

**BEFORE DESIGNATED COURT UNDER M.P.I.D. ACT AT
BOMBAY CITY CIVIL & SESSIONS COURT AT MUMBAI
MISC. APPLICATION NO.160 OF 2016
IN
MPID SPECIAL CASE NO.01 OF 2014**

Mohan India Private Limited)
a company registered under the)
Companies Act, 1956)
having its registered office at)
354, Tarun Enclave Pitampura)
New Delhi – 110 034)
(through its Director)) .. **Applicant**

Versus

- 1. The State of Maharashtra**)
(GB CB CID, EOW, Unit-V, Mumbai))
(C.R.No.89 of 2013))
)
- 2. Senior Inspector of Police**)
(through Arvind Wadhankar)
Having its office at EOW, Crime)
Branch, CID, 1st Floor, STF Bldg.,)
Azad Maidan Police Station,)
Compound, Mumbai – 400 001)
)
- 3. National Spot Exchange Ltd.**)
A Company registered under the)
Companies Act, 1956 and having)
its office at 4th floor, FT Tower,)
CTS No.256 & 257, Suren Road,)
Chakala, Andheri (E),)
Mumbai 400 093) .. **Respondents**

**Learned Advocate Mr.Singh a/w Advocate Mr.Arvind Thapiya for
the applicant.**

Learned SPP Mr.Avhad for State/Respondent Nos.1 & 2.

**Learned Advocate Mr.Thakur for Respondent No.3.
Learned Advocate Mr.Karnik for Org. Informant.**

**CORAM : AJAY DINODE
Special Judge, M.P.I.D. Act
& Addl. Sessions Judge,
City Civil & Sessions Court, Gr.Bombay**

**DATE : 24th October, 2016
(Court Room No.33)**

: ORDER :

By this application, applicant-Mohan India Pvt. Ltd. (In short, Mohan India) claims that it be permitted to apply for sanction/approval of plan/Map for development of Civil Lines Property i.e. 7, Court Road, Civil Lines, Delhi (In short, the Civil Line Property) and there after for fetching high value of the Civil Line property, it be permitted to be sold in parts after obtaining the approval of Plan/Map for Rs. 275 Crore or more, which is higher than the reserved price of Rs. 250 Crore fixed by Court.

: BRIEF FACTS OF THE MATTER :

2. There was settlement agreement between the National Spot Exchange Limited (In short, NSEL) and Mohan India on 30/10/2013. Mohan India agreed to pay Rs.771 Crore in and offered immovable properties as collateral securities. Mohan India handed over the possession of immovable properties of NSEL and also handed over the title documents by executing possession receipt in favor of NSEL. The settlement agreement was subject to approval by Forward Market Commission (In short, FMC).

3. Based on such settlement agreement, Mohan India and NSEL have filed the M.A. No. 98/2013 before this Court and claimed various reliefs therein. The NSEL was the respondent No. 4 in M.A.No. 98 of 2013. This Court considering the settlement agreement and considering the merits and demerits of the contentions of parties, passed the final order in M.A. No. 98/2013 on dated 2/12/2013 and thereby partly allowed it, in terms of prayer clause (a) to (e) on various conditions and permitted Mohan India to sell the properties.

4. The NSEL issued letter to FMC on 10th January 2014. The FMC has disapproved the settlement agreement dated 30.10.2013 on dated 11th April 2014.

5. In the meantime the NSEL filed the M.A. No. 33/2014 on 6th February 2014 claiming the auction sale of immovable properties of collateral securities of Mohan India, towards the compliance of the settlement of agreement 30. 10. 2013.

6. Mohan India gave “no objection” to sell the properties of collateral securities, through EOW and Court and additionally sought assistance of this Court to sell the properties to have early recovery of money of the investors. Mohan India requested the “Auction Sale” of properties to highest bidder to fetch maximum price.

7. NSEL filed the M.A. No. 181/2014 claimed the reliefs of recalling the order dt. 2/12/2013 in M.A. No. 98/2013 and for issuing necessary directions to EOW to take the coercive action against Mohan India.

