

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3066 of 2023

Securities and Exchange Board of India (SEBI)

Vs.

M/s. MPS Greenery Developers Limited and Ors.

For the Petitioner : Mr. Sandipan Ganguly, Sr. Adv.
Mr. Karan Dudhewala,
Ms. Akansha Yadav.

For the Opposite Party : Mr. Pawan Kumar Gupta,
Nos. 1, 2, 4, & 10 to 13 Mr. Santanu Chatterjee,
Ms. Sofia Nesar,
Mr. Rajendra Kumar Nandi.

For the Opposite Party : Ms. Rajnandini Das.
No.5

Hearing concluded on : 12.06.2025

Judgment on : 26.06.2025

Shampa Dutt (Paul), J.:

1. The revisional application has been preferred against an order dated 09.02.2023 and 30.06.2023 passed by the learned Judge, 5th Special Court, Kolkata in Special Case No. SEBI/72 of 2017 under Sections 11(4)/11B/12 (1B) of the Securities and Exchange Board of India Act, 1992 and Regulation 5(1) read with Regulation 68(1)/68(2)/73/74 of the SEBI (Collective Investment Schemes) Regulations, 1999 and for offences punishable under sections 24(1)/27 of the Securities and Exchange Board of India Act thereby allowing the petition under Section 91 of the Code of Criminal Procedure preferred by the accused persons and directing the petitioner to produce and handover documents mentioned in the said petition to the accused persons.
2. Vide the order dated 09.02.2023, the Judge, 5th Special Court, Kolkata allowed the application under Section 91 Cr.P.C. filed by the accused persons.
3. **The relevant part of the said order is reproduced here:-**

“Order No. 57 dated 09.02.2023

.....Upon going through the list of documents are mentioned in paragraph '3' of the petitioner under consideration I find that these documents are all supposed to be in the custody of SEBI itself since it is their own documents. There is no concrete explanation of SEBI as to why these documents have not been handed over to the accused petitioners.

It is the fact that the instant case has been filed by SEBI on the basis of WTM Order and other documents. However the petitioners have every right to demand the official documents of SEBI to dispose of the discharge petition since such official

documents are in the custody of SEBI and by refusing to hand over the same to the petitioners, right of the petitioners to perhaps succeed in the discharge petition cannot be taken away.

On the last occasion SEBI has handed over some documents to the petitioners. **Upon going through those documents I find that they are not the said documents which have been categorically mentioned in the paragraph 3 of the petition U/s.91 Cr.P.C.** It is surprising as to why the prosecution is not willing to hand over such documents to the petitioners. The contention of the prosecution that they have complied with the direction of the prosecution Sec.207 Cr.P.C. cannot be sustained since the present petition under consideration is U/s.91 Cr.P.C. and there is obviously a basis difference between the two provisions of law.

In the light of above discussion I am of the view that the petition U/s.91 Cr.P.C needs to be allowed. However since the prosecution is already contesting the matter there is no question of summoning them.

Hence

Ordered.

The petition U/s.91 Cr.P.C is allowed on contest.

Prosecution is hereby directed to produce and handover all the documents mentioned categorically in paragraph 3 of the petition U/s.91 Cr.P.C to the accused petitioners by date fixed.

To 12.04.2023 for hearing of discharge petition U/s. 227 Cr.P.C. and producing and handing over of documents to the accused petitioners in the mean time.

Sd/-

5th Spl. Court Kolkata”

4. The prosecution submitted that all documents **relied upon** by the prosecution has been supplied to the petitioners/accused persons.
5. It appears that the documents as prayed for in paragraph 3 of the application under Section 91 Cr.P.C. was directed to be handed over to the accused/petitioners.

