

Challenge to Auction Process and Refund Denied

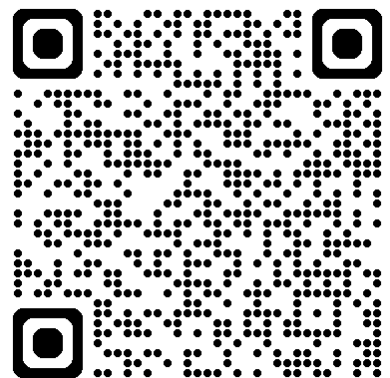
Case Name: Lemon Seeds Hospitality Pvt. Ltd. v. Union of India

Citation: 2024:BHC-OS:18047-DB

Act: Transfer of Property Act, 1882, Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999

Case Brief & MCQs on this case is available in the eBook:

["Bombay High Court Cases in October 2024"](#)



Disclaimer: This document contains the Court opinion. It is provided on an "as is" basis, for educational & informational purposes only.



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3248 OF 2024

Lemon Seeds Hospitality Pvt. Ltd.

A Company duly registered and incorporated
under the Companies Act, 1956, having
its registered office at AB-16, Community
Centre, Safdarjung Enclave, New Delhi – 110029

....Petitioner

Versus

1. Union Of India
(through the Ministry of Finance,
Aaykar Bhavan, Mumbai)
2. State of Maharashtra
(through the Secretary, Home
Department, Government of
Maharashtra, Mantrayala, Mumbai)
3. The Deputy Collector & Competent
Authority, National Spot Exchange Ltd.,
(NSE), having his office at
1st Floor, D. D. Building, Old
Custom House, Mumbai – 400001
4. The Enforcement Directorate
Zonal Office, Kaise-i-Hind Building,
4th Floor, Currimbhoy Road,
Ballard Estate, Mumbai – 400001
5. The Senior Inspector of Police
Economic Offices Wing, Unit-V,
Crime Branch, Mumbai
6. Quikr Realty Limited
Ramon House, 169, Backbay
Raclamation, H. T. Parekh Marg
Churchgate, Mumbai – 400001

....Respondents

Adv. Subhash Jha a/w Adv. Siddharth Jha a/w Adv. Neha Balani, Adv. Sumeet Upadhaya, Adv. Ashish Saxena, Adv. Mukta Kothari, Adv. Deepesh Shahani, Adv. Apeksha Sharma i/b LAW GLOBAL for the Petitioner.
 Smt. Jyoti Chavan, Addl. GP for the Respondent-State
 Mr. H.S.Venegavkar a/w Adv. Kamar Ali Shaikh for the Respondent No.4-ED

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
 M. M. SATHAYE, JJ.**

RESERVED ON : 8 OCTOBER 2024

PRONOUNCED ON : 25 OCTOBER 2024

JUDGEMENT (Per M. M. SATHAYE, J):

1. Heard the learned Counsel for the appearing parties. Perused the record.
2. By this Petition under Article 226 of the Constitution of India, the Petitioner - a private limited company registered and incorporated under the Companies Act, 1956, is praying for quashing and setting aside the auction process in respect of sale of the subject property bearing No. 193/1, Village – Devali, Mehrauli, New Delhi (popularly known as ‘Sainik Farm Area’). The Petitioner is also challenging the auction in which the Petitioner itself is declared as successful auction purchaser. The challenge is on the ground of alleged suppression of material facts in contravention of section 55(1)(a) of the Transfer Of Property Act, 1882. The Petitioner is further seeking directions to the Respondent Nos. 2 and 3 / State to pay damages of Rs.5,00,00,000/- to the Petitioner for making the Petitioner participate in the auction process. The

Petitioner is further seeking refund of the entire amount of purchase price of Rs.8,13,60,000/- paid by it alongwith interest @ 18% p.a. The Petitioner is also praying for restraining the Respondent No. 3-State from parting with or disposing of the amount paid by the Petitioner.

3. Apart from the prayers indicated above, there are certain other omnibus prayers made by the Petitioner, which are reproduced below:

“a(ii) this Hon'ble Court may be pleased to direct the Respondent No.3 not to embark upon to auction any property in future having defects of inability to execute documents such as conveyance /sale deed, effecting transfer in revenue records of auction purchaser, giving full and complete disclosure regarding defects, if any, in the auctioned property in compliance with the mandate of section 55 (1) (a) of Transfer of Property Act;

a(iii) that this Hon'ble Court may therefore be pleased to direct the Respondent No.2 and/or such other administrative authority to take action on the administrative side against the Respondent No.3 for embarking upon to auction the property not having clear and marketable title, giving complete disclosure regarding defects in the property in the auction notice as contemplated u/s. 55 (1) (a) of Transfer of Property Act concerning property bearing No. 193/1 village Devali, Mehrauli, New Delhi, admeasuring 2200sq. Yards;”

4. At the outset, Mr. Jha, learned Counsel for the Petitioner, submitted on instructions, that the Petitioner is not pressing the above prayer clauses a(ii) & a(iii). Accordingly, we proceed to consider the petition.

