

The Hon'ble Special Court took judicial notice of fact that big banks and many third parties were not discharging their obligations of disclosing and handing over to Custodian the attached properties of notified entities

IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) AT BOMBAY

MISC. APPLICATION NO. 400 OF 1994

Standard Chartered Bank.

Applicants.

Vs.

1. Canbank Financial Services Ltd.,
2. Harshad S. Mehta,
3. Custodian,
4. C. B. I.,
5. Fairgrowth Finance Services Ltd.

Respondents.

Mr. E. P. Bharucha i/b Gagrat & Co. for Applicants.
Mr. Pradeep Sancheti i/b Mulla & Mulla for 1st Respondents.
Mr. M. R. Jethmalani i/b Mahimtura & Co. for 2nd Respondent.
Mr. G. R. Joshi i/b P. M. Mithi & Co. for 3rd Respondent.
Mr. P. R. Namjoshi for 4th Respondents.

CORAM: HON'BLE MR. JUSTICE
S. N. VARIAVA.
28TH MARCH 1995.

ORAL ORDER:

1. Mr. Bharucha asks for time to take inspection of certain Bankers Receipts which are in custody of C. B. I. Mr. Namjoshi states that inspection will be granted. He however points out that the documents are in Bangalore. He states that the documents will have to be brought to Bombay. Mr. Namjoshi asks for 4 weeks time.

2. Mr. Jethmalani points out that on the averments of the Applicants in paras 10 to 15 of their Affidavit dated 14th December 1994, the Applicants have to deliver to the 2nd Respondent 13% NPC Bonds of face value of Rs. 3 crores.

3. Mr. Bharucha submits that this also arises from the initial transaction which forms the subject matter of the Application. Mr. Bharucha submits that the 1st Respondents

admit that they have to deliver 13% NPC Bonds of face value of Rs. 5.5 crores to the Applicants. He submits that the Applicants have no objection to 1st Respondents handing over Bonds worth Rs. 3 crores to the 2nd Respondent.

4. Mr. Sancheti states that the 1st Respondent admit that they have to deliver to the Applicants 13% NPC Bonds of face value of Rs. 5.5 crores. He submits that that can only be if the Bankers Receipt is handed back to the 1st Respondents duly discharged and/or the Court grants to the 1st Respondents a discharge. He submits that without the discharged Bankers Receipt and/or a discharge from Court, the 1st Respondents are not willing, at this stage, to bring in the Bonds.

5. Mr. Jethmalani points out that the C. B. I. has filed an Affidavit objecting to release of the 1st Respondents' Bankers Receipt. This because there is a pending prosecution. Mr. Jethmalani points out that the liability of the Applicants to deliver Bonds of the face value of Rs. 3 crores is independent of and not dependent upon the Bankers Receipt of the 1st Respondents. He submits that the attempt to link the two is merely a ruse to delay performance of their own obligation.

6. In my view, at this stage these questions do not arise in this Application. However it does prima facie appear to Court that Applicants have a liability to deliver 15% NPC Bonds of the face value of Rs. 3 crores to 2nd Respondent. It prima facie appears that these should have been

delivered as far back as 1992. Prima facie it does appear that this liability is independent of and not connected to the delivery by 1st Respondents under their Bankers Receipt.

7. Court is noticing that many parties including big Banks, are not performing their obligations. After Notification, all properties of Notified Parties stand attached. The Custodian has issued Public Notices calling upon all parties to inform him if any thing is owed to Notified Parties. Many parties have not replied. They have kept quiet. This probably in the hope that if things do not come to light, they might escape liability. Many of them may ultimately succeed, inasmuch as limitation is fast running out. If the Custodian does not learn of the claim, he cannot file an Application to recover. Parties, including Notified Parties, do not inform the Custodian. It is possible that there is an understanding between them. Presumably at some stage, after known assets are distributed, there will be adjustment between them and the Notified Party.

8. In my view, Court must take serious note of this tendency to not to disclose. In my view, if it comes to attention of Court that a party has not disclosed for the last over 2/3 years and that it is holding attached assets, then that party must be made to pay a high rate of interest and high costs.

9. As stated earlier, at this stage and in this Application, Court cannot call upon Applicants to bring in Bonds of face value of Rs. 3 crores. It is for Applicants to

decide what they want to do. Applicants have recently been a beneficiary of Court's view that high interest and high costs must be awarded under some circumstances. They therefore, more than anybody else are aware of Court's view in these matters. They more than anybody else know that if it is found that they have not disclosed and not honoured their independent obligation, they may end up paying high interest and costs.

10. As this has now come to the notice of the Court, I direct the Custodian to look in this aspect. If he finds that 2nd Respondent's claim is correct and genuine, then he must take out an Application for recovery of these Bonds.

11. This Application is adjourned for four weeks.