cannot be permitted to supervise the functioning of the State of Maharashtra and the competent authority, as vide impugned orders, the Designated Court has encouraged the other traders to intervene in every matter pertaining to the appellant, which amounts to overseeing the action of the State of Maharashtra and its authorities which may result into a chaotic situation, thereby defeating the very object of the MPID Act. According to the counsel for the appellant, the Designated Court

has failed to consider the mandate provided in the matter of **Sundeep Kumar Bafana Vs. State of Maharashtra and Anr.** reported in **(2014)16 SCC 623** and other similar judgments, as the interveners have failed to demonstrate before the Designated Court that the prosecution is likely to fail, in case if they are not permitted to intervene in the matter. According to the counsel for the appellant, once the Designated Court has come to the conclusion that the intervener is neither a necessary nor a proper party, the application for intervention ought to have been rejected, as the same goes contrary to the mandate of Section 13 of the MPID Act, which provides for adherence to the provisions of Order XXXVII of the Code of Civil Procedure. According to Mr. Arvind Lakhawat, counsel appearing for the 63 Moons Technologies Ltd., the Designated Court has failed to appreciate the claim of the intervener in the light of the definition of "Victim" as defined in the Code of Criminal Procedure. He would claim that neither the details of the members of the intervener - Association is brought on record nor the injury likely to be suffered by them, and in such an eventuality, the order impugned is not sustainable.

13. As such, Mr. Lakhawat would urge that the privileges conferred on the interveners thereby permitting to assist the prosecutor is not in accordance with law and that being so, the orders impugned are liable to be quashed and set aside in exercise of the appellate jurisdiction.

14. Mr. Lakhawat would urge that the test, whether a party is a necessary or a proper party to the proceedings, as prescribed under Order I Rule 10 of the Code of Civil Procedure can be said to be permitted if the principles as laid down by the Apex Court in the matter of **Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited** reported in **(2010) 7 SCC 417** are satisfied. According to him, even otherwise the Designated Court has recorded a finding that the intervener is neither a necessary nor a proper party to the proceedings and in such an eventuality, the mandate provided in the matter of **Sundeep Kumar Bafana Vs. State of Maharashtra and Anr.** (supra), cannot be said to be satisfied and as such, he has sought the orders impugned to be quashed and set side by allowing the appeal.

15. As against above, the counsel for the NSEL-Investors Action Group (hereinafter shall be referred as Intervener) would urge that the Court is required to conduct the proceedings in accordance with Order XXXVII of the Code of Civil Procedure, which are in relation to disposal of Summary Suit, in view of mandate provided under sub-section (5) of Section 7 of the MPID Act. As such it is claimed that the interveners from the pleadings have demonstrated that the outcome of the Misc. Applications are going to adversely impact their rights to draw the benefit and in such an eventuality, the interveners should have been permitted to be joined as non-applicants-respondents. According to

counsel for the interveners, the prayer of the petitioner for intervention is directly or substantially related to subject matter of the case and the outcome of the case will impact their rights of the interveners. It is claimed that the presence of the interveners is necessary for the prescribed purpose, as the interveners have cause of action against the property attached. It is claimed that once it is not disputed that the interveners have interest in action, it is necessary to add them as a proper party, if not a necessary party.

16. It is also urged that the interveners have participated and intervened in various proceedings arising out of NSEL scam. It is also claimed that during the hearing of the Writ Petition Nos.508 of 2017 and 1181 of 2018, the interveners were duly heard, so also before the Hon'ble Apex Court and, in such an eventuality, it is claimed that the embargo created by the Special Court on the rights of the interveners is not justified and that being so, the orders impugned is liable to be quashed and set aside.

17. We have considered the rival claims.

18. The perusal of the orders impugned reveals that the interveners are permitted to file written notes of arguments with limited oral arguments on the facts and law. The interveners are permitted to canvass the oral submissions at crucial and critical stage of the proceedings under Section 7(3) of the MPID Act and it is clarified that

the crucial and critical stage will be decided by the Special Court. A specific embargo is created on the right of the intervener by neither permitting them to lead the evidence nor permitting them to cross-examine or re-examine any of the witnesses on either of the sides. A further specific embargo is also created on the right of intervener not to pressurize the Special PP to plead their case in particular mode or manner, as the learned Special PP will be at the discretion to plead the case of the competent authority as per the record and instructions received.