CASE

5. The case of the Petitioner, shorn of unnecessary details, is as under. Respondent No. 3 - the Deputy Collector and the Competent Authority u/s. 5 of

Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short “the MPID Act”) had preferred an application in Sessions Court, Mumbai seeking permission to proceed with the sale of certain properties, which were attached and permission was granted to proceed with the sale of the 7 properties including the subject property. Respondent No. 6 – Quikr Realty Limited was appointed as an agency for conducting the auction. The Petitioner participated in the said auction process and paid a sum of Rs.81,36,000/- as Earnest Money Deposit (EMD). The Petitioner was declared as successful bidder. This took place on 24.10.2018. The Petitioner thereafter paid a sum of Rs.1,22,04,000/- being the first installment towards completion of the sale transaction. The Petitioner thereafter made a payment of Rs.2,03,40,000/- as second installment. The Petitioner thereafter paid 3rd installment of sum of Rs.2,03,40,000/- on 30.11.2018. Upon coming to know that the subject property is under attachment of Respondent No. 4 – Enforcement Directorate (“ED” for short) and the Respondent No. 5 - Economic Offences Wing (EOW), the Petitioner deputed two Advocates from Delhi, who met the Competent Authority for obtaining necessary information. It is alleged that the Competent Authority assured the Advocates of the Petitioner that the attachment by ED and EOW would soon be lifted. As per the Petitioner’s own case, after such assurance, the Petitioner made the payment of the last installment of Rs.2,03,40,000/- on 15.12.2018.

6. It is further the case of the Petitioner that it was waiting for copies of certain documents in respect of the subject property, which were not supplied. It is contended that the Petitioner ultimately vide its email dated 14.01.2019 informed the Respondent No. 6 – auction agency that the Petitioner’s legal adviser had advised it to withhold further process, because the attachment from the subject property was not lifted / revoked, despite repeated requests. It is further contended that this led to the Petitioner filing an Application being Misc. Application No. 1079 of 2019 in the Court of Special Judge for the MPID Act and the Prevention of Money-Laundering Act, 2002 (for short “the PMLA”) at Mumbai. The Petitioner made various prayers in the said Application, which are reproduced below for the purpose of clarity:

“a. Direct the Respondent No. 3, i.e. the Enforcement Directorate to release the attachment on the property being 193/1, Village Devali, Mehrauli, New Delhi, admeasuring 2200 sq. yards;

b. Direct the Respondent No. 2, i.e. the Economic Offences Wing (EOW, Mumbai) to immediately issue notice/order removing and vacating the restraint order made in respect of the said property being 193/1, Village Devali, Mehrauli, New Delhi, admeasuring 2200 sq. yards;

c. To issue necessary orders, directions/letters so that the Applicant can own the property absolutely free from all encumbrances, attachment and restraint order and the name of the Applicant Company or its nominee be recorded in the revenue record maintained by the authorities at Delhi;

d. To direct the Respondents above said to hand over the previous ownership documents/title deeds in respect of property being 193/1, Village Devali, Mehrauli, New Delhi, admeasuring 2200 sq. yards;

e. To direct the Respondent No. 1 to make good on the financial loss incurred by the Applicant Company to the tune of Rs. 42,35,178/- (Rupees FortyTwo Lakhs Thirty Five Thousand One Hundred Seventy Eight Only), being the interest amount accrued from the date of

payment of the last trench of bid amount on December 15, 2018 till June 24, 2019, due to the delay in registration of the said property in favour of the Applicant Company;

f. To direct the Respondent No. 1 to pay an interest at the rate of 18% per annum on the amount of 42,35,178/- (Rupees Forty Two Lakhs Thirty Five Thousand One Hundred Seventy Eight Only) from the date of payment of the last trench of the bid amount, i.e December 15, 2018 till the date of handing over of old chain of original title deeds subsequent to the release of the attachment by the Respondent No. 3 and the removal of the restraining order by the Respondent No. 2;"

7. The designated Court under MPID & PMLA, by its order dated 02.11.2019 allowed the Petitioner's Application only for prayer clause (a) thereby ordering that the subject property be released from the attachment made by the ED. It is important to note here itself that rest of the prayers made by the Petitioner were specifically rejected, including the prayer clause (e) and (f) for making good the alleged financial loss caused to the Petitioner.

8. It is further contended by the Petitioner that the Petitioner thereafter sent an email requesting to provide original title deeds and formal order for removal restrain/attachment. It is contended that the Petitioner had requested the Competent Authority as well as ED and EOW to comply with the directions issued under order dated 02.11.2019, however there was no response. It is further contended that in respect of another property at Village Issapur, Tal. Najafgarh, New Delhi, this Court has directed refund of sum of Rs.12,71,00,000/- to the Petitioner under order passed in Writ Petition No. 8791 of 2019. It is further submitted that the Petitioner is entitled to refund of

purchase price amount in the present case also.

9. The Competent Authority / Deputy Collector (Respondent No. 3) has filed an Affidavit-in-Reply affirmed on 16.10.2020 opposing the Petition. It is *inter alia* contended that this petition is not maintainable because the Petitioner has efficacious remedy of filing an Appeal u/s. 11 of the MPID Act. It is contended that the Petitioner had already approached the designated MPID Court by filing Misc. Application No. 1079 of 2019 and making various prayers, however, by the order dated 02.11.2019 all the prayers of the Petitioner except the prayer clause (a) have been rejected. Copy of the Misc. Application No. 1079 of 2019 is produced on record. It is further contended that the order dated 02.11.2019 (rejecting other prayers of the Petitioner) has attained finality and therefore this Petition is not maintainable making similar prayers about financial loss.

