IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7811 of 2018

==========

MAHENDRA BHASKARBHAI PATIL & 9 other(s)

Versus

UNION OF INDIA & 6 other(s)

==========

Appearance:
MR MAUNISH T PATHAK(5892) for the Petitioner(s) No. 1,10,2,3,4,5,6,7,8,9
DS AFF.NOT FILED (N)(11) for the Respondent(s) No. 1,3
MS DHARMISHTA RAVAL(707) for the Respondent(s) No. 2
NOTICE UNSERVED(8) for the Respondent(s) No. 4,5,6,7

==========

CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

Date : 27/11/2019

ORAL ORDER

1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioners have prayed for the following reliefs :

> *"a) This Hon'ble Court be pleased to admit and allow this petition;*
>
> *b) This Hon'ble Court may be pleased to issue a writ of mandamus and/or certiorari and/or any other appropriate writ, order or direction in the nature of mandamus and/ or certiorari to the respondent nos. 1 to 3 herein, to consider the claim of the petitioners and claimants/investors of respondent no. 4 to 7 company herein and provide proper guideline for filing and adjudication of claim and further direct to start/join the present petitioners and all claimants/investors in the recovery proceedings if any or initiate the recovery proceedings against the "Maitreya Groups" i.e. respondent no. 4 to 7 companies herein and collect the funds of the present petitioner and all investors from the respondent nos. 4 to 7 companies herein and distributes the same towards the investors after verifying their*

Downloaded on : Thu Jul 15 16:14:42 IST 2021

claims and also direct respondent nos.1 to 3 to appoint a competent authority/ officer to investigate and adjudicate claims of investors as expeditiously as possible, in the interest of justice .

c) Pending admission, hearing and / or final disposal of this petition, this Hon'ble Court may be pleased to direct the respondent no.2 & 3 herein, i.e. SEBI to produce the entire details with regards to the proceedings if any carried out and recovery is made out from the respondent no. 4 to 7 companies, and further what steps has been taken against the respondent no. 4 to 7 companies, to secure the interest of the investors/ depositors, in the interest of justice.

d) Such other and further relief as this Hon'ble Court may deem just, fit and expedient be granted in favour of the petitioners.

e) Costs of this petition be provided for to the petitioners."

2. The petitioners have filed this petition to give direction to respondents no. 2 and 3 Security Exchange Board of India ("SEBI" for short) to take action against respondents no. 4 to 7 company in whom the petitioners have made investment by way of deposits. It is the case of the petitioners that one Miss Varsha Madhusudan Satpalkar and Mr. Janardan Arvind Parulekar were running the number of companies since 1998 under the head "Maitreya Groups" for different schemes relating to the collective investment scheme with assurance to return of certain sum of money or gold or plot of land etc. The petitioners therefore, invested in the schemes of the respondent no. 4 to 7 companies with hope for returns on the maturity date.

Downloaded on : Thu Jul 15 16:14:42 IST 2021

3. It appears that respondent no.4 to 7 company were involved in the business of "Scheme towards booking or purchase of plot of land" in installments by way of collecting money from the investors, through their agents with assurance of payment of certain sum of money on the maturity dates and /or a plot of land of money's worth. It appears that respondents no.4 to 7 company were doing the business throughout India and accepted crores of rupees from the investors.

4. In the year 2013, when some of the investors approached respondent no.4 company for payment of maturity amount, respondent no.4 company failed to perform its liability towards the investors and therefore, some of the investors had preferred complaints before the grievance cell of respondent no.3 SEBI at Mumbai and based upon that the respondent no.3 authority issued the show cause notice to the respondent no.4 company and after adjudication passed an order on 30th August, 2013 holding that the collective investment scheme run by the respondent company to be illegal mobilization of funds and therefore, certain directions were given by the said order as under :

> *"In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11(1), 11(B) and 11(4) of the SEBI Act read*

Downloaded on : Thu Jul 15 16:14:42 IST 2021

with Regulation 65 of CIS Regulations, hereby direct Maitreya Plotters & Structures Private Limited (MPSPL) and its Directors viz. Varsha MadhusudanSatpalkar and Mrs. Janardan ArvindParulekar, -

a. not to collect any more money from investors including under the existing schemes;

b. not to launch any new schemes;

c. not to dispose of any of the properties or alienate any of the assets of the schemes;

d. not to divert any funds raised from public at large which are kept in bank account(s) and/ or in the custody of MPSPL.

