IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 150 OF 2020
WITH
INTERIM APPLICATION NO. 819 OF 2020
IN
CRIMINAL APPEAL NO. 150 OF 2020
WITH
CRIMINAL APPEAL NO. 148 OF 2020
WITH
INTERIM APPLICATION NO. 817 OF 2020
IN
CRIMINAL APPEAL NO. 148 OF 2020
WITH
CRIMINAL APPEAL NO. 149 OF 2020
WITH
INTERIM APPLICATION NO. 818 OF 2020
IN
CRIMINAL APPEAL NO. 149 OF 2020
WITH
CRIMINAL APPEAL NO. 151 OF 2020
WITH
INTERIM APPLICATION NO. 820 OF 2020
IN
CRIMINAL APPEAL NO. 151 OF 2020

Rakesh Pratap Singh ...Appellant
V/s.
The State of Maharashtra and Ors. ...Respondents

WITH
CRIMINAL APPEAL NO. 153 OF 2020
WITH
INTERIM APPLICATION NO. 813 OF 2020
WITH
CRIMINAL APPEAL NO. 153 OF 2020
WITH
CRIMINAL APPEAL NO. 154 OF 2020
WITH
INTERIM APPLICATION NO. 814 OF 2020
WITH
CRIMINAL APPEAL NO. 154 OF 2020
WITH
CRIMINAL APPEAL NO. 155 OF 2020

WITH
INTERIM APPLICATION NO. 815 OF 2020
WITH
CRIMINAL APPEAL NO. 155 OF 2020
WITH
CRIMINAL APPEAL NO. 157 OF 2020
WITH
INTERIM APPLICATION NO. 816 OF 2020
WITH
CRIMINAL APPEAL NO. 157 OF 2020

Shivgarh Resorts Ltd. ...Appellant
V/s.
The State of Maharashtra and Ors. ...Respondents

Mr. Sahil Mahajan a/w. Ms. Siddhi Patil for the Appellant in APEAL/150/2020.
Mr. S.R. Agarkar, APP for the Respondent – State.
Mr. N.K. Dayananda for Respondent Nos.2 and 3- original Accused.
Mr. Nishant Dhuri, PSI, EOW, Unit – 8, present.

CORAM: BHARATI DANGRE, &
SHYAM C. CHANDAK, JJ.

DATED : 24th NOVEMBER, 2025.

P. C. :-

1) The Appeals raise challenge to an Order dated 18/11/2019 passed by the Special MPID Judge, Mumbai on an Application filed by the Applicant/Accused No.4/Accused No.1 seeking directions to Shivgarh Resorts Ltd. and the Managing Director of Shivgarh Resorts Ltd. to deposit distinct sums with interest @ 18% so as to utilize the amount for refund to the investors.

Three different Applications seeking deposit of the distinct sums which are indicated in the chart below :-

Sr. No.	Name	Amount (Rs.)

1.	Suman Motels Limited (Financial Establishment)	1,17,01,731/-
2.	Mr. Surendra M. Khandhar (Accused No.1)	1,45,00,000/-
3.	Mrs. Bharati Khandhar (Accused No.4)	95,45,000/-
4.	Mr. Praful Khandhar (Accused No.3)	84,55,000/-
	TOTAL	**4,42,01,731/-**

2) The Applicant urged before the Court that a total amount of Rs.4,42,01,731/- was the secured loan payable by Respondent Nos.2 and 3 to the accused Company – Suman Hotels Ltd. and its Directors. Out of the said loan, a distinct amount of loan was obtained from the Applicants, one of the Directors. Since separate Applications were filed by other Directors and the Company for the loan amount from Respondent Nos.2 and 3, attention of the Special MPID Court was invited to the balance sheet of Shivgarh Resorts Ltd. and it was urged that the Respondent Nos.2 and 3 had manipulated the same and the entire unsecured loan was written off without payment. But, as on date, the amount was outstanding against the Company.

The learned Counsel for Respondent Nos.2 and 3 raised various defences including the Application being barred by limitation though quite conscious of the fact that the MPID Act do not provide any limitation in filing such Application.

