

W.P.Nos.8084 and 18371 of 2017

THE HON'BLE CHIEF JUSTICE
and
M.SUNDAR, J.

(Order of the court was made by Hon'ble Chief Justice)

The 4th respondent in W.P.No.8084 of 2017 (hereinafter referred to as 'the Company') was incorporated in 2006 as Disc Agro Tech Ltd and later renamed as Disc Assets Lead (India) Ltd.

2 The company floated land purchase schemes, which schemes could broadly be classified as Cash down land purchase scheme and scheme of land purchase by instalments.

3 As per the aforesaid schemes, investors have entered into agreements with the company by booking land of different sizes and by starting to make payments in instalments.

4 As per the schemes, the land is to be registered in the name of investors once payment is completed. The non willing customers have the option to pre-close the scheme and get back the amount paid with interest after deduction of pre-closure charges.

settlement of the dues of the investors. Pursuant to an order of this court, the Hon'ble Mr.Justice G.M.Akbar Ali, a retired Judge of this Court was appointed Commissioner for settlement of the dues of the investors.

6 The company submitted a scheme of settlement to the Hon'ble Mr.Justice G.M.Akbar Ali (Retired), the Commissioner appointed by this Court.

7 From the said scheme of settlement, it appears that the Company has collected Rs.1137,30,45,473.00 from about 12,27,274 investors.

8 The company claims to have settled the dues of about 3,21,509 investors amounting to Rs.511,26,79,619.00. As per the settlement scheme, there are 9,50,765 investors whose dues are yet to be settled. The amount payable is to the tune of Rs.761,97,94,145.00.

9 Securities and Exchange Board of India (SEBI) had initiated action against the company for violation of Sections 11-AA and 12(1-B) of the Securities and Exchange Board of India Act, 1992 (SEBI Act), as the company had not obtained a certificate of registration as required under Section 12(1-B) of the SEBI Act.

10 By an order dated 20th August 2015, SEBI directed the company

and its Directors to jointly and severally refund the amounts collected under the schemes and to wind up all the schemes. The company and its Directors were also prohibited from transferring and / or alienating their assets.

11 Later by order dated 30th March 2016, SEBI further directed the company and its Directors to refund the amounts collected under the investment schemes within a period of three months. By the same order, SEBI prohibited the company and its Directors from selling or disposing of their properties except for the purpose of making refund to the investors.

12 The company filed an appeal before the Securities Appellate Tribunal. The Appellate Tribunal disposed of the appeal by granting further three months time to the company and its Directors to implement the order of SEBI.

13 In the meanwhile, on 2nd June, 2016, the Economic Offences Wing of Tamil Nadu Police registered an FIR which has given rise to criminal proceedings being Crime No.6 of 2016 under Sections 406, 420 and 120B of the Indian Penal Code read with Section 5 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 (hereinafter referred to as 'TNPID Act').

14 In the scheme of settlement filed by the company before Justice

G.M.Akbar Ali, it is stated that the company has about 3520 acres of vacant land and other properties which are worth around Rs.1147 Crores.

15 In these proceedings, demands were made by investors for refund of their investments and / or settlement by allotment of land. The company sought orders permitting it to settle the dues of investors by sale of its properties. One of the parties contended that the special provisions of the TNPID Act cannot be bypassed once an FIR has been registered for offences under the TNPID Act.

16 Having regard to the complexities of the issues involved in these writ petitions, this Bench passed an order dated 2nd August 2017, appointing Mr.B.Kumar, Mr.R.Vijay Narayan and Mr.M.S.Krishnan, Senior Advocates to assist this Court as Amicus Curiae to work out the mode by which the depositors / investors of the company could be paid their dues expeditiously in the light of TNPID Act and other applicable laws, without interfering with legal / criminal proceedings against the company.

17 Mr.R.Vijay Narayan has since been appointed Advocate General for Tamil Nadu. Amicus Curiae Mr.B.Kumar and Mr.M.S.Krishnan have painstakingly studied the matter and made their recommendations which we deem appropriate to accept. We express our appreciation for the assistance rendered to this Court by Mr.B.Kumar and Mr.M.S.Krishnan, Senior Advocates.

18 Under the TNPID Act, there are two procedures. There are provisions which deal with the property of financial establishments like the Company after an FIR is registered. There are also provisions for trial and punishment of financial establishments and persons responsible for running them under Section 5 of TNPID Act. Once the charge sheet is filed under the TNPID Act, the Special Court alone will have jurisdiction to deal with the financial establishment and its properties. The charge sheet or the final report has not yet been filed in this case.

19 Under Section 3 of the TNPID Act, the Government on being satisfied that the financial establishment is not likely to return the deposits or make payment of interests, may pass an order attaching the money or other properties procured in the name of the establishment or in the name of any other person from the deposits collected by the financial establishment. The Government can also transfer the property so attached to the control of the Competent Authority constituted under Section 4 of TNPID Act. The Competent Authority to exercise control over the properties attached by the Government under Section 4 of TNPID Act is the Additional Commissioner of Land Administration, Chennai.

