

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.1181 of 2018  
along with  
CHAMBER SUMMONS NOS.155 AND 156 OF 2018,  
CHAMBER SUMMONS STAMP NO.193 OF 2018,  
and  
NOTICE OF MOTION NOS.281 AND 397 OF 2018**

63 Moons Technologies Limited  
Formerly Known as Financial Technologies  
(India) Ltd.,  
Rep. by its Authorized Signatory,  
Having its corporate office at FT Tower,  
CTS Nos.256 and 257, Suren Road,  
Chakala, Andheri (E), Mumbai 400 093  
versus

.....Petitioner

State of Maharashtra through  
Deputy Secretary to Government,  
Home Department, 2<sup>nd</sup> Floor, Mantralaya,  
Mumbai 400 032.

.....Respondent

Mr. Mukul Rohatgi, senior advocate along with Mr.Abad Ponda, Dr.Sujay Kantawala, Mr.Rahul Sarada, Mr. Arvind Lakhawat, Mr.Ayush Agrawal, Ms.Manik Joshi and Mr.Siddhant Jain i/b.Crawford Bayley and Co., advocates for the petitioner.

Mr. Rafiq Dada, senior advocate along with Mr.Avinash Avhad, Spl.PP and Ms.G. R. Shastri, AGP and Mr. Hiten S. Venegaonkar for the Respondent-State.

Mr. Gaurav Joshi, senior advocate along with Mr.Piyush Raheja, Ms.Nupur Desai and Ginni Ahuja i/b. M/s.Markhand Gandhi, advocates for the applicants in chamber summons No.156 of 2018.

Mr. Sandeep Karnik, advocate for the applicants in chamber summons stamp No.193 of 2018.

Mr. Prabhakar Loke, ACP, Mr.Ramchandra Lothikar, Sr. P.I, Mr. Surya Krishnamurthy, competent authority (EOW) are present.

**CORAM** : **RANJIT MORE &  
SMT.BHARATI H. DANGRE, JJ.**  
**DATE OF RESERVING** : **17<sup>th</sup> OCTOBER, 2018.**  
**DATE OF PRONOUNCEMENT** : **24<sup>th</sup> OCTOBER, 2018.**

**P. C. :**

1. The present petition is filed by the petitioner assailing the validity of sections 4 and 5 of the Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999 (for short "the MPID Act") as well as several notifications issued by the State Government in exercise of powers under section 4 of the MPID Act thereby levying attachment of the petitioner's assets as set out in the schedule of the notification.

The petitioner company is a listed company engaged in the business of developing and selling technology products to facilitate trading on Exchange such as stock exchanges and commodities exchanges and it is the contention of the petitioner company that it has more than 63,000 shareholders and more than 800 employees. It also claims to be a champion in financial technologies market and a software belonging to the said company (ODIN) provides a platform for online trading.

2. An offence was registered on a complaint of one Pankaj Ramnaresh Saraf against the National Spot Exchange Limited (for short NSEL"), which is a company registered under the Companies Act, 1956, which provides an electronic platform for spot trading in commodities and it operates from 16 States across the Country. It had acted as a Non-

Banking Financial Company and assured fixed returns on the investments.

It is alleged that the said company is promoted by M/s. Financial Technologies (India) Limited (for short "the FTIL") which holds 99.99% of the total share capital of the company. The FTIL is subsequently renamed as 63 Moons Technologies Limited and is the petitioner before us. It is further alleged in the said FIR that during October 2008 to July, 2013, the NSEL allowed 25 members named as accused to trade on the Exchange as sellers and it is alleged that in authenticating this companies due diligence was not followed resulting into trading of fictitious stocks on the Exchange by raising fake documents and squaring of the contracts initially on the date of maturity but at the subsequent stage when the investments in the company grew substantially, dishonouring of the commitments resulting into wrongful loss of approximately Rs. 5600 Crores to the investors numbering more than 13000. The offence was registered at MRA Marg Police Station vide C.R.No.216 of 2013 under sections 120-B, 409, 465, 467, 468, 471, 474, 477-A of the Indian Penal Code, 1860 on 30<sup>th</sup> September, 2013. On transfer of the investigation to the EOW it was renumbered as EOW C.R.No.89 of 2013.

