2024 INSC 525

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO. 546 OF 2023

Balasaheb Keshawrao Bhapkar & Ors. ....Petitioner(s)

Versus

Securities and Exchange Board of India ....Respondent(s)

O R D E R

SURYA KANT, J.

1. Petitioner Nos. 1 and 2 are husband and wife, whereas Petitioner No. 3 is their son. They have invoked the jurisdiction of this Court under Article 32 of the Constitution, seeking the following directions: -

> "*(a) To issue appropriate writ in the nature of mandamus or any direction or order directing the Respondent No. 1 to liquidate the attached assets within a period of 6 months and/or, in the alternative, allow the Petitioners to assist Respondent No. 1 in liquidating the attached assets;*
>
> *(b) Direct Respondent No.1 to distribute the amount lying within it to genuine investors as early as possible;*

(c) Direct Respondent No. 1 to allow the Petitioners to assist them in identifying genuine investors and also the amount deposited by them; and

(d) Pass other and further order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case."

2. The above-stated reliefs have been sought in light of the following set of events predicated in this factual background: -

(a) Petitioner Nos. 1 and 2 are the founder-Directors of one Sai Prasad Properties Ltd, incorporated under the provisions of the Companies Act, 1956. Petitioner No. 3 also joined the aforesaid company as a Director in 2008, allegedly when he was still studying in college, and is claimed to have thereafter resigned in the year 2014. The Petitioners also floated various other companies, known as the Sai Group of Companies, consisting of:

(i) M/s Sai Prasad Properties Ltd. (hereinafter, "**SPPL**");

(ii) M/s Sai Prasad Foods Ltd. (hereinafter, "**SPFL**");

(iii) M/s Sai Prasad Corporation Ltd. (hereinafter, "**SPCL**"); and

(iv) M/s Shree Sai Space Creations Ltd. (hereinafter, "**SSSCL**").

(b) The Security and Exchange Board of India (hereinafter, "**SEBI**") received a complaint dated 02.06.2010 alleging illegal mobilisation of funds by SPFL. After processing the said complaint and in

furtherance of the orders passed by the High Court of Madhya Pradesh and the Department of Financial Services, Ministry of Finance, the Whole Time Member of SEBI (hereinafter, "**WTM**") issued an interim order-cum-show cause notice dated 17.07.2013, *inter alia,* directing SPFL and its Directors to refrain from collecting any more money from investors, under the existing schemes or any new schemes. SEBI, once again passed an order dated 14.01.2015 against SPFL and its Promotors/Directors, restraining them from collecting any money from the investors, launching or carrying out any Collective Investment Schemes, and from alienating/disposing/selling any of the assets of the Company, except for the purpose of refund to its investors.

(c) SEBI received a letter dated 17.08.2012 from the Registrar of Companies, Goa, Daman & Diu informing that upon inspection conducted under Section 209A of the Companies Act, 1956, it was found that SPPL had been accepting investments from their associates for a period of 4 to 9 years and had also been executing joint venture agreements. SEBI was then requested to take appropriate action against SPPL for violating Section 11AA of the SEBI Act, 1992.

(d) A preliminary enquiry was conducted, and after issuing an interim order-cum-show cause notice dated 17.07.2013, the WTM *vide* the

final order dated 14.01.2015 issued directions against SPPL and its Promotors/Directors, identical to those passed against SPFL (mentioned in paragraph 2(b) above).

(e) In addition, SEBI received complaints on 23.09.2013 against SPCL and its sister concerns, alleging collection of money from the public, through the Collective Investment Schemes. While these complaints were under investigation, SEBI also received a reference from the Income Tax Department dated 03.03.2014 alleging the collection of money from the public by M/s Sai Prasad Group, to the tune of Rs. 290 crores. WTM once again issued an interim order on 22.07.2014, followed by a final order dated 01.02.2016, directing SPCL and its Directors not to collect any money from the investors or launch or carry out any Collective Investment Schemes. SPCL and its Directors were further restrained from accessing the securities market and were prohibited from buying, selling, or otherwise dealing in the securities market for a period of four years.

(f) A somewhat similar complaint dated 06.10.2013 was received by SEBI against SSSCL, alleging the illegal mobilisation of funds through a joint venture participation project, which was in the nature of Collective Investment Schemes. Upon investigation, SEBI found a *prima facie* violation of Section 11AA (2) of the SEBI Act.

