

W.M.P.Nos.601 and 1920 of 2018 and 37897 of 2017
in W.P.No.8084 of 2017

THE HON'BLE CHIEF JUSTICE
and
ABDUL QUDDHOSE, J.

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

The Company (4th respondent in W.P.No.8084 of 2017) 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 could broadly be classified as Cash down land purchase scheme and scheme of land purchase by instalments.

3.Pursuant to the aforesaid Schemes, numerous investors entered into agreements with the Company booking land of different sizes. It appears that many of them started to make payments in instalments.

4.As noted in the order dated 11.10.2017, as per the Schemes, the land was to be registered in the name of investors only upon completion of payment. The non willing customers had the option to

pre-close the Scheme and get back the amount paid with interest after deduction of pre-closure charges.

5.It appears that the writ petition, being W.P.No.8084 of 2017, has been filed by way of public interest litigation by and/or on behalf of the investors for settlement of their dues under the schemes. On the writ petition being moved, an order dated 04.04.2017 was passed by the then Acting Chief Justice, H.G.Ramesh and RMT.Teeka Raman, J., *inter alia* opining that the interest of the depositors had to be protected and requesting Mr.Justice G.M.Akbar Ali, a retired Judge of this Court, to take over charge of the Company, as Court Commissioner.

6.The Division Bench of the then Acting Chief Justice Huluvadi G.Ramesh and RMT.Teeka Raman,J., observed that either the amount invested by the investors had to be returned with interest or they should be allotted sites as per the Scheme floated by the 4th respondent Company. The Court Commissioner was requested to take necessary action after hearing the grievances of the depositors as also the Company.

7.Pursuant to the aforesaid order, Mr.Justice G.M.Akbar Ali, retired Judge of this Court, took over the Company as it's Court Commissioner and also held numerous meetings, in which the 9th respondent, N.M.Umashankarr, erstwhile Director, now represented by Mr.AR.L.Sundaresan, Senior Counsel, appeared. We are informed that the 9th respondent participated before Mr.Justice Akbar Ali, on 24.04.2017. There was no appeal filed by any of the respondents to the order dated 04.04.2017 passed by the Division Bench of the then Acting Chief Justice Huluvadi G.Ramesh and RMT.Teeka Raman, J.

8.Upon change of roster, the writ petition started to appear in the Bench of Chief Justice and M.Sundar,J. The Division Bench appointed Mr.Vijay Narayan, Mr.B.Kumar and Mr.M.S.Krishnan, learned 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 Section 5 of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997, hereinafter referred to as "TNPID Act".

9.Be it noted that on 02.06.2016, the Economic Offences Wing of Tamil Nadu Police had registered an FIR which had 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 TNPID Act. Securities and Exchange Board of India (SEBI) had also 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, as the company had not obtained a certificate of registration as required under Section 12(1-B) of the said Act.

10. By an order dated 20.08.2015, 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. Later, by an order dated 30.03.2016, SEBI 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 refunding the investors. An appeal filed by the Company before the Securities Appellate Tribunal was disposed of only by granting extension of time by three months to the Company and its Directors to implement the order of SEBI.

11.It appears that the Company collected huge sums of money, approximately of Rs.1137,30,45,473/- from about 12,27,274 investors. The Company claimed that it had settled the dues of 3,21,509 investors amounting to Rs.500 crores odd. It was claimed that there were 9,50,765 investors as per the Scheme, whose dues were yet to be settled. The amount payable was to the tune of Rs.761 crores.

12.In the writ petition initiated in this Court, demands were made by investors for refund of their investments or alternatively, settlement of land allotted to them. 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 could not be bypassed once an FIR had been registered for offences under the TNPID Act. However, after considering the aforesaid submission, as also the recommendations of the Amicus Curiae, this Court constituted a Committee headed by Mr.Justice N.Paul Vasanthakumar, retired Chief Justice of the Jammu and Kashmir High Court, two senior members of the legal fraternity, namely, Mr.B.Kumar and Mr.M.S.Krishnan, who had been assisting this

Court as Amicus Curiae, Mr.C.Manishankar, Senior Advocate and Additional Advocate General, the Competent Authority under TNPID Act, namely, the 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.

13.This Court gave liberty 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 was directed to insert an advertisement putting all concerned on notice of the constitution of the Committee under the orders of this Court. This Court further directed that all depositors and/or 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 were to be

processed by the Committee and the list of depositors and their respective claims finalised. Bogus claims were to be rejected.