19. If we appreciate the impugned order referred above, what can be noticed is the intervener is not permitted to be added as a party so as to contest the claim in its entirety with a blanket order to participate in the proceedings. A balance is sought to be struck by Special MPID Court, thereby restricting the rights of the intervener/respondent so as to have check and balance.

20. During the course of hearing, it is brought to our notice that in 11 matters, the interveners are permitted to intervene which orders are not questioned by 63 Moon Technologies Ltd. and such intervention orders have attained finality in relation to claim made for intervenor.

21. The fact remains that the order granting the intervener to place on record written notes of arguments and limited oral arguments is purely with an intention to bring such facts to the notice of the Court, which are

necessary and germane for deciding the issue to be adjudicated pursuant to the mandate provided under Section 7(5) and Order XXXVII of the Code of Civil Procedure.

22. This Court is required to be sensitive to the principle that a judge is a master of the proceedings which is conducted in his Court and, in such an eventuality, giving leverage to the judge to decide the crucial and critical stage in the light of mandate provided under clause (b) of the para (2) of the operative order cannot be said to be giving wide discretion, as the presiding judge will be conducting himself in accordance with the provisions of Order XXXVII of the Code of Civil Procedure.

23. The Special Judge while dealing with the claim of the intervener has considered the law laid down by the Apex Court in the matter of **Mumbai International Airport Private Limited** (supra) and recorded a finding that the intervener cannot be said to be a necessary or a proper party in the proceedings related to the attachment of the property. The Special Judge of the MPID Court on facts has observed that the interveners are the investors/depositors on the NSEL platform and as such are having substantial interest in the proceedings. The Special Court thereafter took into account the interveners having participated in the proceedings before the Apex Court and the Bombay High Court and as such the interveners are pursuing the matters since

last about seven years and a reasonable opportunity needs to be offered to them to assist the learned Special PP.

24. The fact remains that the Special Judge while passing the orders impugned was sensitive to the scheme of Order XXXVII of the Code of Civil Procedure which is to be adopted in the matter of deciding the issue, which is sought to be canvassed in the Misc. Applications. The fact remains that the interveners are the group of investors which is borne out of the record and as such, the attachment of the properties of the defaulters and the sale proceeds received out of the attached property, the interveners can be said to be beneficiaries. In such an eventuality, the Special Judge was of the view that the Special PP, of course, shall be conducting the matter as per the instructions of the State Government and the Investigating Officers but, the interveners can also assist the Special PP to the extent of observations made in the orders impugned with the riders provided therein.

25. In such an eventuality, it cannot be said that the order impugned is contrary to the scheme of Order I, Rule 10 of the Code of Civil Procedure.

26. The fact that interveners were permitted to intervene in other offshoots and such orders being not questioned by the 63 Moons Technologies Ltd. sufficiently speaks of it accepting and recognising the status of the intervener.

27. The fact remains that rights of the interveners are duly protected, thereby permitting them to bring to the notice of Special Judge, MPID Court such material which can be said to be necessary for deciding the issue sought to be adjudicated. In the case of **Vilas Dadarao Chavan Vs. Kiran Ashok Patil Dongaonkar** reported in **2009 (1) Mh.L.J.786**, the Division Bench of this Court has opined that the intervener in the Writ Petition has only a right to address the Court. He cannot take active part in the proceedings. In such an eventuality, the interest of the interveners is also safeguarded by the Special Judge.

28. In this background, we are of the view that no interference is called for in the appellate jurisdiction at the behest of the interveners so also the 63 Moons Technologies Ltd. and that being so, both these appeals fail and are dismissed.

(**MANJUSHA DESHPANDE, J.**)

(**NITIN W. SAMBRE, J.**)