Consequently, an interim order-cum-show cause notice was issued on 23.01.2014, directing SSSCL and its Directors to abstain from collecting any money from the investors and from launching or carrying out any Collective Investment Schemes. WTM further directed SSSCL to wind up the existing Collective Investment Schemes, refund the monies collected by it under such schemes and submit a compliance report including the trail of funds claimed to be refunded, bank account statements indicating the refunds to investors, and replies from the investors acknowledging such refunds. In addition, proceedings under Chapter VI-A of the SEBI Act, 1992 were also initiated, and an Adjudicating Officer was appointed to inquire into the violations.

(g) It may not be necessary to refer to the subsequent events in relation to the four companies referred to above, except to say that:

(i) Penalties were imposed;

(ii) Recovery proceedings for a sum of Rs. 30,561,041,451.69 (Three Thousand and Fifty-Six Crores approximately) were initiated; and

(iii) All the immovable properties and jewelleries owned by the aforesaid companies were attached, including those permitted to be auctioned by the MPID Court in Mumbai in Case No. 7/2016.

(iv) The MPID Court and the SEBI, *vide* orders dated 30.01.2017 and 10.03.2017 respectively, attached various properties of the companies and jewellery items. Subsequently, through various orders passed from time to time, including the one dated 12.02.2020, SEBI attached additional properties in the State of Maharashtra and prevented the creation of any further encumbrances in all the immoveable properties held by the Petitioners. In furtherance, SEBI sold 100 properties in 7 public auctions to liquidate the movable or immovable assets.

(h) Meanwhile, FIR No. 78/2015 was registered on 16.03.2015 at Police Sation Rajhara, District Balod, State of Chhattisgarh, against the Petitioners under Sections 3, 4, and 5 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (hereinafter, "**Prize Chits Act**"). It appears that the Petitioners were arrested in that case on 27.01.2016.

(i) Thereafter, a series of FIRs were registered in the States of Chhattisgarh, Maharashtra, Madhya Pradesh, Rajasthan, Uttar Pradesh and Haryana. Most of these FIRs have been registered under Sections 406, 420 and 34 of IPC read with Sections 3, 4, 5, 6 and 10 of the Prize Chits Act and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999 (hereinafter, "**MPID Act**"). It appears that while 28 FIRs have been registered in the State of Chhattisgarh, 16 FIRs are

registered in the State of Madhya Pradesh, 11 FIRs in the State of Rajasthan, 2 FIRs in the State of Uttar Pradesh, and 1 FIR in the State of Maharashtra and the State of Haryana each.

(j) It further appears that after the Petitioners were arrested on 27.01.2016 in the first case registered in the State of Chhattisgarh, the Petitioner Nos. 1 and 2 still continue to be in custody of various courts, as a result of multiple FIRs registered across the country. Petitioner No. 3, however, was first released on bail by this Court *vide* order dated 15.03.2021, but was again arrested on 26.12.2022 by the Chhattisgarh Police in similar cases registered in 2016 and 2019. It appears that he was, however, released on bail by the Chhattisgarh High Court on 10.04.2023 in MCRC No. 724 / 2023. Thereafter, *vide* the order dated 15.03.2024 passed in SLP (Crl.) D. No. 43363/2023, it has been directed that Petitioner No. 3 shall not be arrested in any fresh case registered against the Petitioners on the same or related issues. On 29.04.2024, it was further directed that Petitioner No.3 shall not be arrested in any of the cases registered against him until further orders.

3. Having understood the facts, we shall now advert to the Petitioners' prayer seeking a direction to SEBI to liquidate the attached assets in a time-bound manner and disburse the sale proceeds to genuine investors as early as possible. In this regard, SEBI noted that

the Forensic Audit conducted by the Economic Offence Wing (hereinafter, "**EOW**") revealed that the Companies floated by the Petitioners were liable to refund Rs. 4700 crores, though as per the order passed by the WTM the refund amount was initially Rs. 3049 crores only. It is also not in dispute that there are 498+13 immovable properties owned by the companies; the details whereof have been furnished before the MPID Court, Mumbai. The parties are broadly *ad idem* that the entire liability of each Company regarding refund of the due amount to all the investors as well as various statutory, foreseen or unforeseen liabilities, can be extinguished from the sale proceeds of some of the immovable properties, if not all of them.