8. On 5th August 2014 this Court ordered NSEL to surrender the title deeds of properties of collateral securities with Competent Authority. But, on 5th September 2014 this Court observed that NSEL has not deposited the original title deeds inspite of directions.

9. In the meantime the Investors have also filed the M.A. No. 432/15 for auction sale of the properties offered by the Mohan India as collateral securities. Again Mohan India gave “**no objection**” to sale the properties of collateral securities.

10. This Court ordered the auction sale of the collateral securities, offered by Mohan India in M.A. No. 33/14 and M.A. No. 432/15 vide order dated 17th October 2015. The property was valued by the HDFC and valuation report is filed before the Court on dated 18th January 2016. This Court ordered the auction sale of properties on the same day. The NSEL claimed that the auction sale be carried out, without prejudice to rights under the settlement agreement.

11. The Competent Authority filed the final report of the Auction Sale of properties of collateral securities and informed that the auction sale of the properties was not found successful, as no bidders came forward in the auction sale procedure.

: Claim of Mohan India :

12. The Mohan India has good contacts in real estate field. The property of Mohan India at 7, Court Road, Civil Lines, Delhi is under the process of auction sale of this Court. The Mohan India has suo-moto offered the property at Delhi as collateral security in settlement agreement with NSEL and handed over the possession and title deeds

to NSEL. The Mohan India since the inception of matter, is claiming that the property be auction sold and money of depositors be recovered. Every co-operation is/was extended for auction sale of the properties by Mohan India.

13. Though the settlement agreement is dis-approved by the FMC, the Mohan India still continued the collateral securities under the agreement of settlement. With no objection of Mohan India, this court passed order dated 17/10/2015 for auction sale of property at Delhi and Bikaner in M.A. No. 33/2014 and M.A. No. 432/2015, under the supervision of the Competent Authority. The auction sale public notice was issued and reserved price was fixed at 2,88,25,00,000/-. But, as per report of Competent Authority dated 28th March 2016, the bidders did not come forward, except offer of Mittal Company for Rs. 140 Crore. The offered price of Rs.140 Crore is much below the reserved price. On request of Competent Authority the reserved price is now reduced to 250 Crore and the Earnest Money Deposit(EMD) was reduced to 1% of reserved price.

14. It is not desirable to reduce the reserved price of property. The Mohan India with bonafide belief is ready to sell the property for a price ranging from Rs. 275 Crore to 300 Crore. With all fair intentions to have proper price of the property, maximum recovery of the amount of the depositors, the Mohan India is ready to actively participate in the auction sale process and is ready to assist the Competent Authority in negotiation of property to fetch maximum value. As the buyers are not coming forward to purchase the big Plot of 14000 Sq. Yards, the property can be sold in parts. The Mohan India be permitted to submit

the plan for approval of land, for attracting the high value. After approval of plan, the buyers will be attracted and it will fetch additional value of property. After the approved plan of land by the authorities, if the property is sold in parts, more small buyers will come forward and it will ultimately benefit the investors. No harm will be caused to any of party in the matter, if Mohan India is allowed to assist the auction sale, as claimed. On the contrary, it will lend support to the paramount interest of depositors.

15. Learned advocate of the Mohan India argued accordingly and further contended that, the auction sale process is pending since last about 2 years without any fruitful result. During pendency of this application, fresh auction was directed by this Court at decreased Price of 250 Crores. Still the Competent Authority is unable to find any buyer and once again the auction sale is failed. It is the unique case, where the owner of property is ready to assist the recovery of money of depositors for fetching of high value. There is no benefit or gains to Mohan India, but only with fair intentions, to have early and maximum recovery of the amount of depositors, this application is liable to be allowed.