10. It is contended that FIR being CR No. 216 of 2013 was registered against Financial Technologies (India) Ltd. (FTIL), now known as 63 Moons Technologies Ltd., National Spot Exchange Ltd. (NSEL), Directors and key Management persons of FTIL and NSEL, some borrowers/ trading members/brokers of NSEL under various sections of Indian Penal Code by M.R.A. Marg Police Station and the investigation was immediately transferred to EOW Mumbai, which registered EOW CR No. 89/2013. The case pertains to around 13000 persons / entities being duped by National Spot Exchange

Limited (NSEL) to the tune of Rs.5600 Crores resulting in failure to repay these 13000 persons and therefore the provisions of MPID Act were invoked. During the investigation, it was revealed that NSEL was running money lending scheme under the garb of spot exchange, which loaned approximately Rs. 900 Crores to one Mohan India Pvt. Ltd. and which in turn transferred some of the money to the company called M/s. Whiz Kid Promoters Pvt. Ltd. The two companies had common Directors. The Government of Maharashtra vide notification dated 13.01.2016, issued u/s 4 of the MPID Act attached 38 properties under the heading "M/s Mohan India Pvt. Ltd.". The Competent Authority then filed necessary affidavits cum Application u/s. 5(3) of the MPID Act for making the attachment of the properties absolute. Based on the consent dated 16.12.2016 given by Mr. Jagmohan Garg, Director of M/s Mohan India Pvt. Ltd., the EOW Mumbai had filed a Miscellaneous Application No 452 of 2016 in the designated MPID Court praying for making the attachment absolute. This Application was allowed on 20.12.2017 and attachment of 7 properties was made absolute. The order explicitly gives directions to the Respondent No. 4 / ED to hand over the original title documents of the properties to the Respondent No. 3 – the Competent Authority, based on which the Competent Authority has made request to the ED. It is contended that subsequently EOW, Mumbai filed another Application no. 61/2018 in the designated MPID Court for making attachment of the remaining properties absolute, which was also allowed vide order dated 04.07.2018. Based on this

order, the Competent Authority has further requested ED for handing over the original documents. It is contended that after getting valuation done through the appointed agency, auction notice was published on 26.09.2018 for auction of 16 properties, including the subject property.

11. It is further contended that there is sufficient disclaimer in the auction notice, which had put the Petitioner to sufficient notice about the circumstances in which auction is conducted and precaution that the Petitioner was expected to exercise. It is contended that the Petitioner has voluntarily participated in the bidding process and has emerged successful bidder, having given the highest bid. It is specifically contended that the Petitioner has paid the installments even after coming to know about the attachment over the subject property and therefore now, the Petitioner is estopped from seeking refund of purchase price already paid. The contentions / allegations of the Petitioner about alleged assurances given by the Competent Authority or its officers, are specifically denied as being outright absurd, blatantly false and misleading. It is contended that on receipt of full payment, sale certificate is also issued to the Petitioner on 07.01.2019. It is further specifically contended that the possession of the subject property is handed over to the Petitioner on 22.01.2019 for which possession receipt is executed. Copies of both, Sale Certificate and Possession Receipt are produced on record.

12. It is contended that the facts in relation to the other property regarding

which an order was passed in W.P. No. 8791 of 2019, which is relied upon by the Petitioner, are different from the facts of the present case. It is contended that the purchase price paid by the Petitioner, is already distributed to the investors, who were duped of their money by NSEL and who were rightful owners of the said money. In short it is contended that purchase price paid by the Petitioner is no more available. It is contended that since the attachment of ED has already been lifted under order dated 02.11.2019, which order has attained finality, the ED is duty bound to comply with the order and the Competent Authority is not responsible for inaction of ED, if any. It is contended that only to overcome the *delay and laches* in filing an Appeal against the order of designated MPID Court, the Petitioner has filed this Petition.

13. The Petitioner filed its affidavit-in-rejoinder, affirmed on 28.10.2020 contending *inter alia* that even if the contention of availability of alternate remedy u/s. 11 of the MPID Act is raised, the rule of alternate remedy is self-imposed restriction and not an absolute bar and in cases where the Petition is filed for enforcement of fundamental rights or where there is violation of principles of natural justice or where the orders or proceedings are wholly without jurisdiction, this Court can exercise writ jurisdiction. The Petitioner contended that if the State does not act fairly and/or reasonably, which led to participation of the Petitioner in tendering / auction process, and if the money

has been illegally withheld without property being handed over to the Petitioner and property is not free from all encumbrances, exercise of Writ Jurisdiction is called for.

14. The Respondent No. 3 – Competent Authority filed its Sur-rejoinder affirmed on 05/11/2020 contending *inter alia* that unlike PMLA, where u/s. 9, vesting of property in the Central Government is free from all encumbrances, the attachment under MPID is not free from all encumbrances and that is the reason why the bid documents clearly mention that the property is being auctioned on “as is where is and whatever there is basis” and it is for the auction purchaser to carry out due diligence. It is further contended that since the attachment of subject property is already lifted by the Designated Court and if the Respondent No. 4-ED does not comply with the orders of the Designated Court, the Petitioner can approach the Designated Court for appropriate remedy. It is again contended that despite the Petitioner’s Advocates visiting office of the Competent Authority and despite discussion in the matter, the Petitioner has chosen to voluntarily continue to participate in the Auction and pay the full amount. It is further contended that the circumstances of present case and the circumstances in other WP/8791/2019 were different.

15. The Respondent No. 3-Competent Authority filed further additional affidavit, affirmed on 06.01.2021 contending *inter alia* that after the total price

was paid the sale certificate of the subject property as well as other properties was issued and the possession has been handed over to the Petitioner. It is contended that while taking sale certificate and accepting the possession, the Petitioner has not raised any protest. This additional affidavit labours on the aspect of how and in what circumstances, the other Petitions were disposed of, which is not necessary to be elaborated further.

16. The Petitioner thereafter again filed affidavit-in-rejoinder affirmed on 18.01.2021, in response to the aforesaid additional affidavit of the Competent Authority. The Petitioner *inter alia* has reiterated that u/s. 55(1) of the Transfer of Properties Act, complete disclosure by the seller is mandatory and further averments are made commenting upon the circumstances in which the other orders were passed by this Court, the circumstances in which the Competent Authority has expressed willingness to return the amount.