13. The above directions shall take effect immediately and shall be in force until further orders."

5. It appears that respondent no.3 after adjudication passed the order on 12th September, 2014 and it was observed as under :

"Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), had pursuant to a preliminary enquiry and on the basis of the findings of such enquiry, issued an ex-parte interim order dated August 30, 2013 (hereinafter referred to as 'the interim order') prima facie observing that the features of the 'scheme towards booking or purchase of plot of land' as offered by Maitreya Plotters and Structures Private Limited (hereinafter referred to as 'the Company') fell within the ambit of Collective Investment Scheme (hereinafter referred to as 'CIS') as defined under Section 11AA of the SEBI Act, 1992 (hereinafter referred to as 'SEBI Act'). It was prima facie observed that the said scheme did not show any resemblance to the real estate business transactions but operated as a disguise to mislead and attract investment from the general public towards fund mobilizing activity of the Company. The interim order also alleged that the Company was engaged in offering or launching CIS without obtaining registration from SEBI as required under

Downloaded on : Thu Jul 15 16:14:42 IST 2021

section 12(1B) of the SEBI Act read with Regulation 3 of the SEB1 (Collective Investment Schemes) Regulations, 1999 hereinafter referred to as 'the CIS Regulations')"

6. It is the case of the petitioners that as the petitioners were not aware about any of the proceedings which were carried on before respondent no.3 and upon inquiry made on the maturity date by the petitioners by approaching respondents no. 4 to 7 companies for payment of maturity amount, respondents no. 4 to 7 companies failed to discharge their liability towards the investors. The petitioners therefore filed complaint before the police authorities for fraud and cheating committed by respondents no. 4 to 7 companies, their directors and agents. However, such complaints were not registered on the ground that the same were relating to the commercial transactions. Thereafter, some of the petitioners preferred Special Criminal Application No.9039/2016 before this court and by order dated 5th December, 2016, this Court directed the authority to register the FIR and accordingly the FIR being no. CR-I 5/2018 has been registered at Ahmedabad Zone police station on 2nd November, 2017.

7. It is the case of the petitioners that several such complaints have been filed throughout India against respondents no. 4 to 7 company and their directors and agents at Mahesana, Nasik etc. It appears that thereafter, the petitioners

Downloaded on : Thu Jul 15 16:14:42 IST 2021

approached respondent no.3 to prefer their claim upon the online grievance platform and the petitioners came to know that they cannot prefer a claim against the respondents no. 4 to 7 companies as the proceedings have been concluded way back in the year 2014 whereby it was directed to the company not to collect any money from investors including under the existing schemes and not to launch any new schemes etc. in order dated 12th September, 2014 passed by respondent no.3. Therefore, under such circumstances, the petitioners have come to know that respondent no.3 has already taken the procedure of recovery by way of selling the assets of the respondent companies and therefore, the petitioners have approached this Court with the aforesaid prayers to direct the respondent no.3 to collect the funds of the petitioners from respondents no. 4 to 7 company and distribute the same towards the investors after verifying their claims.

