

(2013) 09 DEL CK 0436

In the Delhi High Court

Case No : Criminal M.C. 4603, 5004 of 2005, 1974 of 2007 and 279 of 2011 and 2059 of 2007 and Criminal M.As. No's. 10022/05, 10025/07, 13116/07, 2094/08, 2299/10, 2300/10, 12884/10 and 2660/11

Morgan Securities and Credits P. Ltd.

APPELLANT

Vs

State of Delhi and Another
 Morgan Securities and Credits P. Ltd. and Others Vs State of Delhi and Another

RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 30
Criminal Procedure Code, 1973 (CrPC) — Section 482
Depositories Act, 1996 — Section 10
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420, 465

Citation : (2013) 09 DEL CK 0436

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : N. Hariharan, Ms. Pooja Saigal and Mr. Jitender Batta, for the Appellant; Mukesh Gupta, Additional Public Prosecutor for Respondent No. 1- State, Mr. R.N. Mittal , Mr. Vijay Aggarwal, Gurpreet Singh, Mudit Jain, Sugam Puri, Ankit Goel and Mr. Ashish Dhingra, for the Respondent

Final Decision : Allowed

Judgement

Sunil Gaur, J.—In the above-captioned eight petitions, quashing of FIR No. 505/2005 registered at P.S. Defence Colony, Delhi for the offences of criminal breach of trust, criminal misappropriation, forgery, etc. and FIR No. 511/2005 registered at P.S. Connaught Place, Delhi for the aforesaid offences, is sought by petitioners-Morgan Securities & Indo Rama Synthetics on the ground that the dispute raised in these two FIRs is essentially of civil nature and the ingredients of the offence alleged are lacking and that the proceeding arising out of these FIRs is the abuse of process of law. In CrI.M.C. 2059/2005, petitioner-Morgan Securities and Credits Pvt. Ltd. seeks quashing of FIR No. 108/2005 registered in the State of Himachal Pradesh at the instance of M/s. Morepen Laboratories Ltd. for the aforesaid offences on identical grounds as taken in CrI.M.C. 4603/2005.

Under the orders of the Apex Court, aforesaid petition was transferred to this High Court for being heard alongwith CrI.M.C. 4603/2005 etc. In CrI.M.Cs. 279/2011, 280/2011 and 281/2011, trial court's order of 14th January, 2011 is assailed on the ground that since the pledged shares have been sold in open market to bonafide purchasers, therefore, superdari of the pledged shares in question to the complainant/first informant is unwarranted as subject matter of these FIRs is already under active consideration in the civil proceedings between the parties. Thus, quashing of order of 14th January, 2011 is sought in the above referred three petitions.

2. With the consent of learned counsel for the parties, above titled eight petitions were heard together as the quashing of the proceedings arising out of the three FIRs in question is sought on identical grounds and so, by this common judgment, these eight petitions are being disposed of.

3. The relevant factual background of these matters can be conveniently picked up from the status report filed by respondent-State in February, 2008 in CrI.M.C. 5004/2005, which is as under:-

The brief facts of the case FIR No. 511 dt. 07.09.05 u/s 406/409/465/468/471/120B of IPC PS Con. Place, New Delhi are that the complainant M/s. Petunia Financial Services P. Ltd. (PFSPL) reported that their company was the pledger towards Inter Corporate Deposit (ICD) of Rs. 5 crores taken by M/s. Morepen Laboratories Ltd. (MLL) from petitioner M/s. Morgan Securities and Credits Pvt. Ltd. (MSCPL). The complainant company pledged 2,70,000 equity shares of M/s. Blue Coast Hotels & Resorts Ltd. (BCHRL) for securing the said ICD. The borrower M/s. MLL repaid the principal amount and have some dispute over payment of interest and negotiations were going on between the parties for reconciliation of the interest. During that period, they were shocked to learn that the lender M/s. MSCPL has disposed off the pledged shares by transferring them to their sister concerns/concerns of their relatives without their knowledge or consent. These transfers were done with malafide intention and in collusion with co-accused knowing that such transfers were fraudulently done on a price far below the actual price value of the shares in question. No credit was given to borrower for such transfers/sales. These transactions were sham and were made on the basis of false documents in conspiracy with relative/associate companies of the petitioner in order to cause wrongful gain to them and wrongful loss to the complainant.