14.A number of directions were given to the Committee. The Committee was directed to take necessary steps to identify the properties of the Company, it's sister concerns, Directors and transferees, to ascertain the location, marketability and title thereto and thereafter, proceed to sell the properties. This Court gave liberty to the committee to obtain the assistance of a team of experts of the Revenue Department and a competent legal team to perform its duties in terms of the aforesaid order. The Committee was also given liberty to constitute an Accounting Team to look into the bank accounts and other financial documents of the Company, it's Directors, it's sister concerns, etc. and to ascertain whether there had been secretion of funds of the Company.

15.This Court directed that the amounts realized from the sale of the properties would be deposited in a special account opened for the purpose, which might jointly be operated by any two members of the Committee nominated by the Chairperson.

16.By the order dated 11.10.2017, the Company and each of its Directors were directed to make an initial deposit of Rs.10,00,000/- (Rupees ten lakhs only) each for the expenses required for implementation of the aforesaid order. The Company, it's Directors and it's sister concerns were directed to provide the Committee a suitable office space and infrastructure in Chennai to carry out this order. The office space was to be provided in Masilamani Street, T.Nagar, Chennai or at Old Door No.59/1, New No.119, Canal Bank Road, CIT Nagar, Chennai-600 035.

17.This Court directed that in case the amounts realized were not sufficient to settle the claims of all the depositors and/or investors in full, the depositors and/or investors would be paid on pro rata basis in proportion with the amounts deposited by them in the Company as substantiated by cogent documents. The FIR was, however, to be kept alive, as the prosecution might have to continue, if the amounts realized were not sufficient to pay the amounts due to all depositors and/or investors. The Commissioner earlier appointed, Justice G.M.Akbar Ali, was discharged. It may be recorded that Justice G.M.Akbar Ali (Retd.) had himself made a discreet request for his discharge.

18.It is reiterated that the order of the Bench presided by H.G.Ramesh, the then ACJ, as also the order dated 11.10.2017 passed by this Court were accepted and acted upon. The Company has provided the Committee with sufficient space at 119, Canal Bank Road, CIT Nagar, Chennai. Two of the Directors have deposited Rs.10,00,000/- towards initial expenses. However, the erstwhile Managing Director, the 6th respondent in W.P.No.8084 of 2017, has not made any deposit as directed by this Court.

19.Mr.AR.L.Sundaresan, learned Senior Counsel appearing on behalf of Uma Shankarr, the 9th respondent in the writ petition and petitioner in W.M.P.No.601 of 2018, Ms.Lesi Saravanan, learned counsel appearing on behalf of Janardhanan, the 6th respondent in the writ petition and Mrs.Hema Sampath, learned Senior Counsel appearing on behalf of S.Jeevalatha, the 10th respondent in the writ petition and petitioner in W.M.P.No.1920 of 2018, have submitted that there being an enactment in place, that is, TNPID Act, this Court ought not to have appointed a Committee. The provisions of the TNPID Act should take its own course.

20.The orders of this Court referred to above have been passed taking into account the submission that there was an enactment in place, that is, TNPID Act. No appeal has been preferred from either of the aforesaid orders, which have been accepted and even implemented in part.

21.It appears that in vacation, the 9th respondent/Uma Shankarr, filed an application being W.M.P.No.37897 of 2017 for stay of a letter dated 21.12.2017 issued by the Committee calling for the original documents of the immovable properties specified in the said letter. The moving of such an application in vacation was, to say the least, most inappropriate considering that this Court had, by its order dated 11.10.2017, clearly directed that the Committee would take necessary steps to identify the properties of the Company, it's sister concerns, Directors and Transferees to ascertain the location, the marketability and title thereto and further, proceed to sell the properties. Moreover, on 20.12.2017, there was a specific direction of this Court directing the Company and/or it's Directors, to submit all documents of title to the properties, including originals thereof to the Committee, if the same had not already been done. The filing of the application in vacation

was, *prima facie*, contumacious and a deliberate attempt at forum-hunting to try and get an order from a different Bench. If any of the parties were aggrieved by any directions passed by this Court, the remedy lay by way of appeal/Special Leave petition to the Supreme Court.

22.Be that as it may, the Vacation Bench only passed a limited interim order till 09.01.2018 staying the letter. The stay was never extended. The limited stay, hereby, stands vacated. The respondents are bound to comply with the directions of the Committee, which have, in effect, been issued pursuant to the orders of this Court. This Court finds no ground at all either to modify its order appointing the Committee or to stay the directions given by the Committee.