3. On investigation, it is revealed that the Founder Chairman and

Group CEO of FTIL is one Jignesh Shah who was the In-charge of the overall management and affairs of NSEL. It is further revealed that key officials of NSEL consisting of its Chairman, Vice-Chairman and other Directors were central to the operation of NSEL and 25 defaulters were named as accused in this case. As far as the present petitioner is concerned, it is alleged that the NSEL which was operating as a spot exchange was a subsidiary of FTIL with 99.99% stakes and Shri Jignesh Shah who was the promoter of Financial Technologies was the controlling mind and NSEL is nothing but the forefront of FTIL. That is how the proceedings under the MPID Act came to be initiated against the present petitioner.

4. The State Government on being satisfied that the financial establishment and its Chairman/Directors are not likely to return the deposit, issued several notifications in exercise of powers conferred by sub-section (1) of section 4 and section 5 of the MPID Act. By an order dated 18<sup>th</sup> July, 2016, the EOW passed an order restraining the petitioner company from disposing, alienating or creating any 3<sup>rd</sup> party right/title and interest on any of its assets without permission of the designated Court. On 21<sup>st</sup> September, 2016, the notification was issued by the State Government attaching movable as well as immovable property of the petitioner encompassing the investments of the company made in

mutual funds as well as bonds and also all new investments made out of the aforesaid investments. This notification, however, excluded the periodically accrued benefits on these investments. The petitioner company complied with the directions issued by the EOW from time to time and furnished the details of its expenses and investments as well as the accrual on the investment in mutual funds, government securities etc.

5. A separate notification was issued by the State Government attaching the movable property (software known as “ODIN software”) and also attaching the receivables from this software. The Deputy Secretary of Home Department, Government of Maharashtra on 17<sup>th</sup> April, 2018, issued a corrigendum to the Government Notification dated 21<sup>st</sup> September, 2016, thereby deleting the exclusion of the “periodically accrued benefits on the investments”. The said notification came to be challenged by amending the writ petition. Pending the hearing of the petition, the Principal Secretary (Special), Home Department, Maharashtra issued a fresh notification on 19<sup>th</sup> September, 2018 ratifying the earlier notifications and, by way of amendment, the latest notification is also the subject matter of challenge in this petition. By the said notification, the State Government attached the properties including the properties which were already attached in the earlier notifications

along with receivables like interests and dividends and the linked bank accounts into which the receivables were deposited from the properties of the petitioner.

6. We have heard Mr. Mukul Rohatgi, learned senior counsel for the petitioner, on 21<sup>st</sup> September, 2018 and on 9<sup>th</sup> October, 2018. We also permitted the necessary amendment in the light of the issuance of the subsequent notification. The learned senior counsel has also tendered compilation of documents which includes the correspondence and various impugned notifications compiled at one place. Mr. Rohatgi would assail the action of the State Government in attaching the properties of the petitioner company under the provisions of the MPID Act and his specific submission is that the State Authorities have mis-directed itself and misconstrued the provisions of section 4 and though they have proceeded against the defaulter members and their Directors/Promoters as well as Directors and employees of NSEL and had attached the properties worth Rs.6,115 Crores, they have still proceeded against the petitioner and attached its properties more than Rs.2200 Crores. The submission of the learned senior counsel is that as against the alleged original default amount, which was further reduced by the amount being repaid after the allegation of default, against the outstanding default amount of Rs.4822.53 Crores, the authorities have

attached the properties worth Rs.8548 Crores which included the property of the petitioner. During the course of the argument, learned senior counsel submitted a detailed chart reflecting the sum of the alleged default amounts and the value of the properties attached till date. For appropriate consideration of the issue, we reproduce the contents of the said chart which is to the following effect:

A. Alleged Original Default Amount	Rs.5,380.53 Crores	Tab19-Para 13 of the Application dated 06.04.2018 by Competent Authority in MPID Court
B. Amount repaid after allegation of Default	Rs. 558 Crores	Para B(g) at Page 31 of WP 1181/2018
<b>C. Outstanding Default amount (A-B)</b>	<b>Rs.4,822.53 Crores</b>	<b>This is the amount to be secured by way of attachments as per Section 4(1) of MPID</b>

As against the alleged Default of Rs.4822.53 Crores, following attachments have been made-

Sr. No.	Date/period-when attached	Value of attached property notified u/s Section 4 of MPID (In Crores)	Attached from	Remarks
1	Upto 24.07.2016	<b>6,115</b>	(i)Defaulter Members and their Directors/ Promoters etc. (ii) Directors and employees of NSEL	Tab 5 Report on Review Meeting held under Secretary, DEA

Thus, post 24.07.2016, unless any property was acquired from out of deposits, there was no jurisdiction to attach any property of the Petitioner under later part of Section 4(1), based on any alleged satisfaction of insufficiency.

2	Upto 10.11.2017	<b>8,548</b>	(i)Defaulter Members and their Directors/Promoters etc. (ii) Directors and employees of NSEL <b>(iii) The Petitioner (on 21.09.2016 properties of worth more than Rs.2,200 Crores of the petitioner were attached)</b>	Tab 17 Remand Application preferred by the Deponent of the Affidavit -in-Reply dated 29.06.2018
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Shri Rohatgi would also submit that post 2017, the said

authorities continued with further attachments and have issued 6 notifications in the year 2018 attaching the petitioner's properties worth Rs.1561.76 Crores the following effect:

- (i) Properties worth **Rs.1200.30 Crores** are replenishment of the properties/bonds already attached vide Notification dated 21.09.2016.
- (ii) **Excess attachment of Rs.361.46 Crores comprising of the following :**
  - a. Amount of **Rs.170.29 Crores** lying in Bank was periodically accrued returns from the properties/bonds attached vide Notification dated 21.09.2016. These accrued returns were specifically excluded from attachment in Notification dated 21.09.2016. Vide impugned Corrigendum dated 17.04.2018, the said exclusion was deleted.
  - b. Amount of **Rs.51.80 Crores** lying in Bank was income earned by Petitioner from non-ODIN business such as Exchange Technology.
  - c. Investments worth **Rs.61.83 Crores** held by Petitioner in various companies.
  - d. Amount of **Rs.23.02 Crores** being revenue from ODIN. Further receivable on ODIN also stand attached in perpetuity.

The specific submission of Mr. Rohatgi is that the respondents have already attached sufficient properties as against the outstanding default amount of Rs.4,822.53 Crores and, therefore, further attachment of the petitioner's properties by the notifications issued in the year 2018 is highly deprecated. The submission of the learned senior counsel is that by taking into consideration the scheme of the section 4 of the MPID Act, it was incumbent on the part of the State Government to chase the defaulters and the financial establishment first and if the property attached from them is not sufficient, then only the promoters could have been roped into the scene. Shri Rohatgi would invite our attention to the statement made by the Honourable Minister on the floor of the

Lok Sabha on a specific query as to why the properties of the arrested brokers have not been attached and the reply given is that the money trail has not been found in their bank accounts and, therefore, their properties are not attached at present. The learned senior counsel would submit that the notification issued on 21<sup>st</sup> September, 2016, attached the movable and immovable assets of the petitioner which included all new investments made out of attached investments but excluded periodically accrued benefits on these investments. However, Mr. Rohatgi would submit that by taking an overturn, the said exclusion came to be deleted by issuing a simple corrigendum on 17<sup>th</sup> April, 2018, after a lapse of period of almost 18 months and that too, without following the procedure prescribed. He also submit that when an objection is raised that the corrigendum cannot stand the scrutiny of law, the State Government has come up with notification dated 19<sup>th</sup> September, 2018, thereby ratifying all the earlier notifications in an attempt to cure the legal lacuna. In short, the specific submission of the learned senior counsel is when they have attached the properties worth Rs.8,548 Crores as against the required outstanding default amount of Rs.4,822.53 Crores till November, 2017, the issuance of the fresh notifications and thereby further attaching the petitioner's further properties and the ODIN Software is highly arbitrary and hence, he prays that the said notifications are liable to be set-aside.

