

M/S NEELDEEP INVESTMENTS (P) LTD.

v.

THE CUSTODIAN & ORS.
(Civil Appeal No. 1528 of 2005)

MARCH 13, 2008

[C.K. THAKKER AND ALTAMAS KABIR, JJ.]

Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 – s. 10 – Recovery petition by Custodian on behalf of Notified party from Judgment debtor – Notified Party and his son-noticee majority shareholder of judgment debtor – Decree against judgment debtor – Garnishee notices – Noticee repeatedly creating difficulties in way of Court and Custodian passing decree and its execution – Noticee sentenced to 3 month simple imprisonment and fine – Challenge to – On appeal held: Parties agreed that payment would be made in three instalments – However, in view of application by Custodian for modification in the order correcting decretal amount, the decretal amount amended – Judgment debtor directed to pay the balance decretal amount in three equal instalments by the given date – Garnishee notices before Special Court stayed – In case of default in payment, order under challenge would revive.

Under the Special Courts (Trial of Offences relating to Transaction in Securities) Act, 1992, BD-father of noticee MD, was declared a Notified party. The Notified Party is majority shareholder of judgment debtor-appellant Company, along with noticee MD. The Custodian under the Act filed petition on behalf of Notified party-BD for recovery of Rs. 1,42,65,000/- with interest from the appellant Company. The Special Court passed a decree. Meanwhile, the Custodian issued a public notice calling upon the parties to disclose if they owed any

A money to the Notified Party. Despite that the judgment
debtor did not disclose that they owed huge amount to
the Notified Party. The Notified Party came to know about
it from the Income Tax Department. The Custodian filed a
petition. The judgment debtor admitted the said liability
B and on basis thereof, the Special Judge passed a decree
against the judgment debtor. Thereafter, in the Misc
Application to execute the decree, interim order was
passed restraining the judgment debtor and its director
from disposing of or transferring their properties. The
C noticee filed an affidavit that the judgment debtor had to
recover substantial amounts from six parties. The
Custodian took out garnishee notices. Thereafter,
garnishees appeared and filed affidavits that they owed
amounts to judgment debtor, which were adjusted on
D acceptance of shares of different companies by the
judgment debtor. Thereafter, the Special Judge passed
an order that the noticee was to be tried for not complying
with the order restraining judgment debtor and its
directors from disposing of the properties.

E The misc application was filed. Show cause notice
was issued. The Special Judge held that the appellant
through noticee MD, son of notified party, BD repeatedly
created difficulties in the way of Court and Custodian
passing decree and its execution. The noticee MD was
F sentenced to undergo simple imprisonment for three
months with fine of Rs. 2,000/- The Special Court
suspended the order. Meanwhile, appellant filed appeal
u/s 10 of the Act before this Court. The stay granted was
extended. The matter was adjourned to enable the
G appellant to consider whether the entire decretal due of
Rs. 1,42,56, 000/- could be paid. Thereafter, the parties
agreed that the amount would be paid in three instalments.
The appellant paid two instalments and the third one was
to be paid. The matter was adjourned repeatedly. The
H Custodian then filed application for modification of the

order in the appeal by correcting the principal amount in the decree as Rs. 1,74,79,500/- minus Rs. 15,75,000/- which had already been recovered by custodian. A

Disposing of the appeal, the Court

HELD: 1.1 The fact that two separate decrees were passed for the sum of Rs.1,42,65,000/- and Rs.32,14,500/- is not disputed, though, an attempt was made to establish that the two were separate and would have to be dealt with separately. The submission that the order dated 20th January, 2006, had been fully implemented as the entire decretal amount of Rs.1,42,65,000/- had been paid in three instalments, and it is only thereafter that an attempt was made by the Custodian to claim the further sum of Rs.32,14,500/- together with interest thereon cannot be accepted since both the decretal amounts against the appellant have been mentioned in the order dated 19th September, 2003, passed in Misc. Application No.470 of 1999 filed by the Custodian. The decretal amount shall be corrected to read as Rs.1,59,04,500/- together with interest as decreed by the Special Court upon credit having been given for Rs.15,75,000/- which has already been recovered by the Custodian. [Paras 14 and 15] [95-C, D, E, F, G] B C D E

1.2 After taking into account the decretal amount as amended, together with interest as directed by the Special Judge in M.P. 43/1995, the appellant is directed to pay the balance decretal amount by 30th June, 2008, in three equal instalments commencing from the month of April, 2008. The hearing of the garnishee notices before the Special Court, Mumbai, would remain stayed till the said date, and in case of default of such payment being made, this order would cease to be operative and the order appealed against would stand revived. [Para 16] [95-H; 96-A, B, C] F G

A From the final Judgment and Order dated 12.01.2005 of the Special Court (Trial of Offences Relating to Transactions in Securities) at Bombay in Show Cause Notice No. 26 of 2003 in Misc. Application No. 470 of 1999 in Misc. Petition No. 43 of 1995.

B L. Nageshwar Rao, S.R. Mishra, Shailendra Narayan Singh and Vimla Chandra S. Dave for the Appellant.