20 As pointed out by the learned Amicus Curiae, an offence punishable under Section 5 of TNPID Act may be compounded by the

competent authority before institution of the prosecution. It is only after the institution of the case by filing charge sheet or final report, that permission of the Special Court is required for the purpose of compounding the offence. In other words, if the amounts that are payable by the financial establishment are returned, the offence committed under Section 5 of TNPID Act can be compounded and there can be a quietus to the entire issue.

21 Section 7(8) of TNPID Act also empowers the Special Court to issue directions for equitable distribution of monies attached or realized out of the sale of the properties among the investors / depositors. Such order is to be passed on an application made by the Competent Authority.

22 Having regard to the number of depositors and the huge stakes involved, it would be a mammoth task to identify the investors, identify the lands that have been purchased, value the land and realize the actual value by way of sale of properties. Learned Amicus Curiae have suggested that it would be appropriate if a committee is constituted consisting inter-alia of Competent Authority under TNPID Act, representatives from the Revenue Department, representatives from the legal fraternity, representatives from the Economic Offences Wing, representatives of SEBI and a team of Chartered Accountants to carry out the task of identifying the investors, identifying the lands that have been purchased, getting the land valued and raising funds for settlement of dues of investors / depositors by actual sale of landed properties.

23 This Court deems it appropriate to constitute a Committee headed by Hon'ble Mr.Justice N.Paul Vasanthakumar, Retired Chief Justice of the Jammu and Kashmir High Court. The Committee shall consist of two senior members of the legal fraternity, namely, Mr.B.Kumar, Mr.M.S.Krishnan, who have been assisting this Court as Amicus Curiae and also Mr.C.Manishankar, Senior Advocate and Additional Advocate General. In addition, the Committee shall include the Competent Authority under TNPID Act, namely, Additional Commissioner of Land Administration or a person nominated by the Additional Commissioner of Land Administration not below the rank of the Joint Secretary to the State Government, two nominees of the Revenue Secretary to the State of Tamil Nadu of the rank of Revenue Divisional Officer, a nominee of the Additional Director General of Police, Economic Offences Wing, not below the rank of Superintendent of Police and a nominee of the Regional Director, SEBI not below the rank of Deputy General Manager.

24 It will be open to the Committee to engage Chartered Accountants of repute, valuers, lawyers and to employ such other professional services, as the Committee might deem it necessary. The Committee shall insert an advertisement putting all concerned on notice of the constitution of the Committee under orders of this Court. The advertisement shall be published in at least two English newspapers and two Tamil newspapers

having wide circulation in the State of Tamil Nadu.

25 All depositors / investors of the Company should apply to the Committee with details of their investments and documents in support of their claims within the time stipulated in the advertisement. The claims shall be processed by the Committee and the list of depositors and their respective claims shall be finalised. Bogus claims can obviously be rejected.

26 The Committee shall take necessary steps to identify the properties of the Company, its sister concerns, Directors and transferees, to ascertain the location, marketability and title thereto and thereafter proceed to sell the properties. The committee may obtain the assistance of a team of experts of the Revenue Department and a competent legal team to perform the acts mentioned above. The committee may also constitute an Accounting team to look into the bank accounts and other financial documents of the company, its Directors, its sister concerns, etc. and to ascertain whether there has been secretion of funds of the Company.

27 The amounts realized from out of the sale of the properties shall be deposited in a special account opened for this purpose, which may jointly be operated by any two members of the committee nominated by the Chairperson. The Company and each of its Directors shall make an initial deposit of Rs.10,00,000/- (Rupees ten lakhs only) each for the expenses

required for implementation of this order. The Company, its Directors, its sister concerns shall also provide the Committee a befitting office space and infrastructure in Chennai to carry out this order. The office space shall be provided by the Company either at its office in Masilamani Street, T.Nagar, Chennai or at Old Door No.59/1, New No.119, Canal Bank Road, CIT Nagar, Chennai-600 035.

28 In case the amounts realized are not sufficient to settle the claims of all depositors / investors in full, the depositors / investors shall be paid on pro rata basis in proportion with the amounts deposited by them in the Company as substantiated by cogent documents. The FIR shall, however, be kept alive as the prosecution may have to continue if the amounts realized are not sufficient to pay the amounts due to all depositors / investors.

29 In view of the constitution of the Committee, the Commissioner earlier appointed by this Court, Justice G.M.Akbar Ali, is discharged.

30 The Committee shall give the Company and the investors a hearing. The Committee may co-opt one or two representatives of the depositors as members of the Committee, if the committee deems it appropriate to do so. Needless to mention that the Company, its Directors, both past and present as also its sister concerns and persons in the management of its sister concerns shall render full cooperation and assistance

to the Committee and furnish the Committee with all relevant documents and other materials as may be required for proper implementation of this order.

31 The Committee shall function as an Administrator of the Company.

32 The Company, its Directors, its sister concerns are restrained from transferring or alienating any of their properties and assets, except through the Committee in the manner indicated above.