That on the basis of the complaint, above case was registered on 07.09.05 at PS Connaught Place and investigation was taken up by local police.

That subsequently, the investigation of the case was transferred to Economic Offences Wing vide order No. 53095-105/C&T (AC-III) dt. 21.10.05 by the PHQ.

That the investigation revealed that M/s. MLL obtained an ICD of Rs. 5 crores and Rs. 2 crores from the lender M/s. MSCPL in accordance with agreement dt. 19.09.02 and 30.10.02, without security for a period of 120 days. The witnesses

belonging to borrower and guarantor companies stated that due to unforeseeable circumstances, the MLL could not repay the ICDs. They were requested by Sh. Suresh Chand Goyal etc. of the MSCPL for pledging as security the 15 lac equity shares of M/s. Blue Cost Hotel & Resorts Ltd. (BCHRL) one of the group company of the borrower. The complainant stated that they were also assured that the said security is required for the purpose of corporate documentations and that the same would not be sold without prior intimation & consent. Therefore, they agreed to pledge the 15 lac shares as security through six associate companies namely Niketan Traders P. Ltd., Petunia Financial P. Ltd., Becker Traders P. Ltd., Cross Traders P. Ltd., Ebony Traders P. Ltd. & Tendril Financial Services P. Ltd., holding these shares. Pledge agreements dt. 07.02.02 were also signed by pledgers & handed over to the MSCPL. Accordingly, schedule of repayment was extended. Mr. Sushil Suri, CMD M/s. MLL, the borrower company stood as guarantor. The complainant company Petunia pledged 2,17,000 equity shares of BCHRL out of the 15 lac shares.

That the borrower MLL defaulted and did not make payments as per the schedule. Both the parties negotiated and a Memorandum of Settlement (MOS) was executed on 27.05.03 in which new schedule of payment was agreed upon. At that time, late Sh. Arun Suri, CMD, BCHRL also became personal guarantor and M/s. BCHRL stood as surety for the purpose of securing the due payment. On the basis of the MOS, the consent award was passed by the Hon''ble Arbitrator vide order dt. 28.06.03.

That pursuant to the MOS dt. 27.05.03 and award dt. 28.06.03, the MLL made full and final payments towards ICD of Rs. 2 crores by 13.03.2004. The payment include an amount of Rs. 8,94,220/- realized from sale of 19,701 pledged shares of BCHRL. A letter was sent to MSCPL to this effect, which was duly received by it. However, the MLL could not make payment towards ICD of Rs. 5 crores.

That the lender and the borrower resorted to litigation in the courts. Of the various litigations, in Jan. 2004, the petitioner M/s. MSCPL filed two Execution Petitions in the Hon''ble High Court praying for execution of the award. On 08.01.04 and 26.03.04, the Hon''ble Court issued attachment warrants for recovery of Rs. 6,24,44,250/- against the borrower and the guarantors i.e. M/s. MLL and M/s. BCHRL. In pursuance of the said attachment warrants, few bank accounts of M/s. MLL and M/s. BCHRL were attached.

That the CMD of BCHRL late Sh. Arun Suri, Sh. I.S. Deo, Vice President, BCHRL and Sh. PK Singh, Company Secretary, MLL stated that on 24.02.04, they approached Sh. Suresh Chand Goyal, CMD, MSCPL and held a meeting to sort out the dispute because issuing of attachment warrants were threat to their business. In the said meeting, Sh. SC Goyal told them that there is no need to rake up the dispute in the court. He stated that though 1 lac shares approx. have been sold in the open market but assured that remaining shares have been kept/parked in his associate companies under his control. He further assured that the same would be returned once the ICD is repaid. He also agreed to charge

interest @ 17% p.a. instead of the 30% per annum as was done in the ICD of Rs. 2 crores.

That on 17.03.04, the MSCPL also filed an urgent application in the Execution Petition No. 13/04 praying for restraining the BCHRL from increasing or changing its status of equity shares of the company as it may cause decrease in value of the security held by them. This confirmed the statement of Sh. SC Goyal, CMD, MSCPL made on 24.02.04 to borrower/surety that about 1 lac shares have been sold and remaining are parked/transferred by him in his associate companies, which would be returned on repayment of the ICD. However, both the parties negotiated and settled the matter amicably. On 05.04.04, the BCHRL filed an undertaking not to increase or change the status of its equity shares, the MLL withdrew its application asking for details of sale of pledged shares and assured to make repayments of the ICD. In view of the same, the Hon"ble High Court withdrew the attachment warrants issued earlier and disposed off the matter vide order dt. 05.04.04.