8. Learned advocate Mr. Maunish Pathak for the petitioners submitted that respondent no.3 SEBI has to take prior steps against the company for such fraud schemes and has also to inform the investors by way of public announcements with regard to the proceedings and its outcome against such company as it is the primary duty of the SEBI to protect the rights of the investors. It was submitted by Mr. Pathak that

Downloaded on : Thu Jul 15 16:14:42 IST 2021

number of FIRS have been registered against the Maitreya Groups whereas their branch offices are closed and more than 2000 people have been affected by such major scam carried out by respondents no. 4 to 7 companies in Gujarat only and many more throughout India whereby approximately more than 1000 crores funds have been illegally mobilized and therefore, it was the duty of the respondent authority to secure the interest of the investors cum depositors from such fraudulent companies. Learned advocate Mr. Pathak pointed out that during the adjudication proceedings conducted by respondent no.3 in the year 2013 and 2014, various details were called for from respondents no. 4 to 7 and therefore, the list of individual investors was already produced before SEBI and the respondent authority has already taken procedure for recovery by selling assets of the respondent company and therefore, it is required to be directed to respondent SEBI to collect funds of the petitioners from the respondent company and distribute the same to the petitioners after verifying the same.

9. Learned advocate for the petitioners relied upon section 11(2) of the SEBI Act, 1992 which provides for various measures to be taken by SEBI for protection of the investors.

10. On the other hand, learned advocate Ms.

Downloaded on : Thu Jul 15 16:14:42 IST 2021

Dharmishta Raval appearing for respondents no. 2 and 3 submitted that the petition is not maintainable under Articles 226 and 227 of the Constitution of India, as respondents no. 2 and 3 have already taken necessary steps against respondents no. 4 to 7 companies. She referred to the averments made in the affidavit in reply filed on behalf of respondents no. 2 and 3 which are reproduced here in below :

> *"5. With reference to the above it is submitted that SEBI has already notified Securities and Exchange Board of India (Appointment of the Administrator and Procedure for Refunding to the Investors) Regulations, 2018. As per the said Regulations the procedure for appointment of Administrator and the manner in which the properties will be sold and manner of refund of money to the investors has also been provided for in the Regulations. Annexed herewith and marked as Annexure R-1 is a copy of the said regulations. In View of Annexure R-1, the petitioner's prayer for proper guidelines of adjudication and consideration of claim is infructuous.*
>
> *6. The Petitioners have not appreciated that the Maitri Plotters and Structures Pvt. Ltd. is a company having a separate legal entity of its own and the Petitioner cannot claim refund from the assets of Maitri Services Pvt. Ltd which is a different legal entity altogether.*
>
> *The claim of the petitioner, that the assets of the Maitri Group as whole be utilized for the purposes of making payment to the petitioners is not legally tenable as the assets of one legal entity cannot be utilized for the purposes of making payment to the investors or depositors of another legal entity.*
>
> *7. It is further submitted that the petitioner has an alternative statutory remedy and hence this Hon High Court may also not entertain the Petition and may be pleased to dismiss the same.*

Downloaded on : Thu Jul 15 16:14:42 IST 2021

8. With reference to Para 1 of the petition this Respondent has no comments to offer.

9. With reference to Para-2 of the petition on perusal of Annexure A, Shri Mahendra Patil's name (one of the petitioners herein) appears also as an agent. Therefore, the Petitioners are called upon to clarify as to whether the Petitioner have also acted as agent during the collections of monies by the Respondent Companies.

10. With reference to para 3 4 & 5, the orders passed by this Respondent and annexed at Annexure C & D speaks for the action taken by this Respondent. I crave leave to rely on Annexure C & D to substantiate the above submissions regarding the action taken by this Respondent to protect the interest of investors.

11. With reference to Para-6, 7 & 8 this Respondent has no comments to offer as it does not concern the present Respondent.

12. With reference to Para-9, the contents therein are denied. It is submitted that the petitioners have not provided any proof to substantiate their claim that this Respondent refused to entertain a claim allegedly made by the Petitioners.

13. With reference to Para-10 of the petition it is submitted that this Respondent has initiated recovery proceedings in the Scheme of Maitrya Services Pvt. Limited. However, as per dues recovered per capita distribution works out to Rs. 10/- per investors as the amount to be recovered is to the tune of Rs. 82 corers while this respondent has recovered Rs. 2,387 3784/-. As a result of the above facts considering the cost of distribution this Respondent has not considered it feasible to invite applications for refund money in the scheme of Maitrya Services Pvt. Ltd.