6. Para 3 of the application filed by the accused is as follows:-

“1. The instant application has been filed under Section 91 of Code of Criminal Procedure, inter-alia, praying for issuing summons and/or directions upon the appropriate authorities of SEBI situate, inter-alia, at Eastern Regional office at L & T Chambers, 3 door, at 16, Camac Street, Kolkata - 700 017 and also CBI at CGO Complex, Salt Lake, Bidhannagar, Kolkata for production of documents at the time of hearing of application for discharge of accused nos. 1 to 4, 6, 7 and 10 to 13 in respect of documents particularised hereunder for the ends of justice; failing which the effective defence of the accused/applicants abovenamed would be frustrated.

2. At all material times, the dispute between the parties emanate from the interpretation and applicability of provisions of SEBI Act, 1992 vide Section 32 read with Section 30, and, inspite thereof SEBI insisting condition(d) of Regulation 71(1) of SEBI (Collective Investment Scheme) Regulation and 1999 with full knowledge of embargo in Section 14Y of W.B Land Reform Act, 1955 and also the interpretation of the documents exchanged and/or transpired by and between the accused and/of MPS GDL with the appropriate authorities of SEBI, being the Manager, at Eastern Regional office at L & T Chambers, 3rd floor at 16, Camac Street, Kolkata and/or whole time Member of Chairman at SEBI Bhawan, Bandra Kurla Complex, Mumbai-400051 in connection therewith and instituting diligently W.P. No. 27927(W) of 2012 (MPS GDL - Vs SEBI & Ors.) challenging the refusal of SEBI to grant final registration under SEBI (CIS) Regulation, 1999 to protect the land”, acquired and improved upon, from the

fund raised from bond holders. In this connection, copy of W.P. No. 27927(W) of 2012 (MPS GDL -Vs- SEBI & Ors.) are annexed hereto as part hereof and marked "J" and filed separately as the same in voluminous.

3. Full particulars of the writ petitions including WP No. 27927(W) of 2012 instituted by MPS GDL through its Directors, inter-alia, being the accused herein and the aforesaid letters with their respective reference nos, and date before the said complaint dated November 23, 2013, and also the orders and letters subsequent to the said complaint dated November 23, 2013, are stated hereunder.

- (1) Letter dated 08.10.2010 **by MPS** to SEBI regarding payment of sum of Rs. 2.48 crores and Rs. 175 stores to IL & FS towards their trusteeship L & FS 1 services (as sought for by IL & FS vide their letter dated 18/1/2010 for trusteeship Acceptance Fee of Rs. 1.5 crore, one time documentation fee and Rs. 73 lacs & Annual Fee of Rs. 1.75 crores) **[copy whereof is annexed and marked "A" hereto as part hereof]**;
- (2) Letter dated 24/03/2010 **by MPS** to SEBI - submitting consent letter of the trustees, IL & FS Co. Ltd., and Form "C", as per Regn. 18(2) of SEBI (CIS) Regla, 1999 **[copy whereof is annexed and is marked annexure II of annexure "P-43", pg 524 of WP. No. 27927(W) of 2012]**;
- (3) Letter dated 10/05/2010 **by MPS** to SEBI intimating that the land, held beyond ceiling limit, relating to existing exemption u/s 14Y WBLR Act, 1955, was not transferable. To solve the deadlock, necessary permission be accorded, and the land be acquired/purchased in the name of MPS Co. and the CO, in tum, will create a charge in favour of the Trust Company as an equitable mortgage and get the charge reed, with ROC. The Trustees will then hold the original documents i.e, title-deeds of the scheme properties at custodian, as per Trust Deed **[copy whereof is annexed and marked "P-47"at [age 597 of WP No. 27927(W) of 2012]**;
- (4) Letter dated 09/07/2010 **by MPS** to SEBI furnishing further documents in support of its prayers for grant of final Regn, enclosed therewith, also furnished

photo copy of Trust Deed dt. 16/06/10 created in favour of MPS GDL CIS Trust and appointment of IL & FS Trust Co. Ltd. As Trustee executed and duly read on 16/06/2010 [copy whereof is annexed and marked "P-49" page 601 of WP No. 27027(W) of 2012];