16. Learned Advocate for Mohan India, relied on the judgments in support of his contentions, as below;

- i) MANU/ TN/ 1967/ 2014 (MADRAS)
K.Durai Vs. Competent Authority
- ii) MANU/ TN/ 2040/ 2009 (MADRAS)
K. Raamaselvam Vs. Indian Overseas Bank
- iii) MANU/ MP/ 0325/ 2008 (MADHYA
PRADESH)

Smt. Godawari Shridhar Vs. Union Bank Of India

**iv) Writ -C- No. 32710 of 2013 (ALLAHABAD)
*Ramji Das Vs. Debt Recovery Tribunal***

Learned Advocate for Mohan India argued that in the judgments above, the accused, debtors were allowed to find out prospective buyers with a view to fetch higher value. Thus, the claim of the Mohan India is just and bonafide is liable to be granted. The Mohan India is ready to abide by all the conditions imposed by this Court and submits to the orders of Court.

: Submissions of SPP (EOW State) (Respondent No. 1 and 2) :

17. The respondent no. 1 and 2 (EOW/state) opposed the application and contended that there is no provision to grant the relief as claimed by the Mohan India. The Mohan India is the accused in the matter. Hence Mohan India has no right to seek the sale of property. This application is filed with intention of delay the hearing of M.A. No. 181/14 and M.A. No. 271/16. Hence the application is liable to be rejected.

: Submissions of respondent no. 3/NSEL :

18. The NSEL supported the contentions of the respondent no. 1 and 2/ State. The application is filed to linger the auction sale of property. The Mohan India has not offered any security for the proposal given. The Mohan India has mentioned different area of property as 14000 Sq. yard, but the size is 15,666 sq. yards. Such intentional difference is made to create further litigations. Mohan India is posing excessive high value of property. In fact property is valued for only Rs. 180 Crore. After the attachment of property, it vests in Competent

Authority. The Mohan India shall furnish the security by depositing Rs. 100 Crore to show bonafides. The Mohan India can bring the prospective buyers list to Court. The Mohan India, being accused in crime, is not entitled to claim the relief. Hence application is liable to be rejected.

: Submissions of Ori. Informant (Intervenor) :

19. The investors were allowed to intervene the application with no objection of the Mohan India. Learned Advocate Mr. Karnik for investors supported the contentions of the Respondent Nos.1 & 2 (State/EOW). In addition it is contended by Mr. Karnik that, property is tendered as collateral security. There is admitted liability of more than Rs.700 Crores Undisputedly the property can be sold in the interest of depositors. But, the offer of Mohan India, in the capacity of accused, is not acceptable. The Mohan India holds various other properties and shall give no objection for selling the other properties to show bonafide. The fairness of Mohan India can be taken in consideration, if the Mohan India is ready to deposit Rs. 100 Crore.

20. Heard all the parties at length. Perused the record, application, reply filed by the parties.

21. The properties offered by Mohan India as collateral securities were attached by EOW, Unit-V, Mumbai under the provisions of MPID Act. The owner of property Mohan India has not filed any objection under section 7 of MPID Act against the attachment. In the mean time the attached properties of Mohan India are notified by Govt. Of Maharashtra. The Competent Authority is already appointed in the

matter. As objection against the attachment of property is not made, the attachment became absolute. Soon after the attachment of property became absolute, it requires the liquidation and realization of property to recover the money of the depositors.

22. The aim and object of Special MPID Act, is to be achieved by protecting the interest of depositors. The provisions of statutory law will not cover each and every contingency or situation which may arise in the matter. But, while implementing the provisions of statutory law, the Court has to mold the law, which is fitting in the circumstances of case, in light of the aim and object of the statutory provision.

23. The record reflects that, since the inception the Mohan India has not objected the auction sale of the properties of collateral securities and has extended every co-operation. The respondents State/EOW, NSEL and Ori. Informant have not contended any instance of obstruction by Mohan India in the process of auction sale of property and liquidation of property to recover the money of investors.

24. The Mohan India has not objected the valuation of the property by expert. The valuation of property was initially reserved for Rs. 2,88,25,00,000/- (288.25 Crores). The auction sale was proposed on 4th February 2016, in view of the order dated 17th October 2015. But, the auction sale was not successful and reserved price bidder did not come forward. Only one bidder came forward quoting less than half value of the property in the bid i.e. Rs. 140 Crores only. Auction sale procedure ended up with single low amount bidder. **It took about two years and 3 months for completion of first failed attempt of**

auction sale.