14. With reference to Para 11, the contents therein are denied.

15. With reference Ground 11-a, it is submitted that while it is the duty of SEBI to protect the right of investors, SEBI has, and is discharging its duties and has initiated proceedings for recovery of the Amount. It is denied that there are any directions received for

Downloaded on : Thu Jul 15 16:14:42 IST 2021

this Respondent to make payment within 3 months to the investors to the Companies in which the Petitioners have invested.

16. With reference to Ground 11-b it is submitted that this Respondent has passed orders in the case of the Maitri Group the details wherein are as under:

(a) In respect of Maitreya Plotters & Structures Private Limited Proceeding were initiated under section 11(1), 11(4) and 11B and of SEBI Act, 1992 in respect of Maitreya Plotters & Structures Private Limited and its director namely Ms. Varsha Madhusudhan Satpalkar, and Mr. Janardar Arvind Parulekar and Adjudication proceeding under section 15HB has been initiated in respect of the company and its directors. The proceedings section 11(1), 11(4) and 11B and of SEBI Act, 1992 has been concluded by the Whole Time Member Vide order dated January 31, 2019 and certain directions were issued which is reproduced as under:

Directions

27. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11(1), 113, 11(4) and 19 of the SEBI Act, 1992 read with regulation 65 of CIS Regulations hereby issue the following directions against the Noticees:

i. That MPSPL and its directors are jointly and severally liable to wind up its existing CIS and refund the contributions or payments collected from investors under the schemes with returns due to the investors within a period of three months from the date of this order. The repayment and interest payment to the investors shall be effected only through Bank Demand Draft or Pay Order (both of which shall be crossed as "Non-Transferable") or through internet banking channels such as NEFT or RTGS with appropriate audit trail.

ii. Upon completion of the refund as directed above, within a further period of seven days, MPSPL and its directors shall submit a winding up and repayment report to SEBI in accordance with the CIS Regulations. The report shall be supported by the proof of the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt

Downloaded on : Thu Jul 15 16:14:42 IST 2021

from the investors acknowledging such refunds along with a certification of such repayment from two independent Chartered Accountants.

iii. That MPSPL and its directors shall not divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of MPSPL and they shall not alienate or dispose of or sell or create any encumbrance on any of the assets of the Company except for the purpose of making refunds to its investors as directed above. The above directions shall be subject to the permission of the Hon'ble District Court or the Committee constituted under the order of the Hon'ble District Court.

iv. That MPSPL and the Noticee directors shall provide inventory of all the assets purchased in the name of the Company or its directors including all assets movable and/or immovable wherein Noticees have interest directly or indirectly in whatsoever manner, to SEBI within a period of 07 days from the date of this order.

v. That MPSPL and the Noticee directors are restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, till the directions for refund/repayment to the investors are complied with, as mentioned above, to the satisfaction of SEBI and repayment completion certificate is submitted to SEBI and thereafter for a further period of four years from the date of completion of the refund, as directed above. It is further clarified that the restrain to access securities market shall be inclusive of their existing holding of securities, including the units of mutual funds.

vi. The Noticee directors are restrained from holding position as director or key managerial personnel of any listed company for a period of 4 years from the date of this order.

28. This order shall come into force with immediate effect and the directions passed under paragraph 27 (i) to 27(iv) shall be subject to the orders, directions otherwise passed or which may be passed, if any, by the Nasik District Court in the case arising out of charge sheet filed by Sarkarwada Police against the Noticees.

(b) The Adjudication proceeding in the matter of

Downloaded on : Thu Jul 15 16:14:42 IST 2021

Maitreya Ploters and Structures Private Limited are pending.