- (5) *Letter dated 08.09.2010 by SEBI to MPS intimating that the issues raised by MPS in their letter dated 10.07.2010 and 10.05.2010 respectively, inter alia regarding transfer of land in the name of trust/trustees and segregation of CIS related activities from other business is under legal examination & SEBI shall revert back in due course (copy whereof is annexed and marked P-50 page 603 of W.P. No. 27927 (W) of 2012);*
- (6) *Letter dated 08.11.2010 by SEBI to MPS referring to letters dt 10.05.2010, 09/07/10 & 8/9/10, respectively for grant of final regn. Under SEBI (CLS) Regn. 1999 and referring to Sec. 16(2) of SEBI (CIS) Regn. 1999 and which states that CIMC (Collective Investment Management Company) shall appoint a Trustee who shall held the assets of the scheme for benefit of the unit holders" MPS thereby, are required to transfer all the assets properties of the Co. in the name of the Trustee who will held the properties in trust for benefit of the unit holders. The Deed of Conveyance would be required to be executed in favour of the Trustee (copy whereof annexed and marked P-53 at page 615 of W.P. No. 27927(W) at 2012);*
- (7) *Letter dated 24.11.2010 by MPS to L.R. Department of W.B. (14Y) referring to the exemption u/s 14Ydt. 05/05/2005 for 421 acres of land out of the project of 1200 acres at West Midnapore and also referring to the guideline SEBI(CIS) Regn. 1999 and exemption needs to be transferred in the name of Trustee as transfer is possible as per law when kindly grant the same. [copy whereof is annexed and marked "B" hereto as part hereof];*
- (8) *Letter dated 24.11.2010 by MPS to L.R. Department of W.B. (14Y) referring to the exemption u/s 14Y dt. 05/05/05 for 421 acres of land out of the project of 1200 acres at West Midnapore and also referring to*

the guideline SEBI (CIS) Regn. 1999 and exemption needs to be transferred in the name of Trustee as transfer is possible as per law when kindly grant the same. **[copy whereof is annexed** and marked "C" hereto as part hereof];

- (9) Letter dated 09/02/2011 by SEBI to MPS reiterated to transfer all assets and properties of the Co. in the name of Trustees who shall hold the same in Trust for the benefit of unit holders, and Deed of Conveyance would be required to be executed in favour of Trustee. Also reiterated that it is MPS's responsibility for (1) grant of land ceiling exemption in favour of Trustee. **[copy whereof is annexed** and marked "P-56" at page 626 of W.P. No. 27927(W) of 2012);
- (10) "Information slip" in Title Suit No. 618 of 2012 at Nadia filed by Biswajit Mukherjee against MPS GDL & Ors., inter-alia, showing injunction continues till the year 2015. **[copy whereof is annexed** and marked "D" hereto as part hereof];
- (11) Letter of SEBI dated June 2, 2000 seeking amendment of and/or insertion to the main objects of the Company's Memorandum of Association for raising funds and/or SEBI (Collective Investment Scheme) Regulations, 1999. **[copy whereof is annexed** and marked "E" hereto as part hereof];
- (12) The reverse side of the Bonds, containing printed terms and conditions of the Bonds concealed/ignored by SEBI and also by CBI/Police, though, Clause 6 of the "Agro" and /or 'Orchard' Bonds specifically stipulated-Through the Company has taken adequate precautions to protect the plantation and sustain the growth and yield, it shall bit be responsible for any damage or depreciation caused by natural disaster, God's act, governmental policies and such other matters beyond the control of the Company". Therefore, impossibility of performance u/s 55 and 56 of the Indian Contract Act, 1872 applies in full force and presence of the element of alleged 'criminality' and/or 'mens rea' is fully absent by any stretch of imagination. **[copy whereof is annexed** and marked "F" hereto us part hereof];
- (13) Letter dated 19/05/14 by MPS Greenery Developers Ltd. through accused no.1 to SEBI agreeing to the

impounding by the authorities in compelling circumstances stated therein. [copy whereof is annexed and marked "G" hereto];