That accordingly, the borrower M/s. MLL paid the principal amount of Rs. 5 crores from Apr. 2004 to Apr. 2005 through pay orders drawn at their banks. They have also paid part interest component. The dispute remains on the rate of interest to be paid. After paying the complete principal amount the MLL asked the lender MSCPL to reconcile the rest payment of interest and also asked for return of their pledged shares vide letter dt. 29.06.05. The MSCPL through its letter dt. 02.07.05 asked the MLL to pay the remaining debt of Rs. 1,17,59,339/- but did not state about sale of shares. The dispute again arose between both the parties. Both the parties filed petitions in the High Court at Delhi.

That thereafter, the witnesses stated that Sh. Arun Suri was informed by Sh. SC Goyal saying that the entities/companies with whom remaining shares were parked, are willing to return the same only at the then current market price. This proposition if accepted would have resulted into unreasonable and unjust loss to the borrower and gain to the lender and its associates who are Mr. Goyal and his relatives/friends because they have acquired these pledged shares at an abnormally beaten down price of Rs. 8/9 per share and the same were quoted at Rs. 100 per share approx. at that time. The value of these shares became Rs. 15 crores approx. at the then prevailing prices.

That it has been alleged by the borrower, surety and pledgers against the lenders that they have not sold the pledged shares as claimed by them but have been transferred clandestinely into their associate companies or in the companies of their relatives at an abnormally beaten down price of Rs. 8/10 per share with a ill-motive to resell at higher prices to the borrower and to earn illegally in multiple manners.

That the complainant, borrower and surety have alleged that during litigation before the courts, the lender neither informed them nor the courts at any point of time that they had invoked the pledge and had sold the pledged shares.

Further the amount realised towards the sale proceeds of the shares was not adjusted towards repayment of the ICD of Rs. 5 crores. They purposely concealed the material informant throughout with malafide intention to misappropriate the shares entrusted as collateral security.

That the borrower MLL and the surety BCHRL have stated that the prices of their 15 lac pledged shares of BCHRL were lowered down with manipulation by Sh. SC Goyal in connivance and conspiracy with his associates. This reflected from the working of the price mechanism in share market forces. The BCHRL owned Park Hyatt Resort and Spa, Goa which was commercially launched on 01.10.03. The hotel has the potentials to grow and earn income. The quarterly financial results for the quarter ending 31.12.03 & 31.03.04 reflected increased earning from the operations of the hotel. The assets of the company also increased. Accordingly, as per the market forces, the share prices were bound to increase in the stock exchange during this period. But, contrary to the fact, the share prices have come down heavily as shown by the lenders and their associates. Again during the lean period in the hotel industry, the prices are normally decreased slightly but in the instant transactions, these have been shown risen. After the sale of pledged shares completed, the prices continued to increase thereafter because the hotel is doing well. These facts established that the prices of the shares were manipulated by accused persons while transferring the pledged shares between 16.12.03 to 25.03.04.

That the MSCPL through Sh. PK Gupta filed an application dated 23.08.05 in EP No. 13/04 in the Hon'ble High court, Delhi attaching therewith a copy of the sale statement and ledger accounts showing details of sale of shares. The complainant, borrower and surety stated that prior to this date, they were never informed about sale of shares nor provided details of the sale of shares, amount realized from the sale and adjusted towards repayment of the ICD of Rs. 5 crores. They repaid complete principal amount of Rs. 5 crores w.e.f. Apr. 2004 without getting adjusted sale proceeds of the pledged shares from the principal amount because they were not informed about the sale.