17. The Respondent No. 3 (The Deputy Collector holding additional charge of the Competent Authority) filed additional affidavit affirmed on 01.04.2022, stressing *inter alia* upon clause nos.1.1, 2.2 and 2.3 of the tender document and stating further that the petitioner was made aware of all the facts and circumstances through its legal and financial representatives and as such petitioner was fully aware of all the encumbrances at the time of buying subject property.

SUBMISSIONS

18. Mr. Jha, learned Counsel for the Petitioner submitted that the subject property cannot be utilized by the Petitioner effectively because it does not have its title documents. He submitted that despite repeated demands, the title documents are not supplied to the Petitioner. He submitted that Petitioner being the auction purchaser is part of the backbone in the scheme of the things, where-under when properties are put to auction for the purpose of enforcement of law, it is the auction purchasers like the Petitioner, who come forward and put in their money. He submitted that if such persons are not able to utilize the property for want of title deeds, then they must be given refund of their money with interest. Mr. Jha has relied upon the following case law, in support of his submissions:

- (a) Govind Kumar Sharma and Another vs. Bank of Baroda & Ors.¹
- (b) Haryana Financial Corporation vs. Rajesh Gupta²
- (c) Chemstar Chemicals vs. State Bank of Mysore³
- (d) Celir LLP vs Bafna Motors⁴
- (e) Medineutrina Pvt. Ltd. vs. District Industries Centre⁵

19. He further submitted that u/s. 55(1)(a) of the Transfer of Properties Act, the seller (Respondent No. 3-Competent Authority) is bound to disclose any

1 2024 SCC OnLine SC 559
 2 (2010) 1 SCC 655
 3 2010(6) CTC 635
 4 2023 SCC OnLine SC 1209
 5 2021 SCC OnLine Bom 222

material defect in the property or in the seller's title of which the seller is aware but buyer is not. He further submitted that seller is bound to produce to the buyer, on his request for examination, all the documents of title related to the property in the seller's possession or power. He submitted that the auction conducted by the Respondent - Authority of the subject property is contrary to the said provisions of law, as the Petitioner is still not having title documents.

20. *Per contra*, Ms. Chavan, the learned Addl. GP appearing for the Respondent / State has submitted that in all these judgments relied upon by the Petitioner, the auction notice proceeds on 'as is where is and whatever there is' basis, however in the present case, there is much more stated under tender document over and above 'as is where is whatever there is basis' in the form of clause 2.2 and 2.3.

21. For the purpose of clarity, we find it necessary to reproduce the said disclaimer clauses below:

"2.2 Caution to the Bidders.

(a) The Properties are being sold on an "as is where is and whatever there is" basis.

(b) Bidders are advised to go through all the terms and conditions of sale given in this Tender Document and also in the Notice of Sale before participating in the online bidding/auction.

(c) The e-auction shall entitle the Successful Bidder to all the rights of the incumbent holder in respect of the Properties. The Properties will be sold along with all claims, liabilities and/or encumbrances relating thereto, if any, whether known or unknown to the Seller. The details of the Properties as stated in the Notice of Sale and under this

Tender Document are as per the details available with the Seller and neither the Seller nor the Agency shall, in any way, be responsible for any variation in the extent of the Properties due to any reason.

(d) The intending bidders should make their own independent enquiries regarding the nature of land, encumbrances, litigations, attachments, acquisition liabilities of the property/ies, title, survey number(s)/plot number(s) and claim/rights/dues etc. in respect of the properties put on auction, prior to submitting their bid. The auction advertisement does not constitute and will not be deemed to constitute any commitment or any representation of Seller/the Agency. The properties are being sold with all the existing and future encumbrances, whether known or unknown to Seller/the-Agency. Seller/the Agency shall not be responsible in any way for any third party claims/rights/dues, etc:

2.3 Inspection of the Properties/ Buyers Beware

(a) The inspection of the property (ies) shall be allowed to the intending Bidders at the date and time specified in the Schedule to Clause 3.2 for respective property (ies). For inspection intending bidder may submit / mail their request to the Agency **at least 5 days** before the scheduled inspection date to enable the Agency to depute a person for guidance. Thereafter the intending bidder may inspect the property on their own.

(b) Bidders are advised / cautioned to verify with the sub-registrar's office as well as obtain and analyse the revenue records with respect to the Properties and to satisfy themselves regarding the existence, title, nature, description, condition, existing encumbrances, liens, charges, statutory dues, etc., over the Properties before - submitting their bids

(c) The Bidders may inspect and verify the scanned copies of the title deeds relating to the property as are available with the Seller on the e-auction Portal upon completion of registration.

(d) The Agency/ the Seller shall not be responsible for rendering any assistance to the Bidder in connection with its independent inspection of the Properties.

(e) Bidders are bound by the principle of Caveat Emptor (buyer bewares).

(f) Bidders are requested to submit their bids only after conducting their own independent due diligence exercise with respect to the title to the properties.”

22. She submitted that from the above clauses it is clear that bidders were specifically and sufficiently cautioned about the circumstances and the situation of the property in which the auction was conducted and the disclaimer expects the participants to have necessary inspection and they were sufficiently cautioned and advised to verify records.