Subramonium Prasad for the Respondents.

C The Judgment of the Court was delivered by

D **ALTAMAS KABIR, J.** 1. This appeal has been filed under Section 10 of the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992, challenging the order passed by the learned Special Judge on 12.01.2005 in Show Cause Notice No.26 of 2003 in Misc. Appeal No.470 of 1999 arising out of Misc. Petition No.43 of 1995. By his judgment and order dated 12.1.2005 the learned Special Judge came to a finding that the conduct of the appellant herein through the noticee, Milan Dalal, son of the Notified Party, Bhupen Dalal, was such as to repeatedly create difficulties in the way of the Court and the Custodian, firstly, in passing the decree, and, thereafter, in the matter of its execution. In the circumstances indicated in the order, the noticee, Milan Dalal, was sentenced E to undergo simple imprisonment for a period of 3 months and was also directed to pay a fine of Rs.2,000/-. The said order was suspended for a period of 12 weeks within which period the appeal was filed in this Court and on 18.3.2005 notice was issued thereupon. While issuing the notice this Court directed F that the stay already granted by the Special Court would continue for a period of 4 weeks. On 29.4.2005 the stay granted was directed to continue until further orders.

G 2. On 5.1.2006 when the appeal was called on for hearing, H this Court passed the following order.

“We are prima facie of the opinion that having regard to the facts, the order under appeal does not need to be interfered with. However, at the suggestion of the learned Solicitor General we adjourn the matter to enable the appellants to consider whether the entire decretal due of Rs.1,42,56,000/- can be paid.

The matter is adjourned by two weeks.”

3. In order to appreciate the circumstances in which the aforesaid order came to be passed, the facts leading to the filing of the Civil Appeal in this Court are briefly set out hereunder.

4. Bhupen Dalal, the father of the noticee Milan Dalal, was declared to be a Notified Party under the provisions of the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992, hereinafter referred to as the '1992 Act'. The Custodian under the said Act filed Misc. Petition No.43 of 1995 on behalf of the Notified Party, Bhupen Dalal for recovery of 1,42,65,000/- with interest from M/s Neeldeep Investment Company Private Limited, the appellant herein. On 8.6.1995 the Special Court passed a decree on that petition and noted that the Notified Party is a majority shareholder of the judgment debtor M/s Neeldeep Investment Company Private Limited, along with noticee Milan Dalal. It was also noted that after Bhupen Dalal was notified under the said Act the Custodian issued a public notice calling upon the parties to disclose to him if any money was owed by them to the Notified Party. Despite such public notice, the judgment debtor which was practically a family concern of the Notified Party did not come forward to disclose that the judgment debtor owed huge amounts to the Notified Party. It was noted that the Custodian came to know of the liability only on account of information given by the Income Tax Department. It is on the basis of such information that the Custodian had taken out the Misc. Petition No.45 of 1995.

5. The judgment debtor appeared in those proceedings

A and admitted the said liability and on that basis a decree was passed against the judgment debtor by the learned Special Judge.

B 6. In order to execute the decree the Custodian filed Misc. Application No.4 of 1999 and on that application on 24.11.1999 the Court passed an interim order restraining the judgment debtor and its Director from in any manner disposing of, transferring, alienating or encumbering all of their properties. On behalf of the judgment debtor, the noticee filed an affidavit disclosing that the judgment debtor had to recover substantial amounts from six parties namely – 1) M/s Lighthouse Investments Limited, 2) Oceanic Investments Limited, 3) Kalpvruksha Holdings and Investments Co. Pvt. Ltd., 4) Harisharan Developers Private Limited, 5) M/s S. Ramdas and 6) M/s Anmol Chemicals (Guj) Limited.

D 7. On the basis of the information disclosed by the noticee in his said affidavit on 15.12.1999, the Custodian took out garnishee notices. Pursuant to notice to the garnishees they appeared and filed affidavits and the common defence taken was that though they admittedly owed amounts to the judgment debtor, the said amounts were adjusted on acceptance of shares of different companies by the judgment debtor towards repayment of the dues. At that stage the Special Court passed order dated 19.9.2003 where reference was made to the earlier order dated 24.11.1999. Show Cause Notice was issued pursuant to the order dated 19.9.2003 under Section 11-A of the said Act wherein it was stated that the noticee was to be tried for having disobeyed the order dated 24.11.1999. Although, several defences were taken on behalf of the noticee, the learned Special Judge held by his order dated 12.1.2005 that the conduct of the noticee showed that in the instant case attempts had repeatedly been made to create difficulties in the way of the Court and the Custodian, firstly, in the passing of the decree and then in the matter of its execution. The learned Special Judge accordingly felt that it would be appropriate to

impose deterrent punishment on the noticee and sentenced him to undergo simple imprisonment for a period of three months and to pay a fine of Rs.2,000/- as stated hereinbefore. A