On the investigation aspect, the status report is as follows:

That during investigations, it has been revealed that the pledged 15 lac shares (except 9) have been sold by MSCPL between 16.12.03 to 25.03.04. Majority of the shares have been sold through specific and limited number of brokers at the BSE. Majority of the shares 10,89,400 (73%) were sold through M/s. Anand Rathi Securities P. Ltd. of which 9,70,000 (65%) were purchased through this very broker on 24.02.04 and 06.03.04 by the Northern Projects Ltd. In which co-accused Parkash Aggarwal who is son in law of Sh. SC Goyal and Mrs. Meera Goyal is the Director, who is also Director in the seller company i.e. MSCPL, as well as in its holding company M/s. Goyal MG Gases P. Ltd. And other group company Morgan Venture Ltd. It has been further been revealed that Northern Projects Ltd have opened demat account with Anand Rathi Securities P. Ltd. for the purpose of these transactions only. The seller M/s. MSCPL and its group

companies Morgan Venture Ltd. and Parveen Electronics Ltd. have also regular demat accounts with this broker.

The status report concludes as under:-

That thus, out of the 15 lac shares 13,89,400 approx (93%) shares have been bought by three companies namely Northern Projects Ltd., 65%, Parveen Electronics P. Ltd. 20% and Namedi Leasing & Finance Ltd. 8%. About 715 shares initially were purchased by Morgan Venture Ltd. which is direct under the control of seller MSCPL. Later on, this company acquired about 45,345 (3%) shares as on 30.06.04.

4. At the hearing, learned senior counsel for the parties assisted by learned counsel for the parties were heard and with their able assistance the material on record was perused. The written synopsis and the decisions in Renu Kumari Vs. Sanjay Kumar and Others, Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, ; decision of this Court in CS (OS) No. 2281/2006 rendered on 11th December, 2006; Kailash Chand Sharma Vs. State and Others J.R.D. Tata Vs. Payal Kumar and Another, A.E.C. Enterprises Ltd. and Another Vs. Peacock Chemicals Pvt. Ltd. and Others, ; S.P. Sharma Vs. National Capital Territory of Delhi and Others, ; Iqbal Singh Marwah & Anr. V. Meenakshi Marwah & Anr. 2005 II AD (Cr.) SC; K.G. Premshanker Vs. Inspector of Police and Another, Subhkaran Luharka and Shree Ram Mills Ltd. Vs. State (Govt. of NCT of Delhi) and Utility Premises Pvt. Ltd., , have been also perused.

5. On behalf of petitioners, it was contended that this is a classic case where the borrower after having received the monies is unable to repay the debts and resorts to criminal action to avoid it's liabilities under the contract which it had signed without any pressure or coercion. It was asserted that the admitted position between the parties is that the Borrower had taken an Inter Corporate Deposit of Rs. 5 crores returnable within 120 days and had defaulted in the repayment leading to additional securities being provided to the lender through the associate companies of the Borrowers in the form of pledge of demated shares by the complainants. Petitioners assert that the consent award was passed and a schedule of the payment was arrived at and the borrower also defaulted in the same and it was only after such default that the petitioner invoked the pledge and sold the shares. As per petitioners, their action was strictly in consonance with the covenants of the different ICD Agreements and the Letter of Pledge and the Consent Award passed by the learned Arbitrator and hence cannot be subject matter of a criminal action. It was next submitted that contents of different impugned FIRs only allege violation of different agreements which cannot ipso facto lead to criminal prosecution of Directors of the Company against whom no specific role is attributed in the FIR.

6. The basic stand of petitioners is that even if the FIRs in question and the documents relied upon by the complainant/first informant are taken on their face value, still no criminal offence is made out. Pertinently, the precise stand of

learned senior counsel for the contesting respondents-complainant/first informant of FIRs in question is that selling of pledged shares does not give rise to criminal offences in question, but it is the selling of 3,10,000 pledged shares of M/s. Niketan Traders Pvt. Ltd. and 2,70,000 pledged shares of M/s. Petunia Financial Services P. Ltd. without mandatory Notice u/s 176 of the Contract Act, 1876 and that to subsidiary companies owned by petitioner-M/s. Morgan Securities and Credits Pvt. Ltd. at much lesser price than the market value and by not giving credit for it, makes petitioners liable to face the proceedings arising out of the FIRs in question.

7. Respondent-complainant also claims that aforesaid Inter Corporate Deposit of Rs. 5 crores was returned to petitioner-M/s. Morgan Securities and Credits Pvt. Ltd. during the period from April, 2004 upto April, 2005 and very nominal dispute regarding payment of interest is pending. On behalf of respondent-complainant, it was asserted that fraudulent transfer of shares by petitioners-accused clearly attracts the ingredients of offences of criminal breach of trust, misappropriation, forgery, etc.