23. She submitted that the judgments relied upon by the Petitioner are arising out the proceedings under either The Securitisation and Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 (for short “the SARFAESI Act”) or the Recovery Of Debts And Bankruptcy Act, 1993 (for short “*the RD & B Act*”) or Debt Recovery Laws in general. She submitted the present case and the present auction sale under the provisions of MPID Act is not comparable with sales under SARFAESI or RD & B Act. She contended that admittedly the Petitioner has paid amounts till last installment voluntarily. She has drawn our attention to the Sale Certificate dated 17.01.2019 (page 160) executed by the Competent Authority in favour of the Petitioner and Possession Receipt dated 22.01.2019 (page no. 161) executed by the Petitioner through it authorized signatory, in presence of witnesses, having clear affirmation as under:

“AFFIRMATION

Date of Possession: 22nd January 2019

Received the vacant physical possession, complete in all respects

of the above said Property

LEMONSEEDS HOSPITALITY PVT. LTD

Sd/-

Authorised Signatories

HIMANSHU GUPTA'

24. She further submitted that statutory remedy of Appeal u/s. 11 of the MPID Act, having not been adopted by the Petitioner, within stipulated time, order of designated Court refusing the Petitioner's prayer of similar nature, has attained finality. She submitted that since Petitioner got an order of refund in case of Issapur property, the Petitioner has taken chance by filing present Petition, which is nothing but a shortcut.

25. She submitted that the reliance on Section 55 of the Transfer of Properties Act is clearly misplaced in as much as, Section 55 itself carves out an exception of being 'subject to contract to contrary'. She submitted that in the teeth of caution and inspection clauses 2.2 and 2.3 of applicable terms and conditions, section 55 of the Transfer of Properties Act would not have any application. She submitted that it is not the title but interest in the property, which is being sold. She submitted that Petitioner has not stated what due diligence it carried out before participation in the auction. She submitted that subject property is situated in Sainik Farm Area in New Delhi which is a well known locality and the Petitioner has participated in auction and purchased the subject property with open eyes and therefore the Petitioner does not deserve any indulgence under the extra-ordinary writ jurisdiction of this

Court, in facts and circumstances of the case. She has finally submitted that since the ED has not challenged the order of designated MPID Court which lifted the attachment, nothing further is required and in view of the statutory vesting of the property in the competent authority and lifting of attachment of the ED, nothing further is required under law for the Petitioner to enjoy the subject property. She, therefore, prayed for dismissal of the Petition. She has relied upon following the judgment of Division Bench of this Court in the case of *State of Maharashtra Vs Anil Kohli* ⁶(2020 SCC OnLine Bom 2674), in support of her case.

REASONS AND CONCLUSIONS.

26. At the outset, it is apposite to consider certain provisions of the MPID Act, which have material bearing on the case of at hand. They are reproduced below.

4. Attachment of properties on default of return of deposits

(1) Notwithstanding anything contained in any other law for time being in force.-

(i) where upon complaints received from the depositors or otherwise, the Government is satisfied that any Financial Establishment has failed,-

(a) to return the deposit after maturity or on demand by the depositor; or

(b) to pay interest or other assured benefit; or

(c) to provide the service promised against such deposit; or

(ii) where the Government has reason to believe that any

⁶ (2020) SCC OnLine Bom 2674

Financial Establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them;

and if the Government is satisfied that such financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the service against which the deposit is received, the Government may, in order to protect the interest of the depositors of such financial Establishment, after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or other property believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from out of the deposits, collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, director, partner or manager or member of the said Financial Establishment as the Government may think fit.

(2) On the publication of the order under sub-section (1), all the properties and assets of the Financial Establishment and the persons mentioned therein shall forthwith vest in the Competent authority appointed by the Government, pending further order from the Designated Court.

(3) The Collector of a District shall be competent to receive the complaints from his District under sub-section (1) and he shall forward the same together with his report to the Government at the earliest and shall send a copy of the complaint also to the concerned District Police Superintendent or Commissioner of Police, as the case may be, for investigation.

5. Appointment of Competent Authority

(1) The Government may while issuing the order under sub-section (1) of section 4, appoint any of its officers not below the rank of the deputy Collector, as the Competent Authority, to exercise control over the monies and the properties attached by the Government under section 4 of a Financial Establishment.

(2) The Competent Authority shall have such other powers as may be necessary for carrying out the purposes of this Act.

(3) The Competent Authority shall, within thirty days from the date of the publication of the said order, apply to the Designated Court, accompanied by one or more affidavits stating the grounds on which the Government has issued the said order under section 4 and the

amount of money or other property believed to have been acquired out of the deposits and the details, if any, of persons in whose name such property is believed to have been invested or acquired or any other property attached under section 4, for such further orders as found necessary.

6. Designated Court

(1) For the purposes of this Act, the Government may, with the concurrence of the chief Justice of the Bombay High Court by notification in the Official Gazette, constitute one or more Designated Court in the cadre of a District and Sessions Judge for such area or areas or for such case or class or group of cases, as may be specified in the notification

(2) No court including the court constituted under the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, other than the Designated Court shall have jurisdiction in respect of any matter to which shall provisions of this Act apply.

(3) Any pending case in any other court to which the provisions of this Act apply shall, on the date of coming into force of this Act, stand transferred to the Designated Court.

7. Powers of Designated Court regarding attachment

(1) Upon receipt of an application under section 5, the Designated Court shall issue to the Financial Establishment or to any other person whose property is attached and vested in the Competent Authority by the Government under section 4, a notice accompanied by the application and affidavits and of the evidence, if any, recorded, calling upon the said Establishment or the said person to show cause on a date to be specified in the notice, why the order of attachment should not be made absolute.

(2) The Designated Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any interest or title in the property of the Financial Establishment or the person to whom the notice is issued under sub-section (1), calling upon all such persons to appear on the same date as that specified in the notice and make objection if they so desire to the attachment of the property or any portion thereof, on the ground that they have interest in such property or portion thereof.