25. Thereafter on 28th March 2016, the Competent Authority requested to reduce the reserved price and minimize the EMD amount to only 1% of total value. This Court reduced the reserved price to 250 Crore and EMD amount to only 1%, with a view to attract the proper buyers to the property. Additionally to give sufficient time to bidders, the time for bidding process was increased from 1 month to 2 months. Again the fresh auction sale notice was issued.

26. The **second auction sale process** which was carried out as per order dated 28th March 2016, relaxing the conditions and minimizing the reserved price is also found fruitless. As per the report filed by competent Authority below **Exh-13** dated 12th August 2016, it is informed to this Court that, even after issuance of public notice of auction sale of the property by various modes, no bidder came forward to purchase the property. The second failed attempt of auction sale took about **5 months**.

27. Hence there appears to be substance in the contentions of Mohan India that, as the plot at Delhi is of big size, and there is no sanctioned development plan, the purchasers and small investors are not coming forward. The sanctioned development plan and small size plots will fetch more buyers and the amount of depositors can be realized easily.

28. The State/EOW, NSEL and investors objected the claim of the Mohan India. But, except the objection, no effective mode for

auction sale of the property is put forth. Previous two failed attempts of auction sale are sufficient to conclude that even future auction sale attempt of big plot, without development plan and small plots, will not found any result. It will ultimately affect the interest of depositors. Auction Sale of the property at low price will ultimately affect the rights of investors adversely.

29. Perusal of previous auction sale notices reflects that the notice to sale property at Delhi was in respect of 14000 sq. yard of plot. Hence there is no force in the contentions of NSEL that the area of the plot is shown less in this application by Mohan India.

30. It is contented by the respondents and Ori. Informant that, the Mohan India is the accused in the matter and relief claimed in the application cannot be granted. But, at the second breath, it is contended that, Mohan India can be permitted to auction sale the property, subject to deposit of security amounts. As discussed earlier this Court has to mold the provisions of law, fitting to fact and circumstance of the case, to protect the interest of depositors. Additionally, the judgments relied by Mohan India, Supra provides that the person whose property is attached can be given opportunity to find the buyers and can be allowed to sale the property above the reserved price.

31. Hon'ble Madras High Court, in the matter of *K. Durai Vs. The competent Authority*, supra has approved the order of designated Court, whereby the defaulters were permitted to bring the intended purchasers. (Para 26 and 35 of judgment). In light of the principles of

the judgments above, similar permission, as sought by Mohan India can be granted.

32. The other judgments relied by Mohan India lays down principles that, where the auction sale process is not successful and only one bidder is coming forth, below reserved price, the defaulter of loan can be given an opportunity to sell the property by finding purchasers. Similar facts are emerging in the matter, **the auction sale process was failed twice**. No result found, no bidder found, even after decreasing the reserved price of property, decreasing the amount of EMD to only 1% of value and increasing the period of bidding process. Hence the principles of judgments relied on by the Mohan India can be applicable in the case at hand. For protecting interest of depositors and for fetching the proper value of property, a reasonable opportunity can be given to the Mohan India by imposing conditions.

33. Now this Court has to consider the proposal given by Mohan India and its legality and future effect. Perusal of relief claimed by the Mohan India reflects that, it is claimed that the Mohan India be permitted to apply before Concerned/Competent Authority in Delhi for sanction/approval of plan/map for development of the property being 7, Court Road, Civil Lines, Delhi. As discussed earlier the attachment of property is now absolute. The property vests in the Competent Authority. Hence any development of property will not any way give benefit to Mohan India. Per Contra, it will benefit the property for increasing its value. Ultimately increase in value of property will benefit the interest of depositors. Hence the time bound limited permission can be granted to Mohan India as claimed in prayer clause

(a) of application with conditions as per final order

34. The Mohan India further claimed that, its Directors be permitted to negotiate the sale price and finalize sale with the interested purchasers etc. Such prayer does not appear to any way contrary to the interest of depositors. By granting such prayers, the Mohan India will not receive any amount. Such negotiations and finalizations of sale with interested purchasers, can be permitted subject to final approval of Competent Authority. The entire process can be directed to be conducted under supervision of Competent Authority. Hence by putting the conditions such prayer can be granted as per final order.