8. On the contrary, it was asserted with much vehemence by learned counsel for petitioners that breach of contract is by respondent-complainant which gives rise to a purely civil dispute and does not entail any criminality. During the course of hearing, attention of this Court was drawn by petitioners' counsel to Clause 4 (iii), Clause 7 (ii) and Clause 9 (vii) of Pledge Agreements in question and to the Award already given by the Arbitrator, to assert as under:-

- a. That in event of default the Lender (petitioner) had unfettered rights to deal with the shares in any manner whatsoever including realizing itself.
- b. That the Award clearly provided that in event of default in payments the Lender could take unilateral steps and all the steps for sale of shares were taken by the petitioner in terms of the Award and the Letter of Pledge and hence no criminal liability can be foisted on the petitioner.
- c. That the complaint/F.I.R. clearly relates to interpretation and application of the covenants of the Letter of Pledge and the Award which clearly would have a Civil Flavour.

9. Infact, it is the case of respondents-complainant that they were misled into believing that the pledged shares were not sold and only in the year 2005, they came to know about the selling of the pledged shares. Thus, the stand of respondents-complainant is that they had no notice of the sale of pledged shares by petitioner-M/s. Morgan Securities and Credits Pvt. Ltd. To the contrary is the assertion of petitioners, who maintain that the pledged shares in question were sold in open market at stock exchange between December, 2003 and March, 2004 after giving due notice to respondents-complainant vide Notice of 9th December, 2003 by registered Post and at the hearing, attention of this Court was drawn to the copies of aforesaid Notice and the postal receipts.

10. Attention of this Court was also drawn to copies of letters sent to petitioner-M/s. Morgan Securities and Credits Pvt. Ltd. by respondents-complainant on 7th February, 2004, 25th February, 2004, 4th March, 2004 and 14th June, 2004 to point out that respondent/complainant-M/s. Morepen Laboratories Ltd. was well aware of the sale of pledged shares as M/s. Morepen Laboratories Ltd. had failed to adhere to Memorandum of Settlement of 27th May, 2003. Thus, according to learned counsel for petitioners, no criminal offence is made out and the liability, if any, is of purely civil nature.

11. To repel the contention of learned counsel for respondents-complainant of sale of pledged shares being a sham transaction, attention of this Court was drawn to the Securities Appellate Tribunal's judgment of 29th August, 2011 in Appeal No. 55/2011 relating to Pledge Agreement, Consent Award, etc. to assert that the transaction in question has been found to be valid as the credit for the sale of pledged shares was given by petitioner-M/s. Morgan Securities and Credits Pvt. Ltd. to respondent-M/s. Morepen Laboratories Ltd. before the initiation of these criminal proceedings.

12. To assert that the factum of sale of pledged shares was in the knowledge of respondent/complainant-M/s. Morepen Laboratories Ltd. in the year 2004 itself, attention of this Court was drawn to Execution Application No. 129 of 2004 wherein it is clearly stated that the pledged shares in question have been sold. Attention of this Court was also drawn to a copy of Information (Annexure-I in Crl.M.C. 4603/05) downloaded from the official website of National Stock Exchange to point out that the sale of pledged shares in question took place in December, 2003 and January, 2004 upon invocation of the pledged shares, whose details are given in the above-said Annexure-I.

13. At the hearing, it was contended on behalf of respondents-complainant that though the offence in question was committed post December, 2003, but petitioners are trying to give it a colour of civil matter and are burdening the court with irrelevant material and these petitions are premature as the question of petitioner-M/s. Morgan Securities and Credits Pvt. Ltd. selling pledged shares without Notice clearly attracts the offence of misappropriation of the shares in question. Not only this, it was asserted on behalf of respondents-complainant that petitioner-M/s. Morgan Securities and Credits Pvt. Ltd. in collusion with remaining accused had collusively sold the pledged shares at a price much below the fair market value of these shares and since the selling of pledged shares in question without notice is per se bad in law in view of the dictum in J.R.D. Tata. (supra) and M/s. A.E.C. Enterprises (supra), therefore, no case for quashing of the criminal proceedings is made out.