7. On hearing the learned counsel for the petitioner company, we called upon the learned senior counsel representing the State Authorities to submit details of the properties which have been attached, since they disputed the statement made by Mr. Rohatgi. The matter was, therefore, adjourned for placing an affidavit on record and on 9<sup>th</sup> October, 2018, an affidavit sworn by Assistant Commissioner of Police and Chief Investigating Officer, SIT/NSEI/EOW, Mumbai has been tendered.

We have perused the said affidavit and it is necessary to reproduce the relevant statement made in paragraph (2) of the said affidavit which is to the following effect :

"2. On 21<sup>st</sup> September 2018, this Hon'ble Court had directed the Respondent to provide a breakup of attached properties. In this regard, it is submitted as follows:

- a. Up till 31<sup>st</sup> March 2017, the Government of Maharashtra has issued 7 notifications under Section 4 of the MPID Act, dated 28<sup>th</sup> August 2014, 12<sup>th</sup> March 2015, 22<sup>nd</sup> June, 2015, 13<sup>th</sup> January, 2016, 17<sup>th</sup> March, 2016, 21<sup>st</sup> September, 2016, 31<sup>st</sup> March, 2017 and attached immovable and moveable assets of the promoter, directors, partner or managers or members of National Spot Exchange Limited.
- b. The approximate value of attached assets as on 10<sup>th</sup> November, 2017, as referred to in RA 10107/17 in MPID Spl. Case No.1/14 (Ex.F of the Petition) is Rs.8548/- Crores. This includes the assets of the Petitioner i.e. 63 Moons Technologies Limited (formerly M/s.Financial Technologies (India) Ltd.), the promoter of NSEL, totaling approximately Rs.2537 Crores . The breakup of attached properties is as follows :
  - (i) Total immovable properties attached - 821 (approximate value - Rs.4839 Crores)
  - (ii) Total moveable properties attached - 329 (approximate value - Rs.3709 Crores )
- c. Subsequently, verification of titles and other documents has revealed that the status of certain attached immovable properties is as follows:

- (i) Properties which were rented and need to be released from attachment – 60 (approximate value Rs.288.43 Crores )
  - (ii) Properties wrongly attached – 77 (approximate value Rs.119.92 Crores )
  - (iii) Properties mortgaged – 198 (approximate value Rs.679.60 Crores)
  - (iv) Properties released by MPID Court – 9 (approximate value Rs.50 Crores)
  - (v) Encumbered properties -4 (approximate value Rs.40 Crores).
  - (vi) Properties whose attachment is stayed by Punjab and Haryana High Court -193 properties (approximate value Rs.1439 Crores )
  - (vii) 67 properties have been attached both by the Government of Maharashtra and the Directorate of Enforcement (Double Attachments)
  - (viii) Properties over which IRP has staked claim under Insolvency and Bankruptcy code-59 properties in two companies.
  - (ix) The realized value from auction of attached properties is meagre. Out of 20 properties valued at reserve price of Rs.220.63 Crores which were put up for auction over the last two and half years, only 6 properties were successfully auctioned fetching a value of only Rs.1.73 Crores and the auction of remaining 14 properties valued at reserve price of Rs.218.90 Crores was not successful. Most properties have been auctioned multiple times with one property in New Delhi having been put up for auction at least 5 times and not being successfully auctioned.
- d. The total value of the properties mentioned at (i) to (vi) above comes to Rs.2616.95 Crores. If this amount is subtracted from the value of attached properties i.e. Rs.8548 Crores, the value comes down to Rs.5931 Crores . Of this Rs.5931 Crores, Rs.2537 Crores worth of properties/assets are those of the Petitioner i.e. 63 Moons Technologies Limited.
- e. If the value of the properties of the Petitioner are subtracted from Rs.5931 Crores, then the approximate value of the remaining properties comes down to only Rs.3394 Crores .
- f. It must be cautioned that the valuations stated hereinabove are approximate valuations based on the best estimates of the Economic Offences Wing. Before each property is sold, a valuation by HDFC Realty (the Agency appointed by the Government of Maharashtra for valuation and disposal of attached properties) is done. Additionally, even the approximate reserve value of properties put up for auction may not be actually realized.
- g. Therefore just because properties having approximate value of Rs.8548 Crores have been attached does not guarantee that the entire amount that needs to be repaid to depositors/investors will be recovered.
- h. Therefore, the properties of the Petitioner attached are essential to cover the estimated outstanding default amount of Rs.5600 Crores payable by NSEL.”

