

**IN THE COURT OF SPECIAL JUDGE FOR MPID
AT BOMBAY**

ORDER BELOW APPLICATION EXH. 281

IN

EXHIBIT 218

IN

MPID SPECIAL CASE NO.1 of 2014

(CNR NO.MHCC02-000875-2014)

State of Maharashtra

Through the Competent Authority
appointed under
The MPID Act, 1999.

... Applicant

Versus

Ramesh Satpal Nagpal

Proprietor of Shree Radhey Trading
Company having office at
4/624, Jaffar Nawaz,
Pulsabji Mandi,
Saharanpur, U.P. - 247 001.

... Respondent

National Spot Exchange Limited

... Intervener

Appearances:

Ld. Adv. Shri. Arvind Lakhawat and Adv. Ms. Jalpa Shah i/b MZM Legal
LLP for intervener/respondent.

Ld. S.P.P. Shri. Sunil Gonsalves for the State/EOW/Applicant.

Ld. S.P.P. Ms. Sanjana Sharma for ED.

None present for objector/respondent.

CORAM : HIS HONOUR SPECIAL JUDGE

SHRI A.S. SAYYAD

SPECIAL COURT (C.R.No.52)

DATE : MARCH 20, 2023.

(DICTATED AND PRONOUNCED IN OPEN COURT)
:ORAL ORDER:

The applicant herein case is competent authority who sought the permission for auction of 9 properties till their sale is complete and deposit the proceeds in the bank account of the competent authority.

Background facts:

2. According to applicant, this court passed order on 20.12.2017 in Exh.218 in MPID Special Case No.1 of 2014 specifying some conditions to be complied with. As per condition no.2 of this order, the competent authority was directed to find out the valuation of eleven properties for which consent for sale had been given by the respondent and his three sons in this court. The respondent herein case is objector namely Ramesh Satpal Nagpal proprietor of Shri. Radhey Trading Company. Out of eleven properties, the original documents of nine properties are available with the competent authority while for two properties the documents are with the bank to which the sale properties have been mortgaged. The valuation of nine properties has been done by HDFC Realty which has been appointed by Government of Maharashtra as authorized agency for valuation of properties in NSEL case. As per condition no.3 respondent was directed to approach the office of EOW for reconciliation of accounts in order to crystallize the liability. The EOW has reported that the liability of Shree Radhey Trading is Rs.35.34 crores.

3. The compliance of the condition mentioned in this court order dated 20.12.2017 has been done. Therefore as per condition no.4 of this court, the competent authority seeks permission of this court for

conducting auction of nine properties for which valuation has been done. On the grounds as above and others, the applicant prayed for allow the application.

4. This application was strongly opposed by the respondent namely Sunny Ramesh Nagpal, the Power of Attorney holder of respondent vide reply Exh.2. The respondent has denied all the contentions mentioned in the application. According to respondent, neither the respondent and his three sons given a consent for sale of the eleven properties. The above eleven properties are provisionally attached by ED and its confirmed by adjudicating authority. The respondent has challenged said adjudicating authority order before Appellate Tribunal, Delhi and it is pending before Appellate Tribunal, Delhi.

5. According to respondent, if it is accepted as it is, then liability comes only 24.96 crores. The respondent further contends that the present application was filed with malafide intention with ulterior motive and to misguide the court. The applicant has not come with clean hands before the court. Application has suppressed the fact from the court. The respondent has never ever given consent for sale of the properties mentioned in the application. That respondent has given conditional consent for sale of nine properties and it is observed in order itself it is in para no.20.

6. The respondent has already filed objection vide Exh.174 before this court and said is pending. The respondent is ready to take over entire stocks laying in the godown at Saharanpur, UP subject to pay the rent to the partner Mr. Pravin Arora and Mr. Pravin Arora is ready to withdraw the suit which is filed Civil Court at Saharanpur, UP. If the

nine properties made absolute, then the respondent suffers irrecoverable loss and all properties are purchased prior to scam. Lastly, contended that respondent is not running away from the undertaking/proposal which is given before the court. On the grounds as above and others, the respondent prayed for allow the application.