14. To contend that when cognizable offence is prima facie made out then FIR cannot be quashed on the ground that the matter appears to be of civil nature, reliance is placed upon decisions in S.P. Sharma (supra), Kailash Chand (supra) and Acharya Arun Dev (supra). Reliance was also placed upon decision in Renu Kumari (supra) on behalf of respondents to contend that inherent jurisdiction u/s

482 of Cr.P.C. is to be exercised upon sound principles and not to stifle a legitimate prosecution.

15. To further contend that civil and criminal proceedings can go on simultaneously, reliance is placed by respondents' counsel upon decision in Iqbal Singh (supra) and on the order in CrI. Rev. P. 808/2006 by this Court made on 17th July, 2013 in Tapan Lahiri v. State & Ors.

16. Lastly, it was submitted on behalf of respondents that factum of sale of pledged shares was not known to respondents and was result of creation of bogus documents by petitioner-M/s. Morgan Securities and Credits Pvt. Ltd., who entered into sham transactions, whose details can be unearthed only after thorough police investigation. Thus, rejection of these petitions is sought on the ground that they are premature.

17. Whereas according to petitioners' counsel, respondent/complainant-M/s. Morepen Laboratories Ltd. had defaulted in payment of settled amount in relation to Inter-Corporate Deposit (ICD) in question and in the execution of the Consent Award, to avoid attachment of various bank accounts and other properties, etc. of respondent/complainant-M/s. Morepen Laboratories Ltd., it had launched these criminal proceedings in an attempt to pressurize petitioners.

18. Attention of this Court was also drawn to Section 10 of Depositories Act, 1996 which governs the rights of depositories and the Beneficial Owner. The manner of invocation of the pledge is also specified under the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996. During the course of hearing, attention of this Court was drawn to Regulation 58 of aforesaid Regulations to point out that a Pledgee is entitled to invoke the pledge in accordance with the pledged document i.e. Shares in question and thereafter, the Pledge would be recorded as the Beneficial Owner. Thus, in the face of letters of 9th December, 2003 and 7th February, 2004 by M/s. Morepen Laboratories Ltd., how the sale of pledged shares by petitioner-M/s. Morgan Securities and Credits Pvt. Ltd. can attract the offences in question, is the moot point which needs to be addressed and it will clinch the whole issue.

19. Petitioner-Morgan Securities & Credits P. Ltd.'s letter of 9th December, 2003 sent by registered post to all concerned and respondent-M/s. Morepen Laboratories Ltd.'s letter of 7th February, 2004 (Annexure F Colly) are reproduced for ready reference as under:-

December 09, 2003

M/s. Tandril Financial Pvt. Ltd.

B-202, Plot No. 52

Sukhnagar Apartment

I.P. Extension

Delhi-110092

Pledger

M/s. Niketan Traders Pvt. Ltd.

3627, Sector 46D

Chandigarh-160019

Pledger

M/s. Ebony Traders Pvt. Ltd.

1008, Sector-19B

Chandigarh-160019

Pledger

M/s. Becker Traders Pvt. Ltd.

334, Sector-7

Panchkula

Pledger

M/s. Cross Trading Pvt. Ltd.

B-202, Plot No. 52

Sukhnagar Apartments

Delhi-110092

Pledger

M/s. Petunia Financial Services Pvt. Ltd.

31-H, Pocket-L, Sheikh Sarai-II

New Delhi-110017

Pledger

M/s. Morepen Laboratories Ltd.

4th Floor, Antriksh Bhawan

22, K.G. Marg

New Delhi-110001

Borrower

Mr. Sushil Suri

S/o. Sh. P.L. Puri

R/o C-40, Anand Niketan

New Delhi

Guarantor

Mr. Arun Suri

s/o. Shri P.L. Suri

R/o E-9/1, Vasant Vihar

New Delhi-110057

Guarantor

M/s. Blue Coast Hotels & Resorts Ltd.

415-417, Antriksh Bhawan

22, K.G. Marg

New Delhi-110001

Guarantor

Sub: Award dated 28.06.2003 in respect of inter corporate deposit dated 19.09.2002 for Rs. 5,00,00,000/-

Dear Sirs,

We wish to draw your kind attention to the Award dated 28.6.2003 passed by Hon"ble Mr. Justice A.P. Chowdhri (Retd.), Sole Arbitrator u/s 30 of the Arbitration and Conciliation Act, 1996 wherein as per the joint request of the parties the Memorandum of Settlement dated 27.05.2003 alongwith its Annexures form an integral part of the Award.