8. We have heard Shri Dada, learned senior counsel in response to the argument advanced by Mr. Rohatgi and his submission is that the value which would be realised from the attached properties would not match up the default value. Based on the affidavit, the submission of the learned senior counsel is that in light of the status of the immovable properties which have been attached, it is not be sufficient to meet the amount of default, as the outstanding alleged default amount is Rs.5,600 Crores and as against this, on exclusion of the properties of the petitioner, the worth of the properties attached would fetch approximate value of Rs.3,394 Crores. Shri Dada would emphasis on the nature of the allegations levelled in the FIR and the role played by the petitioner company which resulted into defrauding the depositors to a large extent.

9. We have also heard Mr. Joshi, learned counsel for the intervenors representing the depositors. In addition to adopting the submissions of Mr. Dada, he submitted that the properties attached would not be sufficient to meet the amount due to the depositors specifically in light of term "Deposit" as defined under section 2(c) of the MPID Act and thus, it is the specific submission that the amount deposited is liable to be returned with interest and, therefore, the outstanding alleged default would be much more than what has been

calculated as on date. His specific submission is that the depositors have been very systematically defrauded and it is necessary to protect the interest of the depositors by following procedure set out in the MPID Act, 2009.

10. On hearing the learned senior counsel appearing for the respective parties and on perusal of the writ petition, which poses a challenge to sections 4 and 5 of the MPID Act and also various notifications issued by the State Government in exercise of the power conferred under the said Act have been challenged, we are convinced that arguable points are raised in the petition. Since arguable points are raised, it necessitates a detailed hearing on all the points raised in the petition including the validity of the statute, we issue **Rule. Rule is made returnable on 11<sup>th</sup> FEBRUARY, 2019.** To be heard along with connected writ petition.

As far as the interim relief is concerned, we have heard the learned senior counsel appearing for the respective parties extensively. The petitioner company is charged with an act of criminal conspiracy to defraud the investors and misrepresenting and inducing them to trade on the platform of NSEL. It is also alleged that this was done by forging documents of bogus warehouse, falsifying the accounts and commodities and thereby committing breach of trust. The present petitioner

company, in the capacity as promoter of NSEL, is being proceeded under the provisions of the MPID Act.

Perusal of section 4 of the MPID Act would make it clear that when the State Government has reason to believe that any financial establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the services against which the deposit is received, it may issue an order attaching the money or the property acquired by such financial establishment either in its own name or in the name of any other persons out of the said deposits or when it transpires that such money or property is not available for attachment or is not sufficient for repayment of the deposit, then the property of the financial establishment or of the promoter, director, partner or manager of the financial establishment can be attached. The respondent State has effected the attachments for securing the interest of the depositors by issuing various notifications. In the year 2016, the State has attached the property worth Rs. 6115 Crores from the defaulter members of NSEL and their Directors/Promoters as well as the Directors and Employees of NSEL. In the second phase, the State Government has attached the properties of the petitioner in the capacity as promoter of NSEL and upto November-2017, property worth Rs.2200 Crores of the petitioner is attached. It is not disputed by the respondent that to recover the loss caused to investors, the EOW, has attached properties

