# IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CRIMINAL APPELLATE JURISDICTION

## CRIMINAL APPEAL NO. 1106 OF 2022

NSEL Investors Action Group
having its registered address at 305,
B Wing, Kemp Plaza, Chincholi Bunder
Road, Malaw (W), Mumbai-400064. …Appellant

V/s.

1) Chandravali Manek
Age 91 years,
18, A 5 Sindhi Society, Opp. SIES
College, Sion (W), Mumbai 400 022.

2) The Competent Authority
(Appointed by the Government in
MPID Special Case No.1 of 2014
having its office at Deputy Collector,
Land Acquisition, 1st Floor, Old
Custom House, Fort, Mumbai- 400001.

3) State of Maharashtra
Through Government Pleader. …Respondents

## WITH

## INTERIM APPLICATION NO. 4264 OF 2022
## IN
## CRIMINAL APPEAL NO. 1106 OF 2022

National Spot Exchange Limited
A Company incorporated under the
Companies Act, 1956, Having its office
at Malkani Chambers, 1st Floor,
Off. Nehru Road, Near Hotel Orchid,
Vile Parle (East), Mumbai-400 099
(Through its Authorized
Representative, Mr. Santosh Dhuri,
Age: 50 years.) …Applicant/Intervenor

IN THE MATTER BETWEEN-

NSEL Investors Action Group
having its registered address at 305,
B Wing, Kemp Plaza, Chincholi Bunder
Road, Malaw (W), Mumbai-400064. …Appellant

V/s.

1) Chandravali Manek
Age, 91 years,
18, A 5 Sindhi Society, Opp. SIES
College, Sion (W), Mumbai 400 022.

2) The Competent Authority
(Appointed by the Government in
MPID Special Case No.1 of 2014
having its office at Deputy Collector,
Land Acquisition, 1st Floor, Old
Custom House, Fort, Mumbai- 400001.

3) State of Maharashtra
Through Government Pleader. …Respondents

WITH

CRIMINAL APPEAL NO. 1108 OF 2022

NSEL Investors Action Group
having its registered address at 305,
B Wing, Kemp Plaza, Chincholi Bunder
Road, Malaw (W), Mumbai-400064. …Appellant

V/s.

1) Harpreet Kaur Dang
Age 53 years,
A054, Manju Niketan, Opp Topiwala
Centre, Goregaon (W),
Mumbai-400104.

2) The Competent Authority
(Appointed by the Government in
MPID Special Case No.1 of 2014

having its office at Deputy Collector,
Land Acquisition, 1st Floor, Old
Custom House, Fort, Mumbai- 400001.

3) State of Maharashtra
Through Government Pleader. …Respondents

**WITH**

**INTERIM APPLICATION NO. 4265 OF 2022**
**IN**
**CRIMINAL APPEAL NO. 1108 OF 2022**

National Spot Exchange Limited
A Company incorporated under the
Companies Act, 1956, Having its office
at Malkani Chambers, 1st Floor,
Off. Nehru Road, Near Hotel Orchid,
Vile Parle (East), Mumbai-400 099
(Through its Authorized
Representative, Mr. Santosh Dhuri,
Age: 50 years.) …Applicant/Intervenor

**IN THE MATTER BETWEEN-**

NSEL Investors Action Group
having its registered address at 305,
B Wing, Kemp Plaza, Chincholi Bunder
Road, Malaw (W), Mumbai-400064. …Appellant

V/s.

1) Harpreet Kaur Dang
Age 53 years,
A054, Manju Niketan, Opp Topiwala
Centre, Goregaon (W),
Mumbai-400104.

2) The Competent Authority
(Appointed by the Government in
MPID Special Case No.1 of 2014
having its office at Deputy Collector,
Land Acquisition, 1st Floor, Old
Custom House, Fort, Mumbai- 400001.

3) State of Maharashtra
Through Government Pleader. …Respondents

Mr. Sarosh Bharucha a/w Mr. Bhushan Shah, Mr. Akash Jain, Mr. Aakash Mehta & Mr. Mohammed Lokhandwala i/b Mansukhlal Hiralal & Co. for Appellant.
Mr. Chaitanya Pendse i/by Mr. Gaurav Parkar for the Respondent No.1.
Ms. Rebecca Gonsalvez, Special PP for the Respondent No.2.
Mrs. S. D. Shinde APP, for the Respondent No.3.
Mr. Arvind Lakhawat a/w Mr. Nimeet Sharma and Ms. Jalpa Shah i/b MZM Legal LLP for Intervenor in both the Interim Applications.

CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.

RESERVED ON : 10th FEBRUARY, 2023.
PRONOUNCED ON : 15th MARCH, 2023.

***JUDGMENT (PER A.S. GADKARI, J.):-***

1) Appellant in both the Appeals, filed under Section 11 of the Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999 (for short, *" the MPID Act"*) has impugned common Order dated 13th October 2022 passed in Misc. Application No.1041 of 2022 and Misc. Application No.648 of 2022 in MPID Case No.1 of 2014 filed by the Respondent No.1 respectively herein, by the learned Special Judge (MPID), City Civil & Sessions Court, Greater Mumbai.

2) Heard Mr. Bharucha, learned counsel for Appellant, Mr. Pendse, learned counsel for the Respondent No.1 in both the Appeals, Ms. Gonsalvez, learned Special PP for the Respondent No.2, Ms. Shinde learned APP for Respondent No. 3 and Mr. Lakhawat learned counsel for Intervenor

in both the Interim Applications.

3) Respondent No.1 in Appeal No.1106 of 2022 had filed Misc. Application No.1041 of 2022 contending that, she is a senior citizen aged about 91 years and having receivable outstanding of Rs.10,28,520/- as on 31st July 2013, for which she is waiting for over 9 years. That, she has very little savings left and being a senior citizen does not have any other source of income. That, she is bedridden and suffering from various health issues and therefore she is in acute need of money. She therefore approached the Special Court to permit distribution of monies to those investors who have outstanding above Rs.10 lakhs to Rs.20 lakhs. That, considering the health issues and old age the said Application deserves to be allowed.

Respondent No.1 in Appeal No.1108 of 2022 had filed Misc. Application No.648 of 2022 contending that, she is 53 years of age and having an outstanding of Rs.10,10,746/- approximately. That, she has very small outstanding left. She therefore had approached trial Court to permit the distribution of monies to those investors who have outstanding above Rs.10 lakhs to Rs.20 lakhs.

Both the Respondent Nos.1 have relied upon various decisions rendered by this Court in support of their contention that, they fall in the category of 'individual small investors' who are covered in the bracket of above Rs.10 lakhs to Rs.20 lakhs.

4) The trial Court by its impugned common Order dated 13th October 2022 allowed both the said Misc. Applications and directed the Competent Authority to make graded distribution to only individual investors/depositors who had outstanding amount between Rs.10 lakhs to 20 lakhs from the available amount with it, after due verification in accordance with law.

5) Mr. Bharucha, learned counsel appearing for Appellant in both the Appeals submitted that, in view of the decision of this Court in the case of *Mr. Ashish Mahendrakar Vs. State of Maharashtra & Ors. in Writ Petition No.3228 of 2019 dated 13th September, 2019,* only the inter-corporate deposits/loans by a Company with other Company registered under the provisions of the Companies Act, would not amount to a deposit and only those entities can be excluded from extending benefit of receiving all invested amount from the Competent Authority. He submitted that, the trial Court has misinterpreted the Judgment of this Court in the case of *Rabibai Mohamad Ismail Vs. The State of Maharashtra & Anr., in Criminal Appeal No.451 of 2020 dated 8th March, 2021,* while applying the criteria of 'equitable' distribution of the amounts realised from the sale of properties of the accused by the Competent Authority. That, the Appellant's sole objective is to protect the rights of the investors/depositors and to recover the monies from NSEL scam. That, the Corporations and Firms who fall within the ambit of Rs.10 lakhs to Rs.20 lakhs are kept out from

