

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

ORDER BELOW APPLICATION EXH. 225

IN

MPID SPECIAL CASE NO.1 of 2014

(CNR NO.MHCC02-000875-2014)

United Bank of India

A Body Corporate constituted
under the Banking Companies
(Acquisition & Transfer of
Undertakings) Act, 1970,
having its Head Office at
11, Hemant Basu Sarani,
Kolkata 700 001, in the
State of West Bengal, India
and its Branch Office amongst
other places at Ludhina
& Regional Office at
United Bank of India
Building, P.M. Road, Fort,
Mumbai through
its Chief Manager Mr. Navin Kumar

... Claimant

Versus

The State of Maharashtra

... Respondents

National Spot Exchange Limited

... Intervener

Appearances:

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

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

None for applicant/claimant.

**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:**

This application is filed by the applicant United Bank of India for lifting attachment of properties which mentioned in para 12 sub clause (a) to (g) under Gazette Notification dated 22.06.2015 and 11.04.2016 of application.

2. According to applicant/objector, it is secured creditor of its borrower M/s. Genex Industries Ltd. and its loan secured by the personal guarantee of Shri. Kailash Aggarwal and Smt. Rajni Aggarwal who have also furnished security of their own properties. The borrower has committed default in repayment of the loan amount. Therefore, loan account was declared as NPA on 31.03.2016. Therefore, the applicant initiated legal action against its borrowers and guarantors under the provision of SARFAESI Act 2002.

3. According to applicant, it being a secured creditor has empowered under the provision of section 13/4 of SARFAESI Act 2002 to take possession of the aforesaid properties and to sale and dispose of the same for recovering the amount due and payable by borrower and mortgagors. The aforesaid properties have been ordered to be attached vide notification dated 22.06.2015 issued by Government of Maharashtra in exercise of powers conferred by section 4(1) and 5(1) of MPID Act.

4. The aforesaid properties cannot be attached as said properties are mortgaged in favour of the applicant as security for prompt repayment of debt of M/s. Genex Industries Ltd. The applicant has obtained equitable mortgage on the aforesaid properties which has been created on 07.05.2012 and 15.06.2012 for securing a huge amount of loan been availed by the borrow company. The applicant contends that prior to the creation of mortgage, title of the aforesaid properties have been investigated and took search whether any encumbrances are recorded. The provision of MPID Act can only be applicable to the Financial Establishment who have fraudulently defaulted any repayment of deposits on maturity. M/s. Genex Industries Ltd. have not accepted any deposit from public therefore it is not Financial Establishment. On the grounds as above and others, the applicant prayed for allow the application.

5. The application was strongly opposed by the prosecution as well as intervener vide its reply. According to prosecution, in view of the default on the part of accused M/s. Genex Industries Ltd. and pursuant to the crime registered against the said company, the Government of Maharashtra attached the properties of its borrowers under Gazette Notification dated 22.06.2015 and 11.04.2016 in order to protect the welfare and interest of the investors and depositors the Government of Maharashtra has rightly attached the properties of M/s. Genex Industries Ltd. Said properties is all liable to be made absolute to reconciliation of funds of the needy investors and depositors. M/s. Genex Industries Ltd. is one of the accused towards huge liability of amounts of the depositors. As these properties attached under the MPID Act, in order to protect the interest, welfare of the investors/depositors, the said properties has not entitled for de-attachment as stated by the

applicant in its application. On the grounds as above and others, the prosecution prayed for rejection of the application.

6. The intervener vide its reply Exh.15 opposed in detail each and every aspect justifying as to how attachment is proper at the instance of competent authority. Sum and substance of the reply of the intervener is that the Government of Maharashtra has rightly attached the property of the borrower of the applicant in accordance with law, which need not be de-attached on any count. On the grounds as above and others, the intervener prayed for rejection of the application.

7. Heard Ld. SPP Shri. Sunil Gonsalves for the competent authority and Ld. Advocate Shri. Arvind Lakhawat for the intervener at the length of considerable time. Neither the applicant nor his Ld. Counsel remain present before the court to pursue its stand as mentioned in the application. The record and proceeding shows that the objection is filed on 16.03.2017 and thereafter it would persuaded positively till 18.01.2021. Thereafter none present for the applicant. Considering the journey of the matter, it is taken up for adjudication on its own merit against the objector.

8. The short issue involved in this application is that whether the attached properties under MPID Act are in accordance with law or not. Having regard to the aspect, the application filed by the applicant is itself explanatory that M/s. Genex Industries Ltd. which is the borrower of the applicant is an accused in MPID Special Case No. 1 of 2014. It is a matter of fact that pursuant to the registration of crime and as payment defaulted by the said company, the Government of Maharashtra has

attached properties of the borrower of the applicant under notification dated 22.06.2015 and 11.04.2016.

9. It is seen that the applicant raised the ground that the MPID Act in respect of attachment is only applicable to the Financial Establishment and its borrower not Financial Establishment. Having regard that, it would be relevant to consider the observation of the investigating officer during investigation. In the main matter MPID Special Case No.1 of 2014, after long investigation for a period of over nine years, the investigating officer submitted ten supplementary charge-sheets and one final charge-sheet.

10. As per said charge-sheets, the investigating officer found active role of M/s. Genex Industries Ltd. and has given remark exactly opposite as of stated by the applicant in respect of Financial Establishment. It appears that due to loan account became NPA, the bank initiated legal action against its borrower under the provision of SARFAESI Act. However, the application is silent about the actual possession of the said properties whether actually taken or not. In other words, the applicant mentioned in its application about the symbolic or physical possession of the attached properties.

11. It is a matter of fact that the borrower of the applicant defaulted in payment as he collected from the person. Thus, in order to protect the interest of investors and depositors, the Government of Maharashtra appears to be attached properties under Gazette Notification. One thing interested which needs to mention here that the present objection filed on 16.03.2017 and since then the applicant has not taken its proper follow up. It is seen that the objector has filed clear objection on record

however in order to justify the same, failed to produce any other reliable oral as well as documentary evidence. On the contrary, the available documentary evidence on record goes in favour of the competent authority.

12. In the circumstances as above, the objection which raised by the applicant remains without proof of evidence. Consequently, it deserves for non-consideration. The applicant beyond preponderance of probability failed to show that the competent authority/Government of Maharashtra attached the properties as mentioned in application in para no.2 wrongly and not in accordance with law.

13. For the forgoing reasons and discussion, the application filed by the applicant must be failed which deserves to be rejected. The following order would meet the end of justice:

ORDER

1. Exh.225 in MPID Special Case No.1 of 2014 is rejected.
2. The properties which mentioned in para no.2 of the application are ordered to be made absolute forthwith.
3. The Competent Authority is directed to take an appropriate step in compliance of order.
4. 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