33 The Committee shall furnish periodical reports to this Court.

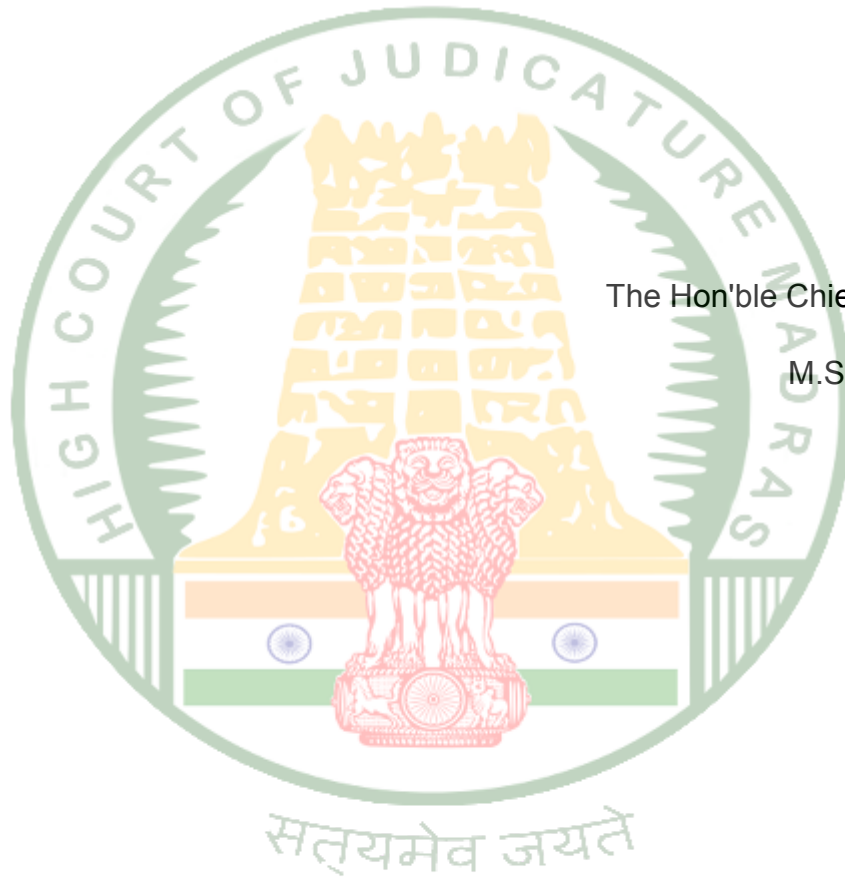
34 Registry is directed to implead past Directors of the Company as respondents.

35 The Company shall pay learned Amicus Curiae, Mr.B.Kumar and Mr.M.S.Krishnan, Rs.1,00,000/- (Rupees one lakh) each within one week from date.

36 Let the writ petitions be listed for further orders on 4th December 2017.

11.10.2017

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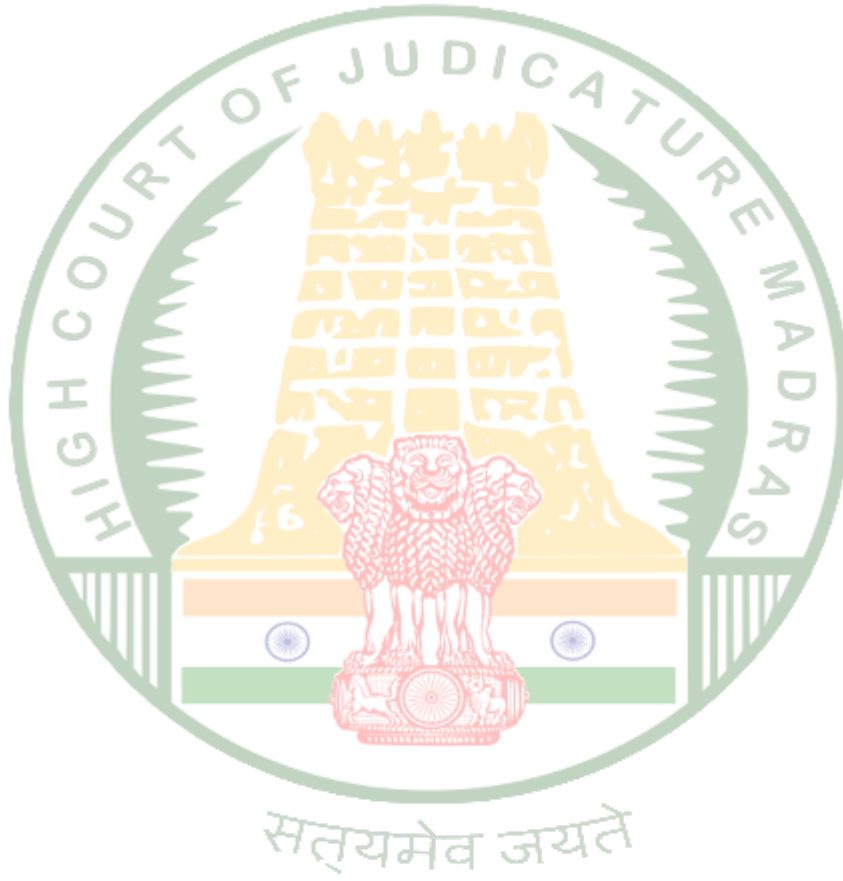


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