(14) *W.P. No. 27921(W) of 2012, challenging the Order of SEBI, inter alia, REFUSING FINAL REGISTRATION, PENDING in Hon'ble High Court [Copy where of is annexed and marked "J" hereto as part hereof];*

(15) *Settlement vide Order dated 23rd December, 2015 passed by Hon'ble Division Bench presided by the then Hon'ble Chief Justice Manjula Chellur in Class Action/PIL upon suggestions of the parties where SEBI as also CBI were parties respondents respectively [copy whereof is annexed and marked "H" hereto as part hereof];*

(16) *Notice by around or over 25% of the Bond-holders of MPS GDL under Regulation 73(7) of SEBI (CIS) Regulations, 1999 giving positive consent under Regulation 73(6) for continuation with CIS of the Company at their risk and responsibility and thereby CIS of the Company need not be wound up as directed by SEBI. [copy whereof is annexed and marked "I" hereto as part hereof]....."*

7. There are in all 16 documents.
8. Copies of the documents from no. 1 to no. 16 have been annexed by the accuseds to the writ application (W.P. No. 27927(W) of 2012) **filed by them** and also under Section 91 Cr. P. C. and as such the said documents called for **are already in their possession.**
9. Document at number 10 & 11 are also available in the public domain.
10. Both parties have relied upon the judgment of the Supreme Court in **Sarla Gupta & Anr. -vs- Directorate of Enforcement, (2025 SCC OnLine SC 1063).**
11. The petitioner/complainant has relied upon Para 31 and 32 of the judgment:-

“31. Now, we come to the decision of this Court in the case of Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re¹. This Court, in paragraph 11 of the said decision, held thus:

“11. The Amici Curiae pointed out that at the commencement of trial, accused are only furnished with list of documents and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused. **This Court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208 CrPC, the Magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under CrPC for their production during the trial, in the interests of justice. It is directed accordingly; the Draft Rules have been accordingly modified. [Rule 4(i)]”**

(emphasis added)

Accordingly, Rule 4(i) of the Draft Criminal Rules of Practice, 2021 was formulated, which reads thus:

“4. Supply of documents under Sections 173, 207 and 208 CrPC.—

(i) Every accused shall be supplied with statements of witness recorded under Sections 161 and 164 CrPC and a list of documents, material objects and exhibits seized during investigation and relied upon by the investigating officer (IO) in accordance with Sections 207 and 208 CrPC.”

Explanation : The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the investigating officer”

(emphasis added)

Therefore, it is held that a copy of the list of statements, documents, material objects and exhibits that are not relied upon by the investigating officer must also be furnished to the accused. As held by this Court, the

object is to ensure that the accused has knowledge of the documents, objects, etc. in the custody of the investigating officer which are not relied upon so that at the appropriate stage, the accused can apply by invoking the provisions of Section 91 of the CrPC (Section 94 of the BNSS) for providing copies of the documents which are not relied upon by the prosecution. This decision upholds the right of the accused to apply for the supply of copies of the documents which are not relied upon by the prosecution at an appropriate stage by making an application to the Court.

32. This requirement was again quoted with approval in a decision of the Coordinate Bench of this court in the case of *Manoj v. State of Madhya Pradesh*⁵. Paragraphs 208 and 209 of the said decision read thus:

“208. This view was endorsed in a recent three-Judge Bench decision of this Court in *Criminal Trials Guidelines Regarding Inadequacies & Deficiencies, In re v. State of A.P.* [Criminal Trials Guidelines Regarding Inadequacies & Deficiencies, *In re v. State of A.P.*, (2021) 10 SCC 598 : (2022) 1 SCC (Cri) 100] This Court has highlighted the inadequacy mentioned above, which would impede a fair trial, and inter alia, required the framing of rules by all States and High Courts, in this regard, compelling disclosure of a list containing mention of all materials seized and taken in, during investigation—to the accused. The relevant draft guideline, approved by this Court, for adoption by all States is as follows : (SCC p. 608, para 21)

“21. ... ‘... 4. Supply of documents under Sections 173, 207 and 208CrPC.—(1) Every accused shall be supplied with statements of witness recorded under Sections 161 and 164CrPC and a list of documents, material objects and exhibits seized during investigation and relied upon by the investigating officer (IO) in accordance with Sections 207 and 208CrPC.