23.To avoid prolixity, the submissions made by the three different counsel are not recorded separately. The arguments in a nutshell are (i) the existence of TNPID Act, which provides its own procedure; (ii) charge sheet should be issued under TNPID Act; and (iii) as per the submission made by Mrs.Hema Sampath, learned Senior Counsel for the 10th respondent/Jeevalatha, in view of the provisions of TNPID Act, this Court has no jurisdiction. Significantly,

Mr.AR.L.Sundaresan, learned Senior Counsel, submitted in all fairness that the bar under Section 14 of the TNPID Act would not apply to the constitutional writ jurisdiction of this Court under Article 226 of the Constitution of India. It is very interesting that the Company or its erstwhile Directors should have submitted that charge sheet be issued under the TNPID Act, but oppose the settlement of dues of depositors, who had admittedly paid money as noted hereinabove.

24.The orders passed by this Court and in particular, the order dated 11.10.2017 contains enough safeguards to ensure that only the claims of bona fide investors and/or depositors are entertained and that bogus claims, if any, are weeded out. The Company and/or its erstwhile Directors have the liberty to make submissions before the Committee and assist the Committee to settle the dues of bona fide investors and/or depositors by sale of the properties of the Company at the best available price. The properties may be sold in such a manner as might be deemed appropriate. It may be sold in lots or in one lot. However, payments would necessarily have to be made on pro-rata basis as earlier directed by this Court.

25.The suggestion made on behalf of the erstwhile Directors that properties should be sold one-by-one in small lots and the depositors paid one-by-one could result in a situation where some depositors would be paid nothing. For the ends of justice, keeping in view the interest of all the depositors and/or investors, we direct that the properties should be sold and in case, the proceeds thereof are not sufficient to meet the claims of all the depositors, the depositors should be paid on pro rata basis. Our orders, thus, do not call for any modification. Significantly, the authorities under TNPID Act have not questioned the order.

26.An objection has also been taken by Mrs.Hema Sampath hearing the writ petition, on the ground that most of the investors and/or depositors are from Kanyakumari and other southern districts. The fact that such a submission should be made, not by any depositors from Kanyakumari, but from those persons who have accepted deposits, to say the least, smacks of oblique intent to delay and/or defeat implementation of the orders passed by this Court.

27.With the above observations, the applications being W.M.P.Nos.601 and 1920 of 2018 seeking stay of operation and/or

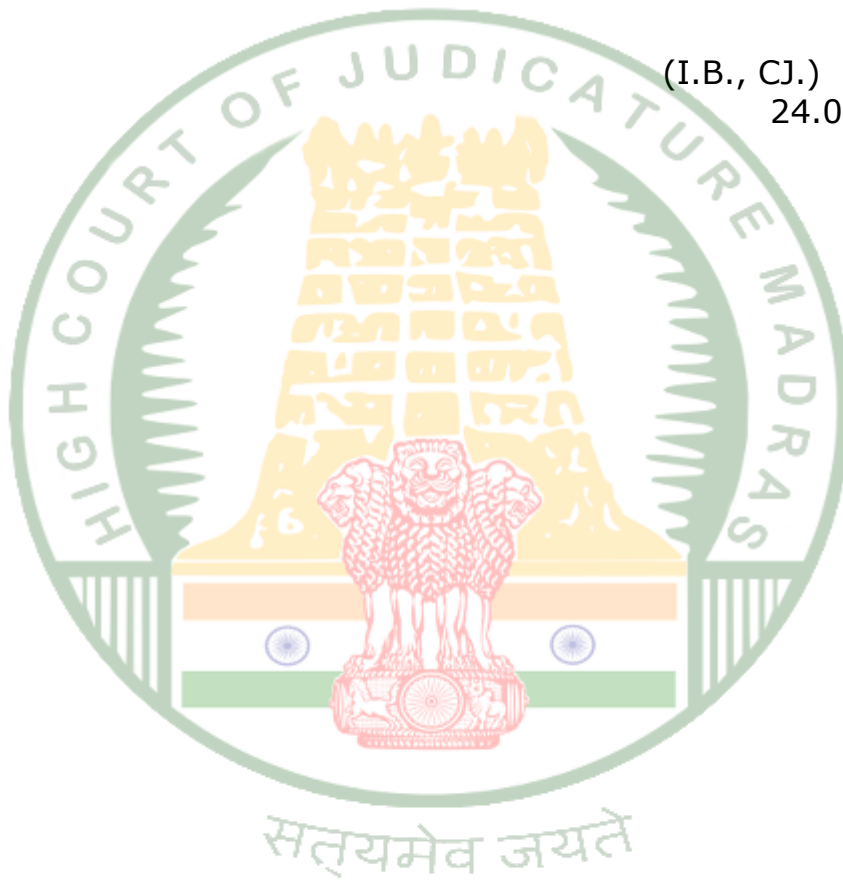
modification of the order of this Court dated 11.10.2017, as also the application being W.M.P.No.37897 of 2017 moved in the Vacation against the letter dated 21.12.2017 issued by the Committee, shall stand dismissed. The respondents shall immediately provide the Committee with the documents called for by the aforesaid letter. The 6th respondent in the writ petition, the erstwhile Managing Director, Mr.V.Janardhanan, shall also pay Rs.10,00,000/- to the Committee towards initial expenses, as earlier directed.