(3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served

upon him under this section, make an objection as aforesaid be the Designated Court at any time before an order is passed under subsection Designated section (6).

(4) The Designated Court shall, if no cause is shown and no objections are made under sub-section (3), on or before the specified date, forthwith pass an order making the order of attachment absolute, and issue such direction as may be necessary for realization of the assets attached and for the equitable distribution among the depositors of the money realized from out of the property attached.

(5) If cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing. as regards the examination of the parties and in all other respects, the Designated Court shall, subject to the provisions of this Act, follow the summary procedure as contemplated under Order 37 of the Civil Procedure Code, 1908 and exercise all the powers of a court in hearing a suit under the said code any person making an objection shall be required to adduce evidence to show that on the date of the attachment he had some interest in the property attached.

(6) After investigation under sub-section (5), the Designated Court shall pass on an order either making the order of attachment passed under sub-section (1) of section 4 absolute or varying it by releasing a portion of the property from attachment or cancelling the order of attachment:

Provided that the Designated Court shall not release from attachment any interest, which it is satisfied that the financial Establishment or the person referred to in sub-section (1) has in the property, unless it is also satisfied that there will remain under attachment an amount or property of value not less than the value that is required for repayment to the depositors of such Financial Establishment.

Rule 8 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Rules, 1999 reads as under :

“8. Power of Competent Authority to sell or Dispose of property

1. Where any property attached under sub-section (1) of section 4 of the Ordinance and vested in the Competent Authority under sub-section (2) of the section 4, is subject to speedy and natural decay or if it is otherwise expedient so to do, the Competent Authority may,

after obtaining permission of the Designated Court, sell or otherwise dispose of the said property and include the proceeds in the account of the Financial Establishment.

(2) The Competent Authority shall, after disposing of the said property under sub-rule (1) report the same to the Designated Court.”

[Emphasis supplied]

27. Bare perusal of the aforesaid provisions would show that the attachment of the properties on default of return of deposits u/s. 4 of the MPID Act starts with a *non-obstante* clause and it provides that when the Government is satisfied that any Financial Establishment has failed to return the deposit after maturity or on demand by the depositor, or to pay interest or other assured benefit, or to provide the service promised against such deposit, or where the Government has reason to believe that any Financial Establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them and if the Government is further satisfied that such financial Establishment is not likely to return the deposits or pay the interest or other benefits assured, the Government may in order to protect the interest of the depositors, issue an order in the Official Gazette attaching the money or other property believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from out of the deposits collected by such Financial Establishment.

28. Section 4(2) clearly contemplates that on the publication of the order

under sub-section (1), as narrated above, all the properties and assets of such Financial Establishment and the persons mentioned therein shall 'forthwith vest in the Competent authority' appointed by the Government, pending further order from the Designated Court.

29. Perusal of the Section 5 shows that the Government is competent to appoint any of its officers (not below the rank of the deputy Collector) as the Competent Authority to exercise control over the monies and the properties attached u/s. 4 and such competent authority shall have such powers as may be necessary for carrying out the purposes of this Act.

30. In the present case, Respondent No. 3 is duly constituted Competent Authority and it has exercised power u/s. 5(3) by applying to the designated Court and subject property was attached. The Designated Court u/s. 6 of the MPID Act has passed an order after investigation, to release the subject property from attachment u/s. 7(6) of the MPID Act.

31. It is therefore clear that the subject property was first vested in the Competent Authority by operation of law and thereafter sold through the auction under process of law and the attachment of ED has been lifted by the Designated Court u/s. 7(6) of the MPID Act.

32. Once the subject property vests in the Competent Authority by operation of law and the same was sold by following due process of law and

once the attachment of the property is lifted / released by the Court of competent Jurisdiction, no further expectation of the Auction Purchaser can be entertained.

33. Now let us consider the scheme of SARFAESI Act and Security Interest (Enforcement) Rules, 2002. Rule 3 contemplates demand Notice, Rule 3(A) contemplates reply to representation of the borrower, Rule 4 governs procedure after issue of notice, Rule 5 provides for valuation of movable secured assets, Rule 6 provides for sale of movable secured assets, Rule 7 provides for issue of certificate of sale, Rule 8 provides for sale of immovable secured assets, Rule 9 provides for time of sale, issue of sale certificate and delivery of possession. The Authorized Officer is provided for exercise of rights of secured creditor under SARFAESI Act.

34. Under section 2 of the SARFAESI Act, following definitions assume importance:

“Section 2

*

*

*

(z) “**securitisation**” means acquisition of financial assets by any [asset reconstruction company] from any originator, whether by raising of funds by such [asset reconstruction company] from [qualified buyers] by issue of security receipts representing undivided interest in such financial assets or otherwise;

(zb) “**security agreement**” means an agreement, instrument or any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor;

(zc) **“secured asset”** means the property on which security interest is created;

(zd) **“secured creditor”** means-

(i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (1);

(ii) debenture trustee appointed by any bank or financial institution; or

(iii) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or

(iv) debenture trustee registered with [the Board and appointed] for secured debt securities; or

(v) any other trustee holding securities on behalf of a bank or financial institution,

in whose favour security interest is created by any borrower for due repayment of any financial assistance.

(ze) **“secured debt”** means a debt which is secured by any security interest;

(zf) **“security interest”** means right, title or interest of any kind, other than those specified in section 31, upon property **created in favour of any secured creditor** and includes—

(i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or

(ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of

intangible asset”

[Emphasis supplied]

35. It is therefore clear that the enforcement of right of the ‘secured creditor’ flows from an agreement / instrument / document and ‘secured asset’ means property on which ‘security interest’ is created. Security interest means right, title or interest of any kind upon the property created in favour of the secured creditor including mortgage, charge, hypothecation, assignment or any right, title or interest of any kind on tangible asset retained by the secured creditor etc.