Explanation : The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the investigating officer.” This extract is taken from *Manoj v. State of M.P.*, (2023) 2 SCC 353 at page 452

209. In view of the above discussion, this Court holds that the prosecution, in the interests of fairness, should as a matter of rule, in all

criminal trials, comply with the above rule, and furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts in criminal trials shall ensure compliance with such rules.”

(emphasis applied)

Therefore, what can be deduced from the above decisions is that the accused has the right to ask for the supply of documents not relied upon by the prosecution by making an application to the Court. The question is at what stage the accused can demand copies of the documents.”

12. The opposite party/accused relies upon Para 45 and 54:-

“45. Therefore, at the stage of entering upon defence, an accused can apply for the issue of process for the production of any document or thing. At this stage, he can also apply for the production of a document or a thing that is in the custody of the prosecution but has not been produced. A fair trial is a part of the right guaranteed to an accused under Article 21 of the Constitution. The right to a fair trial of the accused includes the right to defend. The right to defend consists of the right to lead the defence evidence by examining the witnesses and producing the documents. Therefore, the accused is entitled to exercise his right at the stage of entering upon defence by compelling the prosecution or a third party to produce a document or a thing in their possession or custody. The Court can decline the request of the accused for issuing process for the production of documents only on the limited grounds set out in sub-section (3) of section 233 of the CrPC.

54. We have seen a major shift in the interpretation of rights conferred by Article 21 of the Constitution after A.K. Gopalan's case. When the Legislature has felt a need to bring out a legislation like the PMLA, it is the duty of the Court to interpret Article 21 in such a way that the right of a fair trial available to the accused is not affected. The object of the provisions of Section 24 or 45(1)(ii) is not to take away the fundamental right of fair trial conferred on the accused. These provisions are different in the sense that they put a burden on the accused. When such a burden is put on the accused, it is all the more necessary that the right of

fair trial guaranteed under Article 21 to the accused is protected by permitting the accused to lead defence evidence by seeking the production of witnesses and documents not relied upon by the prosecution. Similarly, for discharging the burden under Section 45(1)(ii), the accused has the right to invoke Section 91 of CrPC (Section 94 of the BNSS) for seeking production of documents at the stage of hearing of bail application.”

- 13. In the present case,** it is clearly seen that the copies of documents prayed for by the accuseds/opposite parties herein have been annexed to the writ application and under Section 91 Cr. P.C. by the accuseds/ opposite parties themselves. Two of the documents at number 10 and 11 are also available in the public domain.
- 14. As such the direction passed by the Court dated 09.02.2023 was not necessary.**
- 15.** Order dated 30.06.2023 was passed rejecting the petitioners/ complainants prayer for recall of order dated 09.02.2023 allowing the application under Section 91 Cr.P.C. filed by the accuseds/opposite parties herein.
- 16. CRR 3066 of 2023 is allowed.**
- 17.** The Orders dated 09.02.2023 and 30.06.2023 are set aside and quashed.
- 18.** The application under Section 91 Cr.P.C. stands rejected as the same is not necessary at this stage as discussed and is thus not maintainable.
- 19.** Trial Court to first consider and dispose of the application filed by the accuseds/opposite parties under Section 277 Cr.P.C. expeditiously.
- 20.** All connected application, if any, stands disposed of.

- 21.** Interim order, if any, stands vacated.
- 22.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)