worth Rs.8583.05 Crores of alleged defaulters. The Deputy Collector, Mumbai, has been appointed as the competent authority under the MPID Act for attachment and disposal of the attached properties. As can be seen from the reply submitted by the Minister of State, before the Lok Sabha, it is apparent that the details of the defaulters and brokers is available with the State Government and the Government has admitted that through the 5 gazette notifications in respect of attachment of properties and bank as well as through Demat accounts, the total properties attached is Rs.6064 Crores. A statement is further made that the assets worth Rs.836.98 Crores have been attached by the Directorate of Enforcement under the PMLA and there are plans to attach more properties identified as proceeds of crime. Three brokers have been arraigned as accused and have been arrested but the EOW has not attached their properties on the specious ground that the money trail has not been found in their bank accounts. We do not find this explanation of not proceeding against them to be a justified one, going by the language and the import of section 4. It is the specific submission of the petitioner company that money trail is not even found in their accounts and in spite of this, without availing the first option available of attaching the properties of the financial establishment including the brokers and traders, the properties of the petitioner came to be attached. In any contingency, since the properties of the petitioner

worth Rs.2200 Crores have already been attached in the year 2017, the petitioner is not presently contesting the said attachment. The grievance of the petitioner is about the excess attachment and specifically the one which is effected by the six notifications issued in the year 2018 which are impugned in the present petition.

11. It is to be noted that the petitioner company had moved a criminal application which came to be numbered as criminal application No.328 of 206 before this Court, in which, a relief was sought to permit them to incur day-to-day expenses for the purpose of conducting its activities/business and they sought modification of the notice dated 18<sup>th</sup> July, 2016, to that extent.

In response to the said application, the Investigating Officer from EOW, CID, Mumbai made categorical statements to the following effect :

*"8. That I respectfully submit that the EOW has secured the movable and immovable properties of the applicant above named for attachment u/s.4 of the MPID Act, however, intention behind securing the properties was never to stall the ordinary course of day-to-day business of the applicant company, to stop the payment of the salaries of its employees or the payment of its statutory dues. That during the course of hearing the applicant has submitted a chart giving the amount required by the applicant company for the payment of its salaries and its statutory dues, however, the details in respect of the same have not been furnished with.*

9. *That I say and submit that, looking at the difficulties faced by the applicant company and the cascading effect it has on its 788 odd employees and also towards payment of statutory dues, the EOW has no objection if the applicant company utilizes funds secured for attachment by notice dated 18.07.2016, for incurring just expenses necessary towards the running of its ordinary course of the day-to-day business, payment of salaries of its employees, payment of statutory dues, however, the applicant be directed to furnish the details of such audited expenses every month with the Investigating Officer."*

Based on the aforesaid statements, the criminal application came to be disposed of on 1<sup>st</sup> August, 2016. Further it is also to be noted that by way of temporary arrangement, this court by an order dated 4<sup>th</sup> May, 2018, had permitted the respondent – State to allow the petitioner to get an amount of Rs.18 Crores released through various bank accounts towards meeting the payments for day-to-day expenses of the petitioner in the light of the audited statement submitted through Sharp and Tannan Associates. This Court had noted that though the amount of Rs.23.43 Crores is shown under the statement of average monthly expenditure, the Court was not inclined to release the entire amount but restricted it to Rs.18 Crores. This order, passed by way of ad-interim relief, was continued from time to time and on 23<sup>rd</sup> August, 2018, we had directed the respondent – State to release the said amount subject to the condition that the petitioner will provide the details of the expenditure

along with supporting documents above Rs. One Lakh and the amount shall be utilised only for meeting day-to-day operational expenses and would not be advanced to any of its associated/related subsidiaries.