As far as the allegations of operation and mismanagement of the Company are concerned, attention of the Court was invited to the Company Petition filed against Shivgarh Resorts Ltd. and its Directors

under Section 397 and 398 of the Companies Act, where it was pleaded that Shivgarh Resorts Ltd. had not paid unsecured loans approximating to Rs.4,42,01,731/-. One more Company Petition was also filed but, it was pointed out that both the Company Petitions were withdrawn on the ground of settlement having been arrived between the Directors of Suman Hotels Ltd. and Shivgarh Resorts Ltd. and its Directors.

It was also pointed out that the Directors of Suman Hotels after filing of the fresh Company Petition in the year 2018 against Shivgarh Resorts Ltd. and its Directors with a relief sought to restore the unsecured loan in its books of accounts, which is pending.

Another defence of the Respondent Nos. 2 and 3 was that the entire unsecured loan amount was repaid as on 31/03/2002.

The Special Judge examined the balance sheet of Shivgarh Resorts Ltd. as regards the unsecured loans and set out the breakup of the unsecured loan advanced to the Respondent Nos.2 and 3, a loan of Rs.1,17,01,731/- being advanced to Suman Hotels Limited and distinct amount of loan being advanced to the Directors - Mr. Surendra M. Khandhar, Mrs. Bharti Khandhar and Mr. Praful Khandhar, thus, totaling it to Rs.4,42,01,731/-.

Taking note of the fact that the Respondent No.2 had admitted that the loan was taken by the Applicant and the other Directors of Suman Hotels Ltd. and that it was an unsecured loan, but the stand of the

Respondent Nos.2 and 3 was that the loan was repaid. However, the learned Judge did not believe this contention as referring to the subsequent balance sheet after 31/03/2002 and to be specific on 31/03/2007, it was noted that there is no material on record to show that how the unsecured loan was reduced to Rs.30,000/- from a sum of Rs.4,42,01,731/- and by referring to the letters issued by the Directors of Shivgarh Resorts Ltd. to the Applicant, a conclusion was drawn that the outstanding amount still remained unpaid and if the entire loan was repaid, it would have shown in the Annual Report of the Company, but the balance sheet did not reflect so.

3) In the wake of the aforesaid, taking note of the fact that the amount was unsecured and remained unpaid as unsecured loan and with a specific contention advanced that the loan was advanced by the Applicant from the crime proceeds, an amount/malafide transfer by the Accused but only because of a bald statement made in the reply that only on the basis of the statement made in the reply that the documents filed by the Applicant are forged and fabricated without any independent evidence being offered to that effect, the Court did not accept the arguments and rendered a finding that the Respondent Nos.2 and 3 are liable to deposit the said amount in the Court failing which the Competent Authority was directed to attach the property of the Respondent Nos.2 and 3 equivalent to the amount due and payable against them. It was specifically noted that

the loan was not repaid for several years and it being a commercial transaction, the Respondent Nos.2 and 3 must pay simple interest @ 18% p.a.

4) Since it was not disputed that the loan was unsecured and despite a flimsy ground being raised that the loan was repaid without any proof thereof being adduced, the Court has rightly come to a conclusion that the amount is due and payable by the Respondent Nos.2 and 3 and it will be added to the credit of the Company which should be able to discharge its liability which it owed towards the depositors. It is to be noted that despite the order being passed on 18/11/2019, the Respondent Nos.2 and 3 had failed to deposit the amount and at this stage, it is imperative that the Competent Authority attach the property of the Respondent Nos.2 and 3, equivalent to the amount due and payable against them.

5) Hence, while dismissing the Appeals, we direct the Competent Authority to take such steps as expeditiously as possible to attach the property of Respondent Nos.2 and 3 and place it before the Designated Court for further directions.

6) Criminal Appeals are dismissed. Consequently, all Interim Applications are disposed of.

(SHYAM C. CHANDAK, J.) (BHARATI DANGRE, J.)

WAKLE MANOJ JANARDHAN
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