(c) In respect of Maitreya Services Private Limited SEBI passed a final order dated March 25, 2013 u/s 11(4) and 113 of SEBI Act, 1992 read with regulation 65 Hand 73 of Collective Investment Scheme Regulations, 1999 against Maitreya Services Pvt. Ltd and its directors Varsha Satpalkar and Janardan Parulekar directing them, inter alia, to wind up its existing collective investment schemes and refund the money collected by it under the schemes with returns which are due to the investors as per the terms of offer within a period of three months from the date of this order and submit a winding up and repayment report to SEBI in accordance with the CIS regulations.

(d) Adjudication order dated November 30, 2018 has been passed against the Maitrya Services Private Limited imposing monetary penalty of Rs. 1 Crore under Section 15D(a) of the SEBI Act for Violation of Section 12(1B) of the SEBI Act, 1992 85 Regulation 3 of the CIS Regulations, 1999 and Rs. 50 lacs under Section 15HB of the SEBI Act for violation of SEBI Order WTM/RKA/CIS/ 07/2013 dated March 25, 2013.

(e) Recovery proceeding initiated by SEBI in the scheme of Maitreya Services Private Limited. The Notice of demand for Rs.82,00,61,523/- along With interest and costs issued vide Certificate dated January 22, 2016. As per the details available on records, the following amounts have been recovered till date towards dues against recovery certificate initiated against Maitreya Services Pvt. Ltd.

i) Through attachment of bank accounts:
Rs.1,76,85,332/-

(ii) Through sale of attached properties:
Rs. 61,88,452/-

Total Rs.2,38,73,784/

Since the amounts to be recovered are to the tune of Rs.82 crore along with interest and costs, the refund has not been considered by SEB at this stage taking into account around 25 lakh investors. Per capita distribution works out to Rs.10 per investors which would not be feasible when the cost of distribution is considered.

Downloaded on : Thu Jul 15 16:14:42 IST 2021

Therefore, no applications have been invited for refund purpose by SEBI.

(f) In respect of Maitreya Realtor and Constructions Private limited Maitreya Realtor' Sand Constructions Private limited (MRCPL): The matter was examined for applicability of Collective Investment Scheme Regulations and it was found that there was no fund mobilization in this company and accordingly the complaint was closed. It is learned by this Respondent that EOW Maharashtra has taken action against Maitreya Group and therefore the matter was referred to EOW Mumbai this Respondent.

(g) In respect of Maitri Suwarnsiddhi Pvt Ltd. The matter was referred to ROC-Karnataka and EOW Mumbai in respect of Maitri Suwarnsiddhi Pvt. Limited and Maitreya Realtor and Constructions Private limited

17. With reference to Ground ll-c the contents therein are denied. The Respondent has not prohibited any investor from preferring any claim. This submission of the petitioner is false. In any view of the matter, the company in which the Petitioners have invested there is no property or assets recovered by SEBI to make payment."

11. Relying upon the aforesaid averments, Ms. Raval submitted that respondents no. 2 and 3 have initiated procedure for recovery of amount and it will take further action in accordance with Regulations 2018.

12. Having heard the learned advocates for the respective parties and having gone through the materials on record, it appears that on perusal of the averments made by respondents no. 2 and 3 in the affidavit in reply as quoted here in above, respondents no. 2 and 3 have taken adequate steps under the provisions of SEBI Act,

Downloaded on : Thu Jul 15 16:14:42 IST 2021

1992 read with Regulations 2018.

13. In such circumstances, there is no need to give any direction as prayed for by the petitioners to the respondents no. 2 and 3 to consider the claim of the petitioners with regard to their investment in respondents no. 4 to 7 companies.

14. In that view of the matter, the petition is devoid of any merit and the same is accordingly dismissed. Notice is discharged. No order as to cost.

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR

सत्यमेव जयते
THE HIGH COURT OF GUJARAT
WEB COPY

Downloaded on : Thu Jul 15 16:14:42 IST 2021