**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL WRIT PETITION NO. 793 OF 2025**
MR. BHAWANI PRASAD MISHRA AND ANOTHER
**Vrs.**
THE STATE OF MAHARASHTRA AND OTHERS

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| Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order | Court's or Judge's Order |
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Shri Y. A. Kullarwar, Advocate for petitioners.
Shri G. S. Umale, APP for respondent Nos.1 and 2.

**CORAM: ANIL L. PANSARE AND**
**Y. G. KHOBRAGADE, JJ.**
**DATE : 06/10/2025.**

1. Shri A. V. Shrivastava, learned counsel appears and submits that the informant Shri Shekhar Lohiya has informed him to appear before this Court and to file application for intervention.

2. Shri Shekhar Lohiya is present in the Court. When enquired as to who has given him information of pendency of petition as also the listing date, Shri Shekhar Lohiya remained silent. After further enquiry, he gave evasive answer by saying that he got information from the Department. Thereafter, upon further enquiry, he said that he received information from Police Department. Thereafter, he was made to disclose the name of person who has given him information

and the name as disclosed is Shri Sachin Yadav, the Investigating Officer.

3. Upon enquiry with Shri Sachin Yadav as to why was this information given to informant, he submits that in MPID cases, the notification is made public and therefore, everybody is made aware of the pendency of matter. By such notification, one cannot acquire knowledge of pendency of petition before the Court. Thus, a misleading response is given by Mr. Yadav. He then submits that informant's house is being auctioned because of fraud played by the petitioners.

4. As such, the issue involved is whether the Police Officer is empowered to debit freeze account, in terms of provisions of Bhartiya Nagrik Suraksha Sanhita, 2023 or for that purpose, The Code of Criminal Procedure, 1973, which we are of prima facie view that he is not.

5. In the circumstances, we fail to understand why Mr. Yadav should inform the informant about pendency and listing date of this petition. We will, as such, permit the informant to intervene in the matter, and will also test his bonafides as well as the conduct of Mr. Yadav.

6. We have heard Shri Yash Kullarwar, learned counsel for petitioners and Shri Umale, learned APP for State as also Mr. Kullarwar for the informant.

7. The petitioners are before us because their accounts have been debit freezed. The counsel for petitioners submits that FIR under question is a classic case of converting civil dispute in Criminal Proceedings. He submits that petitioners and informant entered into a contract in the form of delivery orders. The conduct was to supply coal. The informant paid advance/security deposit of Rs.1 crore against which the petitioners were supposed to supply coal, which the petitioners have partly supplied. According to the petitioners, during rainy season, petitioners could not supply coal because of water-logging in the mines. Accordingly, petitioners informed the informant through e-mail that the coal will be supplied after rainy season.

8. The counsel for petitioners further submits that the informant approached National Company Law Tribunal, Mumbai under Section 9 of the Insolvency and Bankruptcy Code, 2016 being proceeding No.CP (IB)/891(MB) 2024. The National Company Law Tribunal, Mumbai vide Judgment dated 26/03/2025 admitted the petition for initiating Corporate Insolvency Resolution Process (CIRP) against the petitioners' Company.

9. The petitioners challenged the Judgment before National Company Law Appellate Tribunal, Principal Bench,

New Delhi being Company Appeal (AT) (Insolvency) No.557/2025. The NCLAT vide Judgment dated 25/04/2025 quashed and set aside the order passed by NCLT and in doing so, NCLAT observed as under :-

> "32 When we look into the correspondence between the parties and e-mail sent by the Corporate Debtor on 13.08.2024 i.e. prior to issuance of demand notice, Corporate Debtor has expressed its willingness to supply of goods against the advance received. In reply to Section 9 application, the Corporate Debtor has also reiterated its willingness to supply the coal. Clause in terms and conditions as noted above that Corporate Debtor has to refund the amount with interest when it is unable to supply the goods.
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> 33. In the present case, the Corporate Debtor has expressed its willingness to supply the goods, it cannot be said that Corporate Debtor has breached the contract. The observation of the Adjudicating Authority that defence raised by the Corporate Debtor is a moonshine defence to cover up its failure to supply the goods against the advance also cannot be approved. In any view of the matter, requirement for rejection of Section 9 application as contemplated in Section 9(5)(ii)(d) being present, Adjudicating Authority without adverting to the said provision has admitted Section 9 application which cannot be approved. We, thus, are satisfied that the application filed by the Operational Creditor did not deserve admission and was liable to be rejected as required by Section 9(5)(ii)(d) of the IBC. Adjudicating Authority neither adverted to Section 9(5)(ii)(d) nor addressed itself to the said condition and proceeded to admit the application which order cannot be sustained."

