

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 8

CP/88(MB)2024

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **08.07.2024**

NAME OF THE PARTIES: **UNION OF INDIA THROUGH SERIOUS**
 FRAUD INVESTIGATION OFFICE VS
 PAREKH ALUMINEX LIMITED

Section 241(2), 242(4), 246 of the Companies Act, 2013 & Any other
provision - Govt body Section 379

ORDER

CP/88(MB)2024

- 1) Mr. M.S. Bharadwaj, Ld. Counsel for the Petitioner and Ms. Jesal Singh, Ld. Counsel for the Liquidator of the Company/Parekh Aluminex Limited are present.
- 2) The present Company Petition has been filed praying for the following reliefs:
 - I. *That the Respondents (except R1) be restrained from mortgaging or creating charge or lien or third-party interest or in any way alienating, the movable or immovable properties owned by them, direct freezing of all properties;*

- II. *That the Bank Accounts held by the Respondents (except R1) be frozen;*
- III. *That the Respondents (except R1) be immediately directed to disclose their moveable and immovable properties/ assets, including bank accounts, owned by them in India or anywhere in the world;*
- IV. *Direct the proforma respondent to ensure execution of the attachment orders issued by this Hon'ble Tribunal, as per prayer (I) and to submit compliance report by way of affidavit to this Hon'ble Tribunal;*
- V. *That the Central Depository Services Ltd. (CDSL) and National Securities Depository Ltd. (NSDL) be directed that securities owned / held by the respondents (except R1) in any company/ society be frozen and details thereof be shared with the Petitioner;*
- VI. *That the Central Board of Direct Taxes (CBDT) may be directed to disclose information about all assets of the Respondents (except R1), in their knowledge or possession, for the purpose of freezing and restrain on alienation of such assets;*
- VII. *Th at the Reserve Bank (RBI) and the Indian Banks Association (IBA) be directed to facilitate disclosure of the details of the remaining bank accounts, lockers own ed by the Respondents (except R1) and freeze the s a m e on behalf of the Petitioner;*
- VIII. *That the State Government and Administration of Union Territories be directed to identify and disclose all details of immovable properties owned/held by the Respondents (except R1).*

3) The Central Government/Ministry of Corporate Affairs, Government of India assigned investigation into the affairs of Parekh Aluminex Limited to the Serious Fraud Investigation Office, vide its order dated 31.08.2018.

- 4) It is submitted that upon examination of the Investigation Report, Central Government/Ministry of Corporate Affairs, vide letter dated 27.10.2022 issued necessary directions and authorization to the office of the Petitioner/Applicant to, inter alia, initiate proceedings and seek interim orders from the NCLT bench at Mumbai under Ss. Ss. 241(2) r/w 241 (3) r/w 242, 246 r / w 339 of the Companies Act, 2013 r/w 397 r/w 398 r/w 401 r/w 402 r/w 542 of the Companies Act, 1956 and Rules made thereunder for freezer on movable and immovable properties, including bank accounts/lockers and jointly held properties including lockers and final relief for disgorgement of frozen assets against all the individuals and entities who are involved in fraud.
- 5) Heard Ld. Counsel for the Petitioner extensively for a considerable time and perused the material available on record.
- 6) The Petitioner has pleaded for exemption of advance service upon the Respondents under Rule 14 r/w Rule 23(5) of NCLT Rules, 2016. Rule 14 empowers this Tribunal to exempt parties from compliance of any requirement of rules on sufficient cause being shown. It is being pleaded that the Petitioner are seeking urgent ad-interim relief and there exist exigent circumstances so as to dispense with the requirement of advanced service of Petition upon the Respondents. Considering the facts and circumstances of the case, we are of the considered opinion that it is just and expedient to dispense with the advance service of the Petition upon the Respondents;

however, the Petitioners shall submit the copy of the Petition upon the Respondents within Seven (7) days from the date of communication of the order. With this we now proceed to consider the ad-interim relief pressed by the Counsel of the Petitioners.