4. Since the immovable properties owned by the companies are spread over different parts of the country, it was sensed unachievable for either the SEBI or the MPID Court at Mumbai, to liquidate all these assets through time-bound public auctions, for the reason that the process postulates various complex questions such as:

(i) What is the exact location of the immovable property in metes and bounds?;

(ii) Whether or not such property is free from encumbrances?;

(iii) Whether the physical possession of the subject-property is with one of the companies or not;

(iv) Whether any civil dispute regarding the title/ownership of such property is pending before a competent forum?;

(v) What is the market value of the property in the event of its sale in a transparent manner?;

(vi) Is there any lien of statutory tax, levy, duty, or any other charge attached to such property?;

(vii) What mechanism shall be evolved for the sale of each property, so as to fetch the best price?; and

(viii) What is the mandatory procedure to be followed in terms of local laws for the purpose of registration of the auctioned property and its mutation in favour of the auction purchaser, etc.

5. Since SEBI with its *bona fide* pursuits to liquidate the assets and generate funds to satisfy the claims of investors, has already auctioned some of the assets, it has taken a very fair stand through its learned Senior Counsel, agreeing to the constitution of a High-Powered Sale Committee (hereinafter, "**HPSC**") to auction the immovable assets of the companies, to the extent they are required to satisfy the investors' claims and liquidate all other statutory liabilities of the Companies. In this regard, the Petitioners, as well as SEBI, have submitted their comprehensive notes of suggestions to work out the modalities.

6. We have minutely considered the valuable suggestions given by learned Senior Counsel/Counsel for the parties for the constitution of HPSC and have also kept in view exigencies such as that:

(a) Petitioner Nos.1 and 2 are languishing in jail as undertrials for over 8 years;

(b) Innocent investors have been eagerly awaiting the refund of their hard-earned money for more than a decade;

(c) Despite its best intentions and commitment, SEBI is facing an uphill task in conducting public auctions in a timebound manner;

(d) SEBI or MPID Court, Mumbai do not have the readily available infrastructural and strategical facilities to identify each property, to have fair assessment of their market value, and then to auction them to fetch the true market value;

(e) The conclusion of trials in the pending criminal cases is marred by uncertainty; and

(f) The Petitioners have shown their *bona fide* towards refunding the investors' amounts, and any further delay in this regard, will be prejudicial to one and all.

7. Keeping these exceptional and peculiar circumstances in view, we deem it fit to invoke our powers under Article 142 of the Constitution of

India, so as to do complete justice between the parties and hence, constitute the HPSC comprising of the following:

(a) Hon'ble Mr. Justice S. Ravindra Bhatt, Former Judge, Supreme Court of India – Chairperson;

(b) Dr. Justice Satish Chandra, Former Judge, High Court of Allahabad – Member;

(c) A nominee of SEBI who shall be an officer preferably in the rank of its Director – Member;

(d) States of Chhattisgarh, Maharashtra, Madhya Pradesh, Rajasthan, Uttar Pradesh and Haryana are hereby directed to appoint one of their officers of the Revenue Department, not below the rank of Collector, to assist the HPSC in relation to the properties situated within that State. The Collector shall be obligated to provide the requisite information, in writing, and shall sign the proceedings as State Representative;

(e) Mr. Pardeep Kumar Sharma, Registrar (Retd.), Supreme Court of India is hereby appointed as the Member Secretary-cum-Nodal officer of the HPSC. He shall be the Principal Custodian of all records and shall coordinate between the Chairperson and Members of the Committee as well as the State Authorities to give effect to the task assigned to the HPSC;

(f) The Deputy Secretary, Department of Home, Government of Maharashtra, who is the Officer in charge of the EOW, shall act as

Secretary to the HPSC for the purpose of securing title/ownership records or other relevant documents from different States and shall be jointly responsible along with Member-Secretary for maintenance and custody of record;

(g) The HPSC may, at its discretion, associate:

(i) A Chartered Accountant; or

(ii) A Civil Engineer; or

(iii) An Architect; or

(iv) Any other expert, from time to time as and when required;

(h) The HPSC shall:

(i) Firstly, obtain all property documents/original title deeds and other relevant records from the SEBI/EOW/MPID Court, Mumbai and Sub-Registrars of different States, where the properties of M/s Sai Prasad Group of Companies are located;

(ii) A database of the property documents, along with material details, shall be created;

(iii) Arrangements shall be made for safe storage, digitalisation, and unique number marking of the property documents/original title deeds and other jewellery items;

(iv) In this regard, SEBI with the help of Stock Holding Document Management Services Ltd., will provide the necessary facilities;

(i) The HPSC shall take necessary steps to ensure that all the properties are shown to be entrusted/encumbered in its favour in the State Government land records;

(j) The HPSC shall appoint a pool of Certified Valuers to evaluate the Company's assets in each State;

(k) We hereby confer and vest all the powers of a Civil Court in the HPSC for taking necessary actions to speed up the liquidation of the Companies' properties;

(l) The HPSC, with the help of experts, will prepare a list of properties already sold under the supervision of the MPID Court, Mumbai, as well as a separate list of the properties that are yet to be sold;

(m) The HPSC will engage/appoint e-auction service providers for auctioning of the assets;

(n) Similarly, expert agencies may be empanelled for the valuation of the assets for initiating the public auction process and its advertisement;

(o) The final decision regarding the disposal of the assets shall be at the complete discretion of the HPSC and once the sale is made the property shall vest in the buyer, free from all encumbrances.

