

IN THE COURT OF SESSION FOR GREATER BOMBAY

MISC. APPLICATION NO.61 OF 2018

IN

M.P.I.D. CASE NO.1 OF 2014

The State of Maharashtra
Through EOW, Special Investigation
Team, having office at 3rd Floor,
New Building, Police Commissioner
Office Compound, Mumbai – 400 001.

...Applicant

Vs.

1. Mohan India Pvt. Ltd.
Company registered under the Companies
Act, 1956 and having registered office
at 354, Tarun Enclave Pitampura,
New Delhi – 110 034.

2. Tavishi Enterprises Private Ltd.
A Company registered under the Companies
Act, having registered office at
1A/101, Rangrasyan Apartment,
Sector 13, Rohini, New Delhi.

3. Brinda Commodity Private Limited
A Company registered under the Companies
Act, having registered office at
406, D Mall, Pritampura,
New Delhi – 110 008.

...Respondents

Ms. Kalapana Chavan, Ld. SPP for State EOW/applicant.
Mr. Vijay Singh, Ld. Advocate for respondent.
Mr. Karnik, Ld. Advocate for Intervenor.

CORAM : H.H.THE SPECIAL JUDGE
SHRI. MILIND V. KURTADIKAR
(C.R. No.33)

DATE : 4th July, 2018.

(Dictated and Pronounced in Open Court)

ORDER

The State EOW has filed this application for making attachment absolute of the properties of respondent Nos.1 to 3. It is submitted that respondent Nos.2 and 3 Tavishi Enterprises Private Ltd. and Brinda Commodity Private Ltd. are sister concern of respondent No.1 Mohan India Pvt. Ltd. Mr. Jagmohan Garg and Jaishankar Srivastava are the Directors of said Companies. These Companies together have received payments to the extent of Rs.929.40 Crores. Director Mr. Jagmohan Garg by his letter dated 16/12/16 submitted to the EOW has shown his willingness to make attachment absolute of 21 properties to their Companies. Some properties are attached by EOW as well as ED while some properties are attached only by ED.

2. Pursuant to said letter, EOW has filed MA No.452/16 for making attachment absolute of the properties of respondent Nos.1 to 3. It is submitted that out of 21 properties, 7 properties are mentioned in para No.6 while remaining properties were mentioned in para No.7 of MA No.452/16. However, this Court by order dated 20/12/17 made properties absolute mentioned in para No.6 of MA No.452/16 only. Therefore, despite consent remaining properties mentioned in para No.7 of that application are remained to be made absolute. Said mistake is nothing but clerical mistake and therefore it can be rectified by this Court. Accordingly, EOW prayed to allow this application for modification of order in MA No.452/16 making attachment absolute of

the entire properties of respondent Nos.1 to 3.

3. Respondent Nos.1 to 3 have filed its reply at Exh.4. It is not disputed that by way of letter dated 16/12/16 Director Mr. Jagmohan Garg has shown his willingness for making attachment absolute of their 21 properties. Though respondents have given consent, it is necessary to mention that Hon'ble High Court passed prohibitory order in suits filed by NSEL against respondent Nos.1 to 3. As this Court has finally disposed of MA No.452/16 by passing order, now it is not permissible to modify or alter said order. There is bar under Section 362 of Cr.P.C. for making alteration in judgment. As per Section 362 of Cr.P.C. Court cannot alter its judgment once it is pronounced. Therefore, if applicant files separate application with similar prayer, then respondents will make appropriate submission in consonance with the consent given in letter dated 16/12/16.

4. The first informant has intervened this application. It is submitted that considering the huge liability against respondent Companies, it will be in the interest of justice if the attachment of their properties made absolute in view of consent letter dated 16/12/16.

5. In view of submission made in reply by respondents, EOW has filed amendment application at Exh.5. The Ld. Counsel for respondents has given no objection for said amendment. Accordingly, amendment application (Exh.5) is allowed.

6. Now by way of amended application, description of properties of respondent Nos.1 to 3 is given at Sr. No.1 to 14 in para No.4 of application (Exh.5).

7. On such amendment, respondent Nos.1 to 3 have again filed their reply at Exh.6. It is admitted that by letter dated 16/12/16 the Director of respondent Companies have given no objection / consent for making attachment of above properties absolute. Still respondent Companies are binding with said letter giving no objection / consent for making attachment absolute. However, it is made clear that above properties are already attached by Directorate of Enforcement, Mumbai under the provisions of Prevention of Money Laundering Act. This fact is within the knowledge of EOW. So also, Hon'ble Bombay High Court was pleased to pass interim order dated 1/12/14 against these respondents in the Suit filed by NSEL. In such circumstances, these respondent submit that Court may pass appropriate order regarding attached properties.

8. Heard Ld. SPP appearing for the State / EOW and Ld. Counsel appearing on behalf of respondents 1 to 3 and Ld. Counsel for Intervenor. Here, it is not disputed that properties mentioned at Sr. Nos.1 to 14 in para No.4 of Exh.5 belonging to respondents 1 to 3 are attached by EOW. Now by way of this application CA is praying for making said attachment absolute. On such application, notice was issued to the respondents under Section 7(2) of the MPID Act calling their objections if any. In response to it, respondents appeared and

given their consent / no objection for making attachment of their properties absolute. As per Section 7(4) of the MPID Act, if no cause is shown and no objections are made against the attachment then the Court can forthwith pass order making the attachment absolute. Here, respondents have fairly given consent for making attachment of their properties absolute. Therefore, in view of Section 7(4) of the MPID Act, there is no any difficulty in passing order for making attachment absolute of the properties of respondents specifically mentioned at Sr. Nos.1 to 14 in para No.4 of the application Exh.5. Accordingly, the order.

ORDER

1. MA No.61/18 is hereby allowed.
2. In view of consent / no objection given by Director of respondent Companies, the attachment of their properties specifically mentioned at Sr. Nos.1 to 14 in para No.4 of application Exh.5 is hereby made absolute.
3. The Directorate of Enforcement, Mumbai is directed to hand over the original title deeds of above properties to the Competent Authority.

Dt.4/7/2018

(Milind V. Kurtadikar)
Special Judge,
City Civil & Sessions Court,
Gr. Bombay.

Order Dictated on : 4/7/2018
Transcribed on : 6/7/2018
Signed on

“ I affirm that the contents of this PDF file order are the same, word to word, as per the original order.”

Name of Steno with post : Mrs. M. A. Kale
(Stenographer H.G.)

Name of the Judge (with Court No.) : H.H.J. Shri. M. V. Kurtadikar,Court No.33

Date of pronouncement of order : 4/7/18

Order signed by the P.O. on : 6/7/18

Order uploaded on : 6/7/18

"Certified to be true and correct copy of the original signed Judgment / Order."

Upload date and time
6/7/18 4.52 p.m.

Name of Stenographer
Mrs. M. A. Kale