7. The intervener NSEL caused its appearance and supported to the application of the applicant vide its reply Exh.27. The intervener NSEL reiterated the same facts as above by the applicant in his application. The intervener prayed for reject the objection of the objector respondent and prayed for allow the application.

8. Heard Ld. SPP Shri. Sunil Gonsalves for the competent authority/applicant, Ld. SPP Ms. Sanjana Sharma for ED and Ld. Advocate Shri. Arvind Lakhawat for the intervener at the length of considerable time. Neither the objector nor his Ld. Advocate present for argument. Record and proceeding would show that since long neither the objector nor his Ld. Advocate remain present to contest this application. Hence, application is taken up for adjudication on its own merit against the objector.

9. The gravamen of the application Exh.281 is that the respondent instead of giving undertaking before this court, failed to comply an order dated 20.12.2017 in Exh.218 in MPID Special Case No.1 of 2014. At the very outset, in order to better understand the controversy involved in this application, it would relevant to extract the operative order dated 20.12.2017 passed in Exh.218 in MPID Special Case No. 1 of 2014. It is reproduced as under:

1. Application (Exh.218) for cancellation of bail order of respondent/accused is hereby rejected.

2. *The Competent Authority is directed to find out valuation of above 11 properties from reputed/approved valuer.*
3. *The respondent/accused is directed to approach the office of EOW for reconciliation of accounts as alleged by him in order to crystalise the liability.*
4. *After compliance of condition Nos. 2 and 3, Competent Authority to apply before this court for further orders regarding auction sale of those properties.*
5. *The original title deeds of some properties among above are already handed over by respondent/accused to the EOW. EOW to retain the same till further orders.*
6. *Accordingly, this application is disposed off.*

10. It is a matter of fact that Ld. Predecessor of this court vide order dated 20.12.2017 in Exh.218, given specific directions to the respondent as per condition nos. 2, 3 and 4. The said order is still in existence as either of party not produced any document to show the order dated 20.12.2017 is set aside by higher court. Therefore, the said order is till today in existence.

11. In the aforesaid order in para 20 at page 10, Ld. Predecessor of this court observed that the respondent accused Ramesh Nagpal has filed his proposal/undertaking at Exh.3. As per said proposal, he has given no objection to sale his two properties mentioned in para 1(a) of said undertaking. Similarly, his sons Sahil and Vishal have filed similar proposal/undertaking at Exh.4 giving no objection for sale of their seven attached properties. Likewise, the another son Sunny has also given similar proposal/undertaking at Exh.7 for selling his two attached

properties. These eleven properties worth approximately near about Rs.40 crores which is more than the alleged liability. The said proposal is given on behalf of the accused subject to reconciliation of books of accounts of his firm and sister concerns alongwith NSEL, IBMA, Ananad Rathi, Space Commodities and Sahara Que Shoppe.

12. In para 21 of the said order, it would observe that on such undertaking, Ld. SPP and EOW have shown their willingness to consider this proposal made by respondent/accused. Even as observed earlier, it is the ultimate object of EOW to recover the liability amount from the accused by one or other procedure. Therefore, on such proposal/no objection, I hereby direct that the Competent Authority to take above eleven properties (in undertaking Exh.3,4 and 7) as security against alleged liability of respondent/accused Ramesh Nagpal.

13. In the light of clear observation as above, an order dated 20.12.2017, it makes clear that the respondent and his sons had given consent/undertaking to sale of properties as stated by the applicant in the application. It is not disputed the fact that out of eleven properties the original documents of nine properties are available and having regard that the applicant collected the valuation as directed it by this court. It is a matter of fact that rest of two properties and the documents of it were not available as these were with the banks. Thus, the applicant not included the said properties in this application. The respondent has liability as mentioned by the applicant is fortified itself by pleadings of the respondent.

14. The respondent in his reply cum affidavit Exh.2 in para 6 admitted that the respondent submits that if it is accepted as it is then

liability comes only 24.96 crores. Also while concluding the reply at page 8 at bottom, the respondent in its reply contends that he is not running away from proposal which is given before this court. All these facts make it clear that respondent himself given the proposal/undertaking and the same was considered by the Ld. Predecessor of this court while considering the application Exh.218 in MPID Special Case No.1 of 2014 and passed directions on 20.12.2017.