36. These definitions would clearly indicate that while auctions are conducted for enforcement of rights under the SARFAESI Act, they are for enforcing rights of a secured creditor and the immovable property which is sold, is necessarily in the form of secured asset or any property in which security interest is created in favour of the secured creditor. The scheme revolves around creation of such security interest by the borrower / guarantor / assignor in favour of the bank or financial institute.

37. The scheme of MPID Act, on the other hand, has no reference to the secured assets or any security interest or secured creditor. There is no contractual creation of interest with Competent Authority. The MPID Act is basically enacted in public interest to curb the unscrupulous activities of financial establishments in the State who commit default to return the deposits

on maturity or to pay interest or render service in kind in return as assured to the public and where sole object of such establishments is grabbing money received from deposits mostly middle class and poor on the promise of high attractive rates of interest or rewards. Therefore, it is clear that the MPID Act and SARFAESI Act or other debt recovery laws operate in different domains catering to different types of situations and therefore, the role of persons or entities participating in the auction under SARFAESI or RD&B Act and those participating in the auctions under MPID Act, cannot be equated. The learned counsel for the Competent Authority / State is right in her reliance upon the Judgment of *State Vs. Anil Kohli (supra)* in which Division Bench of this Court has held that MPID Act is a complete Code enacted to protect the interests of the depositors in Financial Establishments.

38. In that view of the matter, we do not find it necessary to discuss any factual distinction or similarity of the present case with that of the judgments relied upon by the Petitioner, because there is cardinal difference between the legal consideration. The judgments relied upon by the Petitioners, therefore, being those dealing with sale of the secured assets under the provisions of SARFAESI Act, RD & B Act (under Debt Recovery Laws), are clearly not comparable.

39. We say so for the simple reason that the present sale is by the Competent Authority appointed under the MPID Act who is not a 'secured

creditor' as provided or contemplated under Debt Recovery Laws. The properties which are secured assets, being held by the secured creditor such as banks and financial institutions are held under contract of mortgage or documents of other contractual obligations (e.g. charge, hypothecation, assignment etc.) between the borrower and guarantors and financial institutions. These properties are not tainted properties such as the properties which are attached under statutes such as MPID Act and PMLA. The properties such as the subject property in the present case are attached because there is investigation about public money being embezzled, which in the present case, stems from the complaints from the depositors.

40. Since the Government is satisfied, as contemplated u/s. 4 of the MPID Act, that the money of the depositors was not being returned, the subject property in the instant case was attached and necessary order was issued / published as provided u/s. 4(2) of the MPID Act and therefore it vested in the Competent Authority by operation of law. It does not require execution of the title deed owing to the very nature of facts and circumstances.

41. Another distinguishing factor between the present case and the facts in the judgments relied upon by the Petitioner, is that in the present case, since the auction is under MPID Act, there are sufficiently clear and explicit caution and inspection clauses (2.2 & 2.3) which were part of the auction notice / tender document and which obviously bind the Petitioner. The said clauses

clearly advised / cautioned the Petitioner to verify with the sub-registrar's office as well as obtain and analyze the revenue records with respect to the subject property and satisfy itself regarding the existence, title, nature, description, condition, encumbrances, liens, charges, statutory dues over the subject property 'before submitting its bid'. The Petitioner was called upon to inspect and verify the scanned copies of the title deeds relating to the property as were available with the seller on the e-auction Portal. The said clauses are far beyond mere mention of 'Caveat Emptor or buyer beware'. It was clearly provided that e-auction would entitle the successful bidder to all the 'rights of the incumbent holder' of the subject property. The caution clause clearly indicates that subject property was being sold with all claims, liabilities and encumbrances relating thereto, whether known or unknown to the seller. It was also clearly stated in the said clauses that details of the properties mentioned in the notice under the tender document were as per the details available with the seller and neither the seller nor the agency would, in any way, be responsible for any variation in the extent of property due to any reason. In view of such specific caution and inspection clauses, as narrated above, we find that this case stands on a footing far beyond the usual case of 'as is where is whatever there is basis' sale.

42. The inspection clause 2.3 even provided that participants / proposed purchasers/ intended bidders could even inspect the property on their own

and they were clear to advise of caution to verify with the sub-registrar office as well as revenue records with respect of the property under auction to satisfy themselves regarding title, nature, description, condition, existing encumbrances, liens, charges, statutory dues, etc. over the subject property. Bidders could even inspect and verify scanned copies of the title deeds relating to the property, which were available on the e-auction Portal.

43. These specific terms and conditions couched in the clauses 2.2 and 2.3 about caution and inspection, are much more and beyond the simple principle, 'buyer beware' and formed a contrary contract between the Petitioner and the competent authority.

44. Perusal of Section 55 of the Transfer of Properties Act clearly shows that the rights and liabilities of the buyer and seller provided thereunder, which binds the seller to disclose the buyer any material defects in the property or in the seller's title, is in the absence of contract to the contrary.

45. Clauses 2.2 and 2.3 of the terms and conditions of the e-auction (already reproduced above), would clearly show that there was a contract to the contrary and the participants / proposed purchasers were contractually required to make their own independent inquiries regarding a host of parameters of the subject property such as nature, encumbrances, litigations, attachments, liabilities, title, claims etc.