7) On perusal of the Petition, we note that the Respondent Nos. 2 to 4 are alleged to be involved in conducting the affairs of the Respondent No. 1 in fraudulent manner. Respondent No. 2 as since deceased and is represented by his legal heirs. Respondent Nos. 2 to 4 are stated to be directors of the Respondent No. 1 Company and are alleged to be controlling and managing the affairs of the Respondent No. 1. It is alleged that the SFIO is unearthed the fraudulent conduct of the affairs of the Respondent No. 1, whereby huge amount of bank loans were obtained by the Respondent No. 1 from various banks/financial institutions on the basis of manipulated, falsified and false documents/financials. Further, it is alleged that a sum of Rs. 994 Crores was diverted by Respondent Nos. 2 to 4 for the purposes other than for which loan had been granted by entering into a Criminal Conspiracy with object to cheat the lending banks/financial institutions.

8) Section 339 of the Companies Act provides for liability for fraudulent conduct of business and makes the Directors, amongst others who are knowingly parties to carrying on the business as person responsible without any limitation of liability for all or any of the debt or other liabilities of the Company as this Tribunal may direct. The Petition contends the pleadings

as to the contraventions and the manner in which funds are alleged to be diverted, thus, causing loss to the Respondent Company and also causing prejudice to its Creditors. These allegations make a prima facie case against Respondent Nos. 1 to 4 and it is imperative to protect the interest of the Creditors, who are entities in which Public at large is substantially interested. Accordingly, we consider it appropriate to grant following ad-interim reliefs till further orders, in this regard:

- i. That the Respondents (except R1) are restrained from mortgaging or creating charge or lien or third-party interest or in any way alienating, the movable or immovable properties, including the bank accounts in their name either jointly or singularly, owned by them. However, the Respondent Nos. 2 to 4 shall be submitted by their bankers to withdraw a sum of Rs. 2 Lakhs per month, in aggregate from all the accounts in their name, towards their and family's maintenance. Further, Respondent Nos. 2 to 4 shall be at liberty to convert non-interest bearing deposits into interest bearing deposits in the same bank and such converted deposits shall also remain subjected to these restrictions.
- ii. That the Respondents (except R1) are immediately directed to disclose their moveable and immovable properties/ assets, including bank accounts, owned by them in India or anywhere in the world;
- iii. The proforma respondent is directed to ensure execution of the attachment orders issued by this Tribunal, as per prayer (I) and

to submit compliance report by way of affidavit to this Tribunal;

iv. That the Central Depository Services Ltd. (CDSL) and National Securities Depository Ltd. (NSDL) is directed that securities owned / held by the respondents (except R1) in any company/ society be frozen and details thereof be shared with the Petitioner;

9) In so far as prayer at (VI) to (VIII) are concerned, Section 212(17)(a) of the Companies Act, 2013 itself mandates all Investigating Agency/State Government, Police Authority and Income Tax Authority to share any information/documents available with it to the SFIO. Accordingly, we are of the considered view that no specific directions are required from this Tribunal in this relation.

10) In the meantime, Registry is hereby directed to issue Notice to the Respondents clearly intimating the next date of hearing and to file and place on record Compliance Report well before the adjourned date.

11) In addition to the Notice, ordered to be issued by the Court, Petitioner is also directed to issue Notice to the Respondents, clearly intimating the next date of hearing by all available means (i.e. Speed Post, E-mail, etc.) and to file and place on record Affidavit of Service, enclosing therewith proof of service of Notice upon the Respondents, well before the adjourned date.

- 12) After receiving a copy of the present Company Petition, Respondents shall file and place on record Affidavit in Replies well before the adjourned date thereby duly serving copies thereof to the other side well in advance.
- 13) Stand over to 19.08.2024, for further consideration and hearing.
- 14) Registry shall accept the Hard Copies of the present Company Petition for the record Purpose.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Vedant Kedare

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**