(p) The Petitioners or their nominees will be at liberty to join the auction proceedings and bring prospective buyers. They may submit their suggestions to the HPSC, if any. However, the HPSC will have full discretion to decide on those suggestions, and the

Petitioners shall not be entitled to agitate on such issues before this Court or any other forum;

(q) The objections, if any, submitted by the Companies against the Forensic Audit Report and which are stated to be pending before the MPID Court, Mumbai, are directed to be decided within two months. A copy of the order shall be forwarded by the MPID Court to the HPSC for its information and record; and

(r) SEBI is directed to provide a separate account where the sale proceeds shall be deposited. Such account shall be jointly operated by the Chairperson or his nominee Member along with the Member, nominated by SEBI.

Refund Process

8. Having delineated the manner in which the HSPC will auction the assets and accommodate the sale proceeds in a dedicated account, the following process may be undertaken for the refund to investors:

(i) The HPSC shall identify the number of investors and database of such investors, in consultation with all the concerned agencies / State Representatives and, if so required, the Representatives of the Companies;

(ii) The HPSC shall thereafter determine the amount to be refunded to each investor;

(iii) The HPSC shall determine a threshold recovery limit beyond which the refund process can be started;

(iv) The HPSC shall also decide upon a category of investors based on their investment amount so that the refund can be done in a segregated and simultaneous manner;

(v) As already stated, the HPSC shall open an Escrow Account with a bank designated by SEBI, transfer all amounts from the account monitored presently by the MPID Court, Mumbai, and deposit all sale proceeds in that interest-bearing account;

(vi) The HPSC shall decide the nature of documents to be sought from the investors to determine their claims and the mode of application by the investors (online/physical) to determine their eligibility for refund, as well as the mode of refund (online/draft/both); and

(vii) Investor's claims shall be invited through a public notice that shall be widely publicized in one English newspaper and in one vernacular newspaper, popular in the State.

Obligation of the Petitioners and their Companies

9. Having regard to the duties and obligations to be carried out by the Petitioners and their companies, the following may be done:

(i) The Petitioners and their Companies shall forthwith submit details of all the immovable assets/jewellery items to the HPSC and shall also handover original title deeds or other relevant documents as may be in their possession;

(ii) The Petitioners and their Companies shall execute the necessary sale deeds within the time frame and as per the instructions of the HPSC after the sale is confirmed and the full consideration is received in the bank account to be operated by HPSC; and

(iii) In the event of any pending title dispute, the HPSC shall determine the rights of the Sai Prasad Group of Companies in such properties for the limited purpose of auctioning them. Except for when there are legal impediments, such property shall be auctioned without any delay, and the Petitioners or the authorised representatives of their Companies will execute the necessary documents, including sale deeds, in such cases also.

Secretarial cum Administrative requirements

10. With respect to the administrative or secretarial assistance that is necessitated in the course of dealing with these directions, the following may be adhered to:

(i) SEBI will assist HPSC in the opening of its office, for the purpose of overall coordination and receiving correspondence from the stakeholders. HPSC will also arrange other infrastructure and may

engage secretarial assistance as may be necessary for its smooth functioning. If the SEBI has any adequate office space and infrastructure at a place where the HPSC decides to set up its Principal Office, SEBI may provide the same without prejudice to its right to recover user charges, which will be determined by the HPSC;

(ii) Needless to say, the office space shall be sufficient for carrying out meetings, sitting of secretarial services, maintenance of records, etc.;

(iii) The HPSC shall open a dedicated website for the auction / e-auction/advertisement / refund process etc.;

(iv) The claims / objections / representations etc., as may be received by HPSC shall also be disposed of at its end;

(v) The HPSC shall fix a time line for every action and endeavour to conclude the sale process as early as possible and within the time frame so determined; and

(vi) We will at this stage request the HPSC to make an endeavour to conclude the entire process within one year.