35. Learned Advocates for EOW/State, NSEL and Ori. Informant argued that Mohan India be directed to deposit Rs.100 Crore to show bonafide intentions. But, in this matter, Mohan India is not seeking release of attachment by giving security. Hence, order to furnish security cannot be issued. Mohan India intends to assist and co-operate auction sale of property by Competent Authority. Hence, for allowing Mohan India to assist the Competent Authority in auction sale, the condition to deposit Rs.100 Crore at this stage does not appear to be reasonable. The attachment is absolute and hence Court and Competent Authority have every power to recover the amounts by auction sale. As at this stage and in this application, limited prayer of assistance by Mohan India is only involved, it does not require any directions in respect of other properties of Mohan India. However, the EOW/ Competent Authority are at liberty to take appropriate steps about other properties of Mohan India and other companies of Mohan

India for recovery of amount by auction sale.

36. It is the unique case where the person whose property is attached under legal process, is coming forward and co-operating the auction sale of property. It is totally contrary to the usual conduct now a days observed normally, where the person affected by attachment fights year together and take every opportunity to create complications in the recovery of amounts. Such conduct is appearing form the records and needs appreciation, by giving reasonable time bound opportunity to do acts for increasing the value of property. The recent principles of “*Socio-econimic interpretation of statutes*” is required to be applied in the case at hand.

37. For the discussion and reasonings above, following order is passed.

: O R D E R :

1. Misc. Application No. 160/2016 is allowed
2. The applicant is directed to apply before the Competent/Concerned Authority, Delhi for sanction/approval of plan/map for development of the property Khasara No. 468, Situated at 7, Court Road, Civil Lines, Delhi within four weeks from today.
3. The applicant shall report the compliance of condition no. (2) above, to this Court, within two weeks from today.
4. The concerned/ competent authority, Delhi to consider the application for plan/map of development of property, on priority and expeditiously as far as possible, within 3 months of date of application.

5. The applicant shall report progress of the approval/sanction of development plan/map to this Court, without fail, in writing, every month.
6. The applicant is permitted for the period of 6 months from the date of approval of development plan/map to negotiate with the prospective buyers, in consultation of Competent Authority .
7. The applicant is directed to take every bonafide and genuine effort to fetch maximum value of property not less than Rs.275 Crore to Rs.300 Crore for entire property, in consultation with the Competent Authority.
8. The applicant is directed to seek prior approval of Competent Authority for finalization of sale of any part of land.
9. The amount of the transactions, only be accepted by Cheque/Demand Draft in the name of Competent Authority and the amount received be credited in NSEL Escrow account maintained by Competent Authority.
10. The applicant shall strictly follow the terms and conditions of order. If the applicant commits any default in the terms and conditions of this order, the permission granted to applicant by this application stands cancelled automatically.
11. The applicant and Competent Authority is at liberty to seek further orders of this Court, as and when required.
12. Misc. Application No.160 of 2016 stands disposed of accordingly.

Dt. 24/10/2016

(Ajay Dinode)
Special Judge, M.P.I.D. Act &
Additional Sessions Judge,
City Civil & Sessions Court, Gr. Bombay

: 16 :

Order-M.A.160 of 2016 in
MPID Case No.01 of 2014

Dictated on : 24/10/2016
Transcribed on : 24th & 25th /10/2016
Signed on : 25/10/2016

“ I affirm that the contents of this PDF file judgment/order are the same, word to word, as per the original judgment/order.”

Name of Steno : - Mrs. M. M. Salgaonkar (Stenographer – H.G.)

Name of the Judge : - H.H.J. Shri Ajay Dinode, C.R.No.33

Date of pronouncement :- 24th October, 2016
of Judgment/order

Judgment signed by the
P.O. on :- 25th October, 2016

Judgment uploaded on :- 27th October, 2016