46. No submissions were made before us pointing out what efforts the Petitioner had taken to carry out due diligence. In fact what emerges from the record is that despite the Petitioners' advocates and advisors being in touch with the officers of the Competent Authority, the Petitioner had volunteered to proceed with full payment.

47. Therefore, we have no hesitation to hold that in the teeth of clauses 2.2 and 2.3, much more than mere 'buyer beware' or 'caveat emptor' was specifically stated and therefore, the Petitioner cannot be entertained to say that he was not made aware sufficiently.

48. The very basis of the Petitioner's case seeking refund of the purchase price paid, is that the subject property cannot be utilized by the Petitioner. This argument is based on the alleged non-availability of the title deeds. Once the subject property vested in the Competent Authority and is sold to the Petitioner under due process of law and once the attachment of ED is lifted by the order of designated MPID Court, nothing more is required, in our opinion, for the Petitioner to enjoy the subject property. We hasten to add that admittedly, sale certificate is executed in favour of the Petitioner and Petitioner is already in possession of the subject property under possession receipt duly executed by the Petitioner.

49. Perusal of the Petitioner's application (Misc. Application No. 1079 of 2019) for lifting of the attachment over the subject property, would show that

it prayed for similar relief ‘to make good the financial loss incurred’, which was refused by the designated MPID Court. The Petitioner has chosen not to file statutory Appeal u/s. 11. Once this order attained finality in one opinion, exercise of jurisdiction under Article 226 of the Constitution of India appears uncalled for.

50. So far as the order of this Court in respect of another property at Village Issapur, Taluka Najafgarh, New Delhi is concerned (order dated 16.09.2019 in WP/8791/2019), it is apparent that during hearing of the said Petition, refund of principal amount was offered by the Respondent-State readily and willingly and only the interest component was contested. It is not necessary for us to enter into or comment upon the reasons why the Respondent – State, in that case, had shown readiness and willingness to refund the principal amount. Suffice it to say that in the present case, the Respondent – State is opposing the refund of purchase price alongwith interest and we find that reasons stated for such opposition are both justifiable and sustainable, for reasons narrated above and in the facts and circumstances of the this case.

51. Before parting, we note that interestingly, learned counsel for the Petitioner has tried to canvass before us the principle of ‘*caveat venditor* i.e. the seller beware’ relying on the judgment of Delhi High Court in *Kalyani (India) Private Limited vs. Punjab National Bank & Ors.* (supra). So far as this judgment is concerned, we must note that it was a case arising out of SARFAESI Act. Also,

in paragraph nos. 40 & 41 thereof, the learned Single Judge of Delhi High Court held that ‘as is where is’ clause is not a clause of blanket application and the meaning to be placed on such clause must result in a just and equitable outcome. The learned Single Judge of Delhi High Court has observed that there is need for caution while giving effect to such a clause, because such clauses have the potential to become the tools of abuse at the hands of unscrupulous sellers. It is in this context that the learned Single Judge of Delhi High Court has held that it is pertinent to accentuate the rise in the principle of ‘*caveat venditor*’ i.e., the seller beware’ as compared to ‘*caveat emptor*’ i.e., the buyer beware’, due to the changes in the orientation of market dynamics, which is becoming more consumer oriented. In this respect, we must note that in this case, seller is the Competent Authority, which is a statutory authority. Nothing is brought to our notice to hold that the Competent Authority has acted in an unscrupulous manner in this case. The Hon’ble Supreme Court in case of *K. C. Ninan vs. Kerala State Electricity Board and Ors.*⁷ has held in paragraph no. 148 that while examining the effect of an “as is where is” clause, the facts and circumstances of each case individually, along with the terminology of the clauses governing the auction sales must be taken into consideration, to arrive at an equitable decision. In the facts and circumstances of this case, already narrated above, especially in the light of caution clause no. 2.2 and exception cause no. 2.3, we find that there is no need to apply the principle of ‘*caveat*

7 2023 SCC OnLine SC 663

venditor i.e. the seller beware' as canvassed by learned Counsel for the Petitioner, to the facts of this case.

52. Having held that the Petitioner is not entitled to refund of the principal amount (purchase price paid), it is not necessary to labour any further about grant of interest as claimed by the Petitioner or otherwise. For the same reason, even the Petitioner's prayer for damages / compensation is only stated to be rejected.

53. In the aforesaid facts and circumstances and for the reasons recorded above, we find no merits in the Petition and the same is accordingly dismissed.

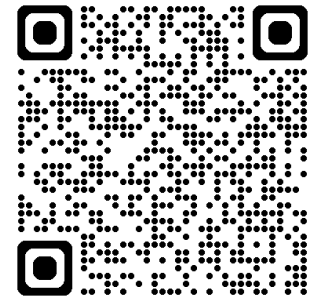
54. No order as to the cost.

(M. M. SATHAYE, J.)

(CHIEF JUSTICE)

Case Brief & MCQs on "Lemon Seeds Hospitality Pvt. Ltd. v. Union of India" (2024:BHC-OS:18047-DB) is available in the eBook:

"Bombay High Court Cases in October 2024"



The book "Bombay High Court Cases in October 2024" provides a comprehensive collection of Case Briefs & MCQs on 56 Recent Cases in the Bombay High Court. A wide range of legal areas is covered, including Criminal law, Civil law, Family law, Taxation, and Administrative law. Each case brief provides a structured summary, outlining the facts, procedural history, issues, rule of law, rationale, holding, and implications of the judgment. Readers will gain insights into the legal principles applied by the Court, along with their application. The MCQs reinforce key takeaways and encourage readers to engage actively with the material.

Author: Sagar Badade

Read the Book: <https://www.amazon.in/dp/B0DP5YYCB1>