12. In furtherance of the said statement, the notification came to be issued on 21<sup>st</sup> September, 2016, thereby attaching various properties of the petitioner including the movable and immovable properties but excluding the periodically accrued benefits. The State Government continued to attach the properties of the petitioner including its bonds, mutual funds, banks accounts, fixed deposits and also the ODIN and its receivables. These notifications were assailed in the present writ petition and during its pendency, a corrigendum came to be issued on 17<sup>th</sup> April, 2018, deleting the exclusion clause. The grievance of the petitioner is about the manner in which the corrigendum has been issued and also in contrast to the statement made on affidavit by the EOW that they had no intention to strangle the company and its working but permit them a working amount so that it can prosper. The corrigendum dated 17<sup>th</sup> April, 2018, is now completely replaced by the new notification issued on 19<sup>th</sup> September, 2018, the validity of which including the power of the State Government to ratify its earlier act would be dealt by us at the time of hearing of the petition finally.

However, it is apparent that in the year -2018, the accruals on the investments came to be attached by issuing notifications and this is what has been objected to. The petitioner has given the details of the attachments effected by the State Government to the extent of Rs.361.46 Crores which attachment is in furtherance of the corrigendum and deletion of the exclusion clause. The attachment of the petitioner's properties effected in the year 2018 is not disputed by the petitioners to the extent of Rs.1,200.30 Crores, since it is on account of replenishment of the properties/bonds already attached vide notification dated 21<sup>st</sup> September, 2016. What is termed as "excess attachment" is the amount of Rs.361.43 Crores, the details have been already submitted by Shri Rohatgi in the chart which we have reproduced above. This includes periodically accrued returns from the properties/bonds which were already attached vide notification dated 21<sup>st</sup> September, 2016 and also the investments worth Rs.61.83 Crores held by the petitioner in various companies. The amount of Rs.51.80 Crores lying in the bank is the income earned by the petitioner company from non-ODIN business by applying Exchange Technology. It is this amount which is sought to be excluded according to the counsel for the petitioner.

We are, therefore, of the prima facie view that the said attachment is arbitrary, unreasonable and unjustified and needs to be excluded at this stage on two counts viz. That the respondent itself had

made a categorical statement before the Court that the EOW had no objection if the company utilised the funds secured for attachment by the impugned notice dated 18<sup>th</sup> July, 2016 for incurring just expenses, necessary towards running of its day-to-day business including payment of salaries and clearing all statutory dues. One rider which came to be imposed is that the audited expenses be submitted every month. Based on this statement, the notification issued on 21<sup>st</sup> September, 2016, excluded the periodical accruals on the investments and this position continued for more than 18 months. For the first time, by way of corrigendum, concession relaxing the periodical accruals on the investments is sought to be revoked by mere issuance of corrigendum without following the procedure of issuance of notification as contemplated under section 4 of the MPID Act, though this is sought to be justified by issuing a fresh notification on 19<sup>th</sup> September, 2018, which is also assailed before us. We also find the said attachments arbitrary in the light of the statement produced before us demonstrating that even if the outstanding alleged amount is taken as Rs.5,600 Crores, the assets attached by the respondents till November - 2017 is to the tune of Rs.8,548 Crores and thus, both the parties are *ad idem* to the said amount. In such circumstances, merely because the State Government makes a statement that they are not sure about the amount which would be realised from these properties, we cannot say that the

attachments are completely justified. As on date, the attachment is of properties estimated to be Rs.8,548 Crores and moreover when the State has other option to attach the properties of the brokers/defaulters who fall within the first part of section 4, it cannot be said that the investors can be paid only through the properties belonging to the petitioner. Therefore, we find substance in the submissions of the learned counsel for the petitioner.