28. There can be no dispute with the proposition that special law will prevail over the general provisions in case of any conflict. We do not find any conflict between our order and the TNPID Act. As observed above, our order has been passed with a view to expedite settlement of the dues of investors and/or depositors who have invested huge amounts of money. The FIR has been kept alive. The TNPID authorities have not been restrained even from proceeding under the TNPID Act. However, in view of the submissions made by Ms.Lesi Saravanan and Mrs.Hema Sampath, who are appearing on behalf of the erstwhile Directors, that proceedings under TNPID Act should go on, charge sheet be filed, we expressly clarify that the TNPID authorities may arrest the Directors, if they deem it appropriate

to do so and the criminal proceedings may take its own course against the Company and its erstwhile Directors, notwithstanding the orders of this Court.

sra

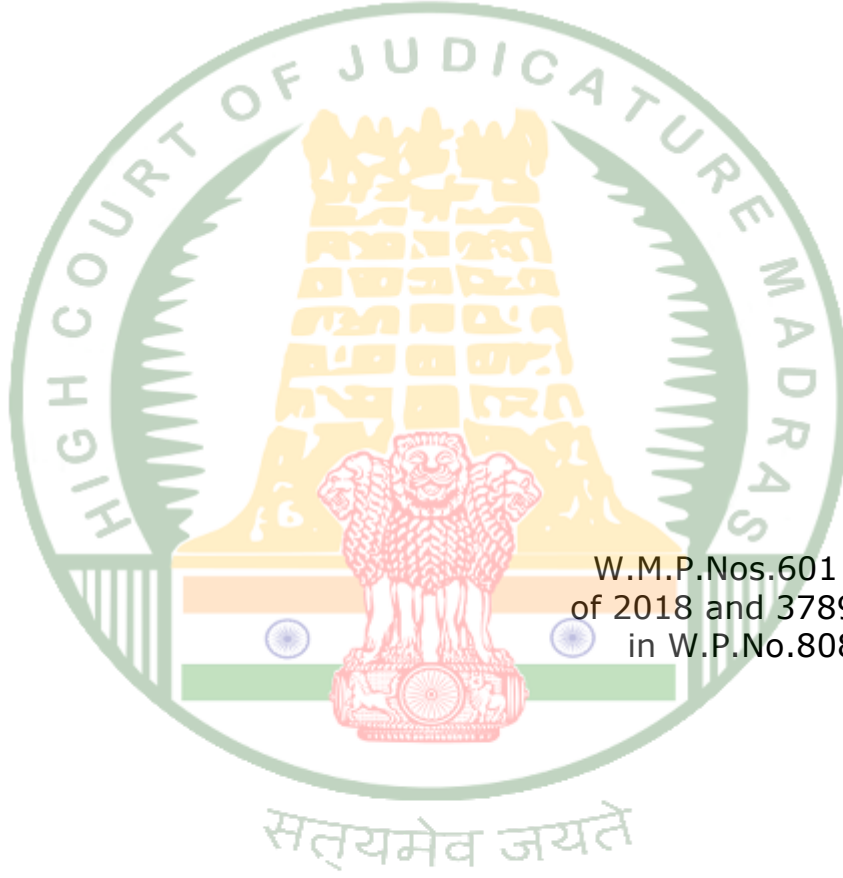
(I.B., C.J.) (A.Q., J.)
24.01.2018



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The Hon'ble Chief Justice
and
Abdul Quddhose, J.

(sra)



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