8. It is in this background that on 20.1.2006 this Court passed the following order: B

"It is proposed by learned counsel appearing on behalf of the appellant that his client will pay an amount of Rs.1,26,25,000/- (Rupees one crore twenty six lakhs and twenty five thousands) (being the balance of the decretal amount of Rs.1,42,00,000 (Rupees one crore and forty two lakhs seventy five thousands) paid by the garnishee by three instalments in the course of 2006. The first instalment shall be paid on 3rd April, 2006, the second on 10th July and the third by 4th December, 2006. C

The learned Solicitor General appearing on behalf of the Custodian has submitted that as far as contempt proceedings are concerned, his client is willing to accept the offer of the appellant but submits that this should not in any way affect the ultimate liability of the appellant to pay the decretal amount. D E

In this view of the matter we adjourn the passing of the order on the basis of the consent as arrived at between the parties, till 3rd April, 2006 when the petitioner will bring the first instalment of the amount to Court. In the event the payment of all the instalments is made as aforesaid, this appeal will stand allowed and the order of the High Court will stand set aside and the garnishee notice will be discharged. F G

In default of payment of any one instalment or any portion thereof, the appeal will stand dismissed and the impugned order of the High Court will become operative.

Adjourned to 3rd April, 2006." H

A 9. Pursuant to the aforesaid order on 3.4.2006 the
appellant brought two cheques towards payment of the first
instalment. The matter was directed to appear after 2 weeks to
ensure that the cheques were duly encashed. Subsequently, on
B 14.7.2006 it was recorded that the second cheque which was
payable on 10.7.2006 in terms of the order dated 20.1.2006
had also been paid and that the third instalment was payable
by 4.12.2006. The matter was directed to be listed in the last
week of December 2006, and, in the meantime, the hearing of
C the garnishee notices before the Special Court, Mumbai, was
stayed.

10. The matter thereafter appeared on 22.1.2007 when it
was adjourned for a period of 4 weeks and then again on 23.2.07
it was adjourned for a further period of 4 weeks for filing a
D rejoinder affidavit. A third adjournment of 4 weeks was granted
on 30.3.2007 and on 27.4:07 the matter was directed to be
listed for final disposal in September, 2007.

E 11. The matter thereafter appeared for hearing on
14.11.2007 and on the said date after hearing the parties the
matter was adjourned further to enable the parties to file the
facts relating to the execution proceedings and the actual amount
alleged to be due on account of an error in the decretal amount
which went unnoticed when the decree was passed.

F 12. Thereafter, an application was filed by the Custodian
for modification of the order passed in this appeal on 20th
January, 2006. In the said application, it was clarified that two
separate decrees were passed by the Special Court against
G the respondent No.1, one was for recovery of a sum of
Rs.1,42,65,000/- with interest at the rate of 24% per annum from
the date of receipt of amount till payment and the other for a
sum of Rs.32,14,500/- with interest at the rate of 15% per annum
from the date of receipt of the amount till payment. Despite the
H fact that two decrees had been passed for a total sum of

Rs.1,74,79,500/- in the decree the sum of Rs.1,42,65,000/- was mentioned together with interest. It has been stated in the application that the total principal amount should be mentioned as Rs.1,74,79,500/- together with interest payable thereon instead of Rs.1,42,65,000/- as indicated. By the said application, it was, therefore, prayed that the order dated 20th January, 2006, was required to be modified by correcting the principal amount mentioned in the decree to be Rs.1,74,79,500/- minus Rs.15,75,000/-, which had already been recovered, together with interest as decreed by the Special Court in its order dated 8th June, 1995.

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13. The said application was also heard at the time of hearing of the appeal.

14. The fact that two separate decrees were passed for the sum of Rs.1,42,65,000/- and Rs.32,14,500/- is not disputed, though, an attempt was made to establish that the two were separate and would have to be dealt with separately. On behalf of the appellant it was submitted that the order dated 20th January, 2006, had been fully implemented as the entire decretal amount of Rs.1,42,65,000/- had been paid in three instalments, and it is only thereafter that an attempt was made by the Custodian to claim the further sum of Rs.32,14,500/- together with interest thereon.

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15. We do not see any force in the said submissions since both the decretal amounts against the appellant have been mentioned in the order dated 19th September, 2003, passed in Misc. Application No.470 of 1999 filed by the Custodian. We accordingly allow the said application. The decretal amount shall be corrected to read as Rs.1,59,04,500/- together with interest as decreed by the Special Court upon credit having been given for Rs.15,75,000/- which has already been recovered by the Custodian.

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16. After taking into account the decretal amount as

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- A amended, together with interest as directed by the Special Judge in his order dated 8th June, 1995 in M.P. 43/1995, the appellant is directed to pay the balance decretal amount within 30th June, 2008, in three equal instalments commencing from the month of April, 2008. The first of such instalments shall be paid by 15th April, 2008, and the next two instalments by the 15th day of May, 2008 and 30th June, 2008. The last instalment shall include any broken amount left over after payment of the first two instalments. The hearing of the garnishee notices before the Special Court, Mumbai, shall remain stayed till the said date, and in case of default of such payment being made, this order will cease to be operative and the order appealed against will stand revived.

17. There will be no order as to costs.

- D 18. The appeal is disposed of in the above terms.

N.J.

Appeal disposed of.