10. Thus, it appears that there was a business transaction between the petitioners and the informant. The petitioners expressed willingness to supply goods against the advance received. The judgment indicates that the informant

has paid advance to the petitioners and has not deposited the amount as an investment in the scheme floated by the petitioners. Thus, the petitioners cannot be labelled as 'Financial Establishment' as defined under Section 2(d) of the MPID Act. The Judgment further indicates that the petitioners were willing to supply the coal and that in terms of Clauses and conditions, the petitioners were under obligation to refund the amount with interest when he is unable to supply the goods.

11. The informant, as such, has challenged the order of NCLAT before the Hon'ble Supreme Court in Civil Appeal No.6882/2025, however, Supreme Court has not stayed the order impugned. Accordingly, counsel argued that the business transaction between two parties is given colour of criminal proceedings that too suggesting that informant is a depositor in scheme floated or arrangement made by the petitioners and the Investigating Officer has registered FIR under Section 3 of the MPID Act.

12. The counsel for petitioners further submits that while lodging FIR on 30/08/2025, the informant has suppressed the fact of proceedings filed before the NCLT, NCLAT and pendency of the case before the Hon'ble Supreme Court.

13. We have gone through the FIR. The informant has reported to police that the amount of Rs.1 crore was paid as deposit. He has then made grievance that the coal was not supplied. He further stated that an amount of Rs.72.50 crores approximately was paid to petitioners company and in return coal worth only Rs.36 crores (approximately) was only supplied. The informant then stated that the petitioners company has not paid to the informant an amount of Rs.36.50 crores (approximately), despite repeated requests. According to the informant, he had invested total amount of Rs.126 crores approximately, but the petitioners company has not supplied coal as promised and accordingly, informant has been duped.

14. At this stage, when enquired with learned APP whether the contents of FIR, even if accepted at its face value, will attract the provisions under Section 3 of the MPID Act, he submits that it would not.

15. Mr. Yadav shall therefore justify invoking Section 3 of the MPID Act in the present case. In addition, he will justify the action of debit freezing the account of petitioners, because of which petitioners are said to have suffered losses in business.

16. We may note here that the FIR as is lodged by the informant does not disclose about the proceedings before the

NCLT, NCLAT and the Supreme Court. He has also not disclosed about the stand taken by him before the said Tribunals.

17. In context with the above when we enquired with the informant's counsel as to whether the facts of the proceedings before the NCLT and NCLAT were disclosed to Investigating Officer, the informant remained quiet. However, the Investigating Officer Shri Sachin Yadav gave instructions to the informant's counsel. Thus, when we sought instructions from the informant, it is the Investigating Officer who is more keen to give instructions to the counsel. For the time being, we have just noted this conduct but same will be considered while testing his action in recording FIR under Section 3 of the MPID Act so also debit freezing accounts of the petitioners.

18. Thereafter, the informant gave instructions to his counsel saying that information about the proceeding before NCLT and NCLAT was given to Mr. Yadav, which Mr. Yadav admits.

19. Thus, there are more reasons to doubt the conduct of Mr. Yadav. He shall therefore, justify why has he not noted in the FIR about true and correct facts disclosed by the informant and secondly, even if the contents of FIR are accepted, how the provisions under Section 3 of the MPID Act

will be attracted. Further, he is called upon to justify his action of debit freezing the account.

20. At this stage, counsel for petitioners made a request to grant interim relief. We will consider this request on next date.

21. The petitioners shall, in the meantime, put-forth through affidavit, the amount which the informant has paid and against which the coal has been not supplied. The petitioners shall also place on record the documents indicating the time within which he agreed to supply the coal.

22. With the above observations, we permit the informant to intervene in the matter. The petitioners shall add informant as party Respondent. The informant may file reply, if so desired.

23. Copy of order shall be served on DIG, Maharashtra for information and appropriate action against Mr.Yadav.

24. Stand over to 13/10/2025.

**[Y. G. KHOBRAGADE, J.]** **[ANIL L. PANSARE, J.]**

*Choulwar*