distribution of said amount which is not in consonance with the principle of equity. He submitted that, the Appellant is challenging the distribution to the individual depositors having amounts outstanding between Rs.10 lakhs to Rs.20 lakhs without there being any classification available under the law. That, there cannot be further classification at the request of two depositors (i.e. Respondent Nos.1 herein), once the classification which was recommended by the Advisory to the Government of India, Ministry of Finance and upheld by this Court and further confirmed by the Hon'ble Supreme Court. The trial Court has erred in relying on the Judgment dated 8th March, 2021 passed in Criminal Appeal No.451 of 2020 by this Court to assume that, it has jurisdiction to pass an Order for distribution. He submitted that, the Hon'ble Supreme Court in a Writ Petition (s) Civil No(s). 995 of 2019 filed by National Spot Exchange Ltd. (accused), has constituted a Committee namely 'Supreme Court Committee' by its Order dated 4th May, 2022 and therefore it is the sole jurisdiction of the said Committee to distribute sale proceeds, so realised from the sale of the attached properties in the present case and not by the trial Court. That, therefore also the trial Court has erred while passing the impugned Order. He therefore prayed that, the impugned Order passed by the trial Court be set aside and the Applications preferred by the Respondent Nos.1 herein be dismissed.

6) Mr. Pendse, learned counsel for the Respondent No.1 in both the Appeals, drew our attention to paragraph Nos. (xi) and (xix) of the Order of Hon'ble Supreme Court dated 4th May 2022 and submitted that, the said Order has prospective effect from 4th May 2022 and not prior to it. That, in the present case properties of the accused were attached in the year 2014-2015 and the said attachment was made absolute under Section 7(3) of the MPID Act in the year 2015-2016. He submitted that, the Applications under Section 7(4) of the MPID Act, made by the Respondent Nos.1 before the trial Court were maintainable and therefore there is no error committed by the trial Court while passing the impugned Order dated 13th October, 2022. He submitted that, the trial Court has adopted the criteria of 'equitable distribution' as has been held by this Court in Criminal Appeal No.451 of 2020 (Supra) by its Judgment dated 8th March, 2021, which has been affirmed by the Hon'ble Supreme Court and therefore also the trial Court has not committed any error while passing impugned Order. He drew our attention to the paragraph Nos.25 to 29 of the Judgment dated 8th March, 2021 passed in Criminal Appeal No.451 of 2020 (Supra) and submitted that, the said findings recorded by the Co-ordinate Bench of this Court have not been disturbed by the Hon'ble Supreme Court in Special Leave Petition (Criminal) Diary No(s) 7435 of 2021 by its Order dated 26th March, 2021. He submitted that, therefore it is not necessary to interfere with the impugned Order passed by the trial Court and the Appeals may be

dismissed.

7) Ms. Gonsalves, learned counsel for the Respondent No.2 submitted that, the impugned Order advances object of the Act behind its enactment and not contrary to it. She submitted that, this Court in paragraph No.28 of the Judgment in Criminal Appeal No.451 of 2020 (Supra) has elaborately enunciated term 'equitable' and therefore the Order passed by the trial Court is in consonance with the said Judgment and not otherwise. She submitted that, paragraph No.(ii) of the Order dated 4th May, 2022 passed by the Hon'ble Supreme Court in the case of National Spot Exchange Ltd. (Supra) deals with the proceedings for execution of all the decrees/orders/arbitral awards listed in the Annexures-1 and 2 thereof, currently pending in various Courts across the country and the trial Court has not precluded from deciding an application under Section 7(4) of the MPID Act. She submitted that, there are no merits in the Appeals and they may be dismissed.

8) As noted earlier, in the present case the Respondent No.1 in Appeal No.1106 of 2022 has categorically contended that, she is a senior citizen aged about 91 years and having receivable outstanding of Rs.10,28,520/- as on 31st July 2013, for which she is waiting for over 9 years. That, she has very little savings left and has no other source of income. That, she is bedridden and suffering from various health issues and therefore she is in acute need of money. The Respondent No.1 in

Appeal No.1108 of 2022 has contended that, she is 53 years of age and having outstanding of approximately Rs.10,10,746/-. That, she has left with very small outstanding and therefore had requested the trial Court to distribute the monies to those investors who have outstanding above Rs.10 lakhs to Rs.20 lakhs.

9) The trial Court has observed that, there are approximately 2040 individual investors who are having receivable outstanding in the range of Rs.10 lakhs to Rs.20 lakhs. That, if the payment between Rs.10 to 20 lakhs is effected to the said individual investors, it would satisfy approximately 30% of their balance outstanding. According to this Court, such graded distribution of money to the individual investors in the range of Rs.10 to 20 lakhs is certainly as per the principle of equity, in conformity with the intention of legislature and the statement and object behind enacting the MPID Act.