15. It is seen that after giving undertaking/consent, the respondent suddenly took 'U' turn stating neither he nor his sons never ever given consent as alleged by them. He testified himself as P.W.1 vide Exh.5. This witness cross examined by Ld. SPP. In the cross examination, respondent admitted that he himself is father and his brother Vishal have been prosecuted by Enforcement Department. During investigation by ED, his father was interrogated by ED and his statement was recorded in the said proceeding. The properties belonging to his family have been attached by ED.

16. In order to buttress the case of respondent examined Uday Shantilal Gandhi P.W.2 at Exh.11 and has cross examined him at the length of considerable time. The said witness is a Chartered Accountant and deposed that the Government of Maharashtra has appointed him as a Forensic Auditor by notifications dated 28.09.2016 and 18.11.2016. In respect of Shree Radhey Trading Company, he had examined in all eight bank accounts. Out of them, two accounts were maintained by Shree Radhey Trading Company and four accounts were maintained by the sister concerned of said company i.e. Shrikrishna Trading Company and Harsh Traders.

17. He had also found that there are some transactions between NSEL and Shree Radhey Trading Company which were known as T-2 plus T-25 contracts. The term T-2 means putting a sale contract on NSEL platform and receive the money within two days from NSEL. Whereas T-25 means buying contracts on NSEL platform and promising to purchase the goods after 25 days and make the payment after 25 days. In the cross examination of Ld. SPP, this witness stated that after analyzing all the documents, it would found that as on 31.08.2013 the balance amount was 34,58,90,278 crores. It would also reveal that the flow of money of Rs. 24.94 crores was transferred to various parties i.e. Shrikrishna Trading Company, Harsh Nagpal, Arun, Durga Traders, Harsha Traders, White Water Foods Pvt. Ltd. He recognized the Forensic Audit report as true and correct which filed in case No. 5/19 and get the same marked as Exh.12.

18. The evidence of this witness indicates that the respondent has liability as stated by the applicant. One thing here important to mention that the Power of Attorney holder on behalf of respondent contended as P.W.1 vide Exh.5 and attempted to fortify its objection. Whereas, the fact that Chartered Accountant Uday Shantilal Gandhi prepared Forensic Audit report as he was appointed by Government of Maharashtra and there was flow of money of Rs.24.96 crores found in the account of respondent.

19. It further noteworthy that the respondent examined himself on 08.04.2019 and cross examined on 08.04.2019 and 25.04.2019 and witness P.W.2 cross examined on 12.06.2018 after the aforesaid dates i.e. 12.06.2018 neither the respondent nor his Ld. Advocate remain present to pursue the objection filed by the objector i.e. respondent. The

record and proceeding would show that the respondent since from 12.06.2018 not remain present in the court. The conduct of the respondent appears that either he wants to prolong the matter or he is not interested to pursue the matter. The lukewarm approach of the respondent indicates that due to his given consent for his undertaking/no objection for selling the properties, he might have remained absent. The oral as well as documentary evidence available on record is found to be corroborated with the case of the applicant.

20. In view of the facts and circumstances discussed as above, this court is of the considered opinion that the applicant has made out its case as cited for. Hence, in the interest of investors and depositors, it would just and proper to consider the present application as sought for. Hence, following order would meet the end of justice:

ORDER

1. Exh.281 in Exh.218 in MPID Special Case No.1 of 2014 is allowed.
2. The competent authority is permitted to auction nine properties till their sale is completed and the proceeds in the bank account of the competent authority.
3. Application is disposed of accordingly.



Date: 20.03.2023

(A.S. Sayyad)
Special Judge (MPID)
City Civil & Sessions Court,
Gr. Bombay.

Dictated on : 20.03.2023
Transcribed on : 20.03.2023
Signed by HHJ on : 20.03.2023

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

UPLOAD DATE AND TIME

NAME OF STENOGRAPHER

20.03.2023 (3.42 p.m.)

K.Y. INAMDAR

Name of the Judge (with Court Room No.)	Shri A.S. Sayyad C.R. No.52
Date of Pronouncement of JUDGMENT/ ORDER	20.03.2023
JUDGMENT/ORDER signed by P. O. on	20.03.2023
JUDGMENT/ORDER uploaded on	20.03.2023