In terms of clause 3 of the Memorandum of Settlement, failure to pay the installments being the AMOUNT OF DEBT PAYABLE (wholly or in part)" by the dates specified in Annexure B (to the Memorandum of Settlement) shall in each case be an event of default.

As per clause 4 of the Memorandum of Settlement, in the event the number of unpaid instalments (whole or in part) become three, then there shall be an acceleration and the entire DEBT DUE AND PAYABLE as mentioned in Annexure A" (to the Memorandum of Settlement) shall become due and payable forthwith without requirement of any notice and further without prejudice to the excitability of the Award in terms thereof. On occurrence of any event of default, without prejudice to other remedies which we as Lender are entitled to, the pledge will become enforceable forthwith which includes the right of sale of shares pledged.

We hereby notify to you all that M/s. Morepen Laboratories Ltd. have failed to

pay three instalments due on 20.09.2003, 20.10.2003 and 20.11.2003 respectively has committed default, the right to remedy default also ceases and the amount being the entire "DEBT DUE AND PAYABLE" has now becomes due and payable forthwith.

Since the Borrower, Guarantors and Surety have failed and neglected to pay the outstanding amount and/or any part thereof, we will be exercising our right under the said Memorandum of Settlement and the Award to sell the shares of M/s. Blue Coast Hotel & Resorts Ltd. pledged with us on the expiry of 4 working days from the date of this notice.

This is for your kind information.

Thanking you,

Yours faithfully,

for Morgan Securities & Credits Pvt. Ltd.

sd/-

(Authorised Signatory)

Saturday, February 07, 2004

M/s. Morgan Securities Pvt. Ltd.

53, Friends Colony (East)

New Delhi

Dear Sir,

Pending formalization of understanding arrived at between us as mentioned in our letter dated 6th February, 2004. You are requested to stop selling the equity shares of M/s. Blue Coast Hotels & Resorts Limited and to maintain the status quo in the matter.

Thanking you,

Yours faithfully,

For Morepen Laboratories Limited

Sd/-

Authorized signatory

20. Upon in-depth consideration of the submissions advanced by both the sides and on careful perusal of the FIRs in question, the material on record and the decisions cited, it emerges that the case of respondents-complainant has to be taken on its face value and then, it is to be seen as to whether any criminal

offence is made out or not. The crux of respondents' entire case is whether respondent/complainant-M/s. Morepen Laboratories Ltd. was put to notice prior to the selling of the pledged shares in question. On this crucial aspect, the stand of petitioners is that copy of Information (Annexure-I in Crl.M.C. 4603/05) downloaded from the official website of National Stock Exchange points out that the sale of pledged shares in question took place in December, 2003 and January, 2004 upon invocation of the pledged shares, whose details are given in the above-said Annexure-I. Pertinently, respondents-complainants have not controverted the afore-said stand of petitioners.

21. Furthermore, afore-said Information (Annexure-I in Crl.M.C. 4603/05) receives ample corroboration from communication of 4th March, 2004 (Annexure P-1 to Rejoinder in Crl.M.C. 2059/07) of respondent/complainant-M/s. Morepen Laboratories Ltd. which reads as under:-

March 4, 2004

Morgan Securities & Credits Pvt. Ltd.

53, Friends Colony (East)

New Delhi-110065

Sub:-Balance repayment for ICD of Rs. 2 crores

Dear Sir,

Pursuant to the Memorandum of Understanding signed on May 27, 2003 please find enclosed therewith P.O. No. 241092 date March 4, 2004 for Rs. 15,23,900/- drawn on State Bank of Indore in lieu of cheques earlier issued to you but not cleared as per detail below:-

* For cheque No. 812910, Shares worth Rs. 8,94,668/- have been sold by Morgan Securities. Part payment made of Rs. 2.50 lacs was made vide pay order No. 241019 dt. 25/02/04. Therefore, balance payment due in lieu of cheque No. 812910 is Rs. 1,05,332/-.

By payment the above amount, ICD of Rs. 2 crores availed from Morgan Securities & Credits (P) Ltd. stands paid off. Therefore, we request you to kindly withdraw the petition filed for the execution of Decree in Delhi High Court, all cases filed under the Negotiable Instruments Act, 1881 and/or any other Legal proceedings/cases filed against us in relation to the above mentioned ICD.