13. Further, we have also noted that the petitioner company claims to be a world leader in providing next generation technology through its innovative platforms and has developed a software known as ODIN SUIT for trading terminals and claims to have registered one million licenses over 600 cities, towns and villages. The objection of the petitioner is about the attachment of the said software and also the receivables from use of such software in perpetuity and by automatic mechanism without taking into consideration the fact that the petitioner company has to incur expenses on daily basis to maintain this ODIN software so as to render the services to the licensees of this software which includes the salaries of 250 employees, hardware expenses, maintenance charges etc. We are of the prima facie opinion that attachment of the said software would impede the petitioner from incurring the expenses and attaching the ODIN software and its

receivables would virtually amount to strangulation of the petitioner company which surely is not the purport of the notification issued on 21<sup>st</sup> September, 2016, when for the first time the State Government attached the properties of the petitioner and to the exclusion of certain periodically accrued benefits on the investments. We are also of the view that ODIN and ODIN receivables cannot be a subject matter of attachment. In such circumstances, we find that the exclusion of the accruals on the investments and the inclusion of ODIN and its receivables by way of attachment by the State Government by issuing various notifications would be contrary to the spirit of the Enactment and also to its own prior conduct in form of a statement on affidavit made before this Court and also the exclusion clause contained in its first notification dated 21<sup>st</sup> September, 2016.

14. In this backdrop, what the petitioner has now sought is only exclusion of the accrual amount which is sought to be attached by issuance of corrigendum on 17<sup>th</sup> April, 2018 and the subsequent notification dated 19<sup>th</sup> September, 2018 which is the subject matter of the challenge. On consideration of the prayer of the petition, at an interim stage, they are only seeking exclusion of the periodically accrued returns on its properties/bonds which are already attached by notification dated 21<sup>st</sup> September, 2016 and also the income earned

from the non-ODIN business, such as Exchange Technology. Further, the petitioner also seeks exclusion of the amount earned by the company from ODIN which according to the petitioner stands attached in perpetuity. We find sufficient substance in the said grievance of the petitioner as ODIN is a software developed by the petitioner and it accrues income to the petitioner by using technology and attaching ODIN perpetually would strangle the business of the petitioner company.

15. In the backdrop of the facts, when the State Government do not dispute that the properties attached are worth Rs.8,548 Crores though it disputes its value after realization and the various factors to which it may be realized, prima facie we find that those properties of the petitioner which have been attached on the account of periodically accrued returns from the properties/bonds as well as the amount earned from the non-ODIN business and the revenue accruing from ODIN need not be brought within the purview of attachment by taking recourse to the impugned corrigendum dated 17<sup>th</sup> April, 2016 and the subsequent notification dated 19<sup>th</sup> September, 2018, at this stage. In any contingency, the validity of the corrigendum and the impugned notification dated 19<sup>th</sup> September, 2018 would be dealt by this Court at the time of final hearing of the petition.

16. In the light of the aforesaid observations, we are inclined to stay the impugned notification dated 7<sup>th</sup> April, 2018, relating to ODIN and its receivables and also notifications dated 11<sup>th</sup> April, 2018, 17<sup>th</sup> April, 2018, 19<sup>th</sup> April, 2018 and 15<sup>th</sup> May, 2018 which purports to attach the properties in the form of accrual benefits on the investments, which came to be earlier attached by the State Government in the year 2016. We grant stay to the notification dated 19<sup>th</sup> September, 2018, to the extent of attaching the ODIN and its receivables and attachment of accrual benefits.

17. Today when the matter was listed on the board for passing orders and we pronounced the said order in the open Court, Shri Dada, learned senior counsel for the State and also Shri Joshi, learned senior counsel for the intervenor seeks stay of this order. The same is vehemently opposed by Shri Ponda, learned counsel for the petitioner. Since, we have admitted the petition in order to test the validity of the Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999 and also the challenge to the attachment of the properties of the petitioner by taking recourse to section 4 of the said Enactment and we have granted interim relief, since we are prima facie convinced that the notification issued by the State Government purporting to attach the properties of the petitioner company in the year

2018 is in excess of the defaulted amount and also since we are satisfied that the respondent has acted in arbitrary manner inasmuch as it initially excluded certain attachments from the purview of the notification and subsequently has included the same without following the due procedure. In view of the said position, we are not inclined to stay the effect and operation of the order which we have pronounced today and, hence, the request made by respective learned senior counsel appearing for the State and representing the intervenor is rejected.

**[SMT.BHARATI H. DANGRE, J.]**

**[RANJIT MORE, J.]**