Remuneration

11. Finally, keeping in mind the distinct responsibilities and obligations to be shouldered by the HPSC, it is imperative to also address the remuneration of the learned Chairperson along with all the

members. In this regard, learned Senior counsel for the parties have referred to two orders passed by this Court as `guidelines'.

The first order is dated 4th May, 2022 passed in Writ Petition (C) No.995 of 2019 (National Spot Exchange Ltd. v. Union of India & Ors.) wherein, a `Supreme Court Committee' headed by a former Chief Justice of the High Court was constituted for the purpose of sale of the attached properties and disbursement of sale proceeds amongst the investors. This Court, instead of fixing the honorarium, observed that "the learned Judge will fix his own fee". The second order dated 29th March, 2023 was passed in I.A. No.56308 of 2023 in Writ Petition (C) No.191 of 2022 (Pinak Pani Mohanty v. Union of India & Ors.) wherein also a High-Powered Committee headed by a former Judge of this Court was constituted to supervise and monitor the disbursement of an amount of Rs. 5000 crores to the depositors of the Sahara Group of Co-operative Societies. In that case, an honorarium of Rs. 15 lakhs per month was ordered to be paid to the learned former Judge of this Court, besides Rs. 5 lakhs per month to the learned amicus curiae.

12. Having bestowed our thoughtful consideration on these two orders and after taking note of the fact that the entire process in the case in hand might take more than a year, it seems to us that fixation of monthly honorarium may not be desirable. Similarly, we do not want to leave it for the learned Chairperson or members of the HPSC to fix their

own honorarium as it is likely to cause embarrassment to them. Considering all these aspects in view, we issue the following directions:-

(i) The Chairperson of the HPSC shall be entitled to an honorarium of Rs. 2 lakhs per sitting day, when effective proceedings are held. This will be in addition to travelling, boarding and other miscellaneous expenses as may be incurred in discharging the assigned responsibilities;

(ii) The learned Member, who is a former Judge of the High Court shall be entitled to an honorarium of Rs. 1.50 lakhs per sitting day, when effective proceedings are held. This will be in addition to travelling, boarding and other miscellaneous expenses as may be incurred in discharging the assigned responsibilities;

(iii) The Member nominated by SEBI shall not be entitled to any remuneration—since he is a full-time officer of SEBI. However, he shall be entitled to travelling, boarding, and other miscellaneous expenses as may be incurred in discharging the assigned responsibilities;

(iv) The Member Secretary cum Nodal Officer of the Committee shall be entitled to an honorarium of Rs. 75 thousand per sitting day, when effective proceedings are held. This will be in addition to travelling, boarding and other miscellaneous expenses as may be incurred in discharging the assigned responsibilities;

(v) Remuneration of experts like Chartered Accountant, Civil Engineer, Architect, Certified Valuer etc. shall be determined by the HPSC; and

(vi) The expenditure towards honorarium, hiring of office, secretarial assistance, as well as for following the prescribed procedure of auction, etc., shall be reimbursed from the sale proceeds. The initial expenditure shall be reimbursed from the sale proceeds of the properties which have already been sold, namely, the amount which the SEBI will transfer to the Escrow Account.

13. The States of Chhattisgarh, Maharashtra, Madhya Pradesh, Rajasthan, Uttar Pradesh and Haryana are hereby directed through their Chief Secretaries and Financial Commissioners (Revenue), to extend full cooperation and provide complete assistance as may be required by the HPSC for the purpose of execution and fulfilment of the assigned task. There must not be any delay on their part to comply with the instructions as may be received from the Chairperson of the HPSC.

14. Similarly, the Directors General of Police of the above-mentioned States are directed to provide assistance, if so required for the purpose of securing and protecting possession of the properties of the Companies.

15. In addition, the HPSC, if so required, may deploy private guards for the protection of the properties of the Companies.

16. SEBI and the Petitioners are also directed to extend full cooperation to the HPSC.

17. To facilitate the sale and disbursement process and keeping in mind the period of incarceration already undergone, Petitioner Nos. 1 and 2 are directed to be enlarged on interim bail to the satisfaction of the MPID Court, Mumbai in Case No. 7 / 2016. This will be treated as interim bail in all of the FIRs. We order this on the basis of the special facts of the case, in exercise of our power under Article 142 of the Constitution of India.

18. The HPSC shall be at liberty to seek further guidelines or clarifications as may be required, for which its Member Secretary cum Nodal Officer shall be at liberty to move an appropriate application before this Court.

.....J.
(SURYA KANT)

.....J.
(K.V. VISWANATHAN)

NEW DELHI

DATED: 15.07.2024