We are highly grateful and thank you for the cooperation extended.

Thanking you,

Yours sincerely,

For MOREPEN LABORATORIES LIMITED

Sd-

AUTHORIZED SIGNATORY

22. Upon a plain reading of the afore-said Information (Annexure-I) and above-said Communication (Annexure P-1), it becomes crystal clear that respondent/complainant-M/s. Morepen Laboratories Ltd. had prior notice of the sale of pledged shares. Having found so, it can be certainly said that the decisions in J.R.D. Tata (supra) and M/s. A.E. Enterprises (supra) are of no avail to the case of respondents-complainant.

23. This Court is conscious of the settled legal position that inherent jurisdiction u/s 482 of Cr.P.C. is to be exercised on sound principles as reiterated by Apex Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, and in Harshendra Kumar D. Vs. Rebatilata Koley Etc., Keeping in mind the parameters governing exercise of powers u/s 482 of Cr.P.C., I have scanned through the three FIRs in question, in the light of the latest decision of the Apex Court in Chandran Ratnaswami Vs. K.C. Palanisamy and Others, reiterating the dictum of Apex Court in (2005) 10 SCC 336 which is as under:-

6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under Sections 420/120B IPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs. 4,20,000, they would pay a sum of Rs. 2,60,000 to the complainant out of that but the same has never been paid. Apart from that there is no other allegation in the petition of complaint. It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the Consumer Forum in relation to the claim of Rs. 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence u/s 420 IPC.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either u/s 420 or Section 120B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers u/s 482 Cr.P.C. which it has erroneously refused.

(emphasis supplied)

24. Since it is amply clear that the sale of the pledged shares by petitioner-M/s.

Morgan Securities and Credits Pvt. Ltd. was with prior notice to respondent/complainant-M/s. Morepen Laboratories Ltd. and was in consonance with the Pledge Agreements [Annexure-B (Colly.) in CrI.M.C. 2059/07], Memorandum of Settlement of 27th May, 2003 and Consent Award of 28th June, 2003 (Annexure-C in CrI.M.C. 2059/07), therefore, in the face of afore-referred Securities Appellate Tribunal's judgment of 29th August, 2011, finding the transaction in question to be valid, it can be unhesitatingly concluded that neither the offence of criminal breach of trust nor of criminal misappropriation or of being in possession of stolen shares or of forgery, etc. is prima facie made out. Infact, it is nowhere spelt out in the FIRs in question as to what document has been forged. Rather, the three FIRs in which petitioners are sought to be prosecuted, do not disclose the ingredients of the alleged criminal offences.

25. During the course of hearing, it was brought to the notice of this Court that the civil litigation initiated by respondents-complainant is to get the sale of pledged shares declared as null and void. The applicability of The Depositories Act, 1996 and the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 is quite relevant but it is required to be considered in detail in the civil proceedings and not in these criminal proceedings.

26. No doubt, civil and criminal proceedings can go on simultaneously but, in the instant matters, I have found that the ingredients of the criminal offence alleged are utterly lacking and the dispute between the parties is infact of purely civil nature and that civil litigation between the parties is already pending. Thus, this Court is of the considered opinion that from the FIRs in question, even a prima facie case to continue the proceedings arising out of the FIRs in question is not made out and lodging of these three FIRs is nothing but an abuse of the process of the court and the case of petitioners falls in the first illustrative category indicated by Apex Court in State of Haryana v. Bhajan Lal (supra) which is reproduced as under:-

Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

27. In the ultimate analysis, finding the initiation of criminal proceedings in the afore-said three FIRs in question, to be an abuse of the process of the law, FIR No. 505/2005 registered at P.S. Defence Colony, Delhi, FIR No. 511/5005 registered at P.S. Connaught Place, Delhi and FIR No. 108/2005 registered at P.S. Parwanoo, Himachal Pradesh and proceedings emanating therefrom are hereby quashed while refraining to comment upon the merits of the disputes raised in these criminal proceedings lest it may prejudice either side in the pending civil proceedings. Consequentially, order of 14th January, 2011 in CrI.M.C. 279, 280 and 281 of 2011 is also set aside. The above captioned eight petitions and the applications are accordingly allowed.