The intention of legislature in enacting the MPID Act is to protect the interest of depositors in Financial Establishments and matters relating thereto. The statement and object behind enacting the MPID Act clearly mentions as under:-

> *"There is a mushroom growth of Financial Establishments in the State of Maharashtra in the recent past. The sole object of these Establishments is of grabbing money received as deposits from public, mostly middle class and poor on the promises of unprecedented high attractive rates*

> *of interest or rewards and without any obligation to refund the deposit to the investors on maturity or without any provision for ensuring rendering of the services in kind in return, as assured. Many of these Financial Establishments have defaulted to return the deposits on maturity or to pay interest or render services in kind, in return, as assured to the public. As such deposits run into crores of rupees it has resulted in great public resentment and uproar, creating law and order problem in the State of Maharashtra, specially in the city like Mumbai which is treated as the financial capital of India. It is therefore, expedient to make a suitable legislation in the public interest to curb the unscrupulous activities of such Financial Establishments in the State of Maharashtra."*

10) In the case of *Mr. Ashish Mahendrakar (Supra)* an important question of law was raised as to, whether the inter-corporate deposit/loan i.e. a loan advanced/deposit made, by a company with another company registered under the provisions of the Companies Act, 1956 would amount to a *'deposit'* within the meaning and for the purpose of the MPID Act? The Co-ordinate Bench of this Court has answered it and declared that, the inter-corporate deposit/loan i.e. a loan advanced/deposit made by a company with another company registered under the provisions of the Companies Act, 1956/2013 would not amount to a 'deposit' within the meaning and for the purpose of MPID Act. It has been further declared that, the inter-corporate deposits made with the financial establishments in

the said proceedings leading to MPID Special Case No.4 of 2014 (i.e. present case) shall not be taken into consideration for the purpose of the prosecution and proceedings under the MPID Act.

Though the learned counsel for the Appellants has referred to and relied upon the said decision during the course of his arguments, according to us, it has no application to the facts and circumstances of the present case in hand.

11) Another Co-ordinate Bench of this Court in the case of *Rabibai Mohamad Ismail dated 8th March, 2021 (Supra)* was posed with a question for its determination, as to the manner in which the Designated Court under Section 7(4) of the MPID Act is supposed to distribute money realized from assets attached under the provisions of the MPID Act. After analysing the provisions of the MPID Act, it has been held in paragraph Nos.28, 30, 35 and 38 as under:-

> *"28. Thus, it becomes clear that the term 'equitable' is not the same as 'equal'. We are of the opinion that when this definition is kept in mind, it becomes clear that the approach adopted by the Designated Court in proceeding on the basis that equitable distribution would necessarily mean equal distribution, is not correct. Otherwise, the legislature would have thought it fit to simply use the words 'equal distribution' in Section 7(4) of the MPID Act instead of the words 'equitable distribution'. By using the said specific expression in the context of the*

*power available with the Designated Court to give a direction for distribution of monies amongst the depositors, it has been clearly indicated that the Designated Court would have the power and discretion to pass appropriate direction for equitable distribution of money in terms of the object of the MPID Act. In a given case, depending on the facts and circumstances, equitable distribution may mean equal distribution of money amongst the depositors. But, this cannot lead to a conclusion that in particular facts and circumstances where the Designated Court may find it just, fair and reasonable to give appropriate direction for distribution of money amongst the depositors not necessarily in equal proportion but, in a graded manner, it cannot do so. This aspect was not appreciated in the correct perspective by the Designated Court while passing the impugned order."*

*"30. In the present case, a perusal of the above-quoted objects and reasons for enactment of the MPID Act would show that the MPID Act was primarily enacted for protecting the interests of the poor and middle class depositors/investors, who had become the victim of Establishments, whose sole object was to grab their money. Keeping the said objects and reasons in mind, and applying the mischief rule while interpreting Section 7(4) of the MPID Act, it can be said that the Designated Court may issue an appropriate direction in the facts and circumstances of a particular case, to direct graded distribution of money to depositors/investors,*

*depending on the extent of outstanding amount payable to them. This would advance the purpose for which the MPID Act has been enacted."*

*"35. Such a prayer made by the Competent Authority ought to have been considered by the Designated Court on the principle of equitable distribution. Instead of doing so, the Designated Court proceeded on the basis that whatever amounts became available for distribution, the Competent Authority was necessarily required to distribute the same equally amongst all depositors. As noted above, in a given case, the distribution of available amounts equally amongst depositors may be justified, but, categorization of depositors on the basis of quantum of outstanding amounts due, is a reasonable basis of classification to identify small depositors as opposed to others. This is clearly in furtherance of the object of the MPID Act and in the facts of the present case, the prayer made on behalf of the Competent Authority ought to have been favourably considered by the Designated Court. It is significant that during the initial period of distribution of available amounts in the year 2014-15, distribution was made in favour of depositors, whose outstanding amounts were less than Rs.2 lakhs so as to fully satisfy their grievances. Hence, the prayer for making graded payment to depositors falling in the category of Rs.2 lakhs to Rs.10 lakhs, was a reasonable request made on behalf of the Competent Authority."*

*"38. Much emphasis was placed on behalf of the contesting respondent on the observation of the Designated Court*

*that in a given case an investor may have deposited entire life savings of more than Rs.10 lakhs as opposed to a corporate body, which may have deposited less than Rs.10 lakhs and that therefore, if the prayer made on behalf of the Competent Authority was to be accepted, it would lead to an incongruent situation. The said argument is fallacious for the reason that when the basis of a classification is found to be reasonable, a cut off adopted for identifying such classification cannot be faulted because a few cases may be an exception to the general rule. In the present case, we have not been presented with any such contingency and, therefore, the aforesaid reason given by the Designated Court in the impugned order dated 23/04/2019, is found to be untenable."*

It is thus clear that, the distribution of amount received from sale of attached properties has to be 'equitable'. According to us, the class of individual investors/depositors to whom outstanding amount between Rs.10 lakhs to Rs.20 lakhs from the available amount with the Competent Authority as directed to be paid by the trial Court, does not create further/separate classification of investors/depositors. In fact, it is in view of the intention of the legislature to protect the interest of depositors from public, mostly middle class and poor economic strata of the society and not the corporate entities as has been held by this Court in Criminal Appeal No.451 of 2020 *(Supra)*.

12) The Order dated 4th May, 2022 passed by the Hon'ble, Supreme Court in Writ Petition(s) (Civil) No(s).995 of 2019 is on a Petition filed by the National Spot Exchange Ltd. an accused in the present crime and not on a Petition filed by the Investors/Appellants. The request of the Petitioner Company therein was to consolidate all decrees/orders/arbitral awards listed in the Annexure-1 and particulars of which are set out in Annexure-2 thereof. It is for speedy execution and administrative convenience. In paragraph Nos.(ii) and (vii) of the said Order, it has been observed by the Hon'ble Supreme Court as under:-

> *"(ii) The proceedings for execution of all the decrees/orders/arbitral awards listed in Annexure-1, particular of which are set out in Annexure-2, currently pending in various Courts across the country, are hereby transferred to the Supreme Court Committee, for speedy execution thereof."*
>
> *"(vii) In execution of the above decrees/orders/arbitral awards, the Supreme Court Committee shall be entitled to sell the properties of the judgment-debtors notwithstanding the attachment thereof by respondent No.2(ED) under the PMLA and/or by respondent No.3 (State of Maharashtra) under the MPID Act, to the extent of recovering the amount of the decree/order/arbitral award."*

The Order of Supreme Court is prospective in nature. In the present case, the properties have been attached in the year 2014-2015 and

the attachment has been made absolute under Section 7(3) of the Act in the year 2015-2016. According to us, therefore the trial Court is not precluded from passing the Order of distribution of the assets to the persons as per the impugned Order.

13) In view of the above and after perusing the impugned Order, we are of the opinion that the trial Court has not committed any error either in law or on facts while passing it. There are no merits in the Appeals and are accordingly dismissed.

14) In view of dismissal of both these Appeals, Interim Application Nos.4264 of 2022 and 4265 of 2022 filed in the respective Appeals do not survive and are also disposed off.

(PRAKASH D. NAIK, J.) (A.S. GADKARI, J.)