

ITEM NO.1

COURT NO.5

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

I.A. 8/2014 in Civil Appeal No. 6572/2004

M/S. P.G.F. LTD. & ORS.

Appellant(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(for directions and office report)

Date : 01/04/2015 This application was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Appellant(s)

Mr. Kapil Sibal, Sr. Adv.
Mr. Satish Maneshinde, Adv.
Mr. Debesh Panda, Adv.
Mr. Subramonium Prasad, A.O.R.
Mr. P.N. Puri, Adv.

For Respondent(s)

For UOI/RR 1

Ms. Pinky Anand, A.S.G.
Ms. Niranjana Singh, Adv.
Mr. R.K. Verma, Adv.
Ms. Saudamini Sharma, Adv.
Mr. S.A. Haseeb, Adv.
Mr. B.K. Krishna Prasad, Adv.
Mr. B.V. Balaram Das, A.O.R.

Mr. Milind Kumar, A.O.R.

For SEBI/RR2

Mr. Arvind Datar, Sr. Adv.
Ms. Suruchii Aggarwal, A.O.R.

UPON hearing counsel the Court made the following
O R D E R

Heard Mr. Kapil Sibal for the applicant, Mr. Arvind
Datar, learned counsel for S.E.B.I., Ms. Pinky Anand, learned

Additional Solicitor General for the Union of India.

**The Application stands disposed of in terms of the
signed order.**

**[KALYANI GUPTA]
COURT MASTER**

**[SHARDA KAPOOR]
COURT MASTER**

[SIGNED ORDER IS PLACED ON THE FILE.]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NO. 8 OF 2014 IN CIVIL APPEAL NO. 6572 OF 2004

M/S. P.G.F. LIMITED & OTHERS APPELLANTS

VERSUS

UNION OF INDIA AND ANOTHER RESPONDENTS

O R D E R

Heard Mr. Kapil Sibal for the applicant, Mr. Arvind Datar, learned counsel for S.E.B.I., Ms. Pinky Anand, learned Additional Solicitor General for the Union of India.

In our order dated 18th March, 2014, after hearing learned counsel, we passed the following order:-

"The applicant/Respondent No.2-SEBI prays for appropriate orders/directions for ensuring compliance of our order 12.3.2013 passed in C.A. No.6572 of 2004. Pursuant to our orders in the said appeal, Central Bureau of Investigation (hereinafter referred to as the CBI) stated to have attached the cash deposits made by the appellants in different banks in the value of Rs.79,91,79,324.71 somewhere in the month of February, 2014. The additional affidavit filed by the appellants discloses that the CBI has also attached the immovable properties which were part of the so-called Collective Investment Scheme promoted by the appellants and an indicative list of 25 such properties have also been disclosed in the said additional affidavit.

While hearing learned counsel for the respective parties it was felt that the implementation of our order dated 12.3.2013 in the Civil Appeal can be worked out by disposing

of the immovable properties and the money collected from such disposal along with the cash deposits available in the Banks can be disbursed to the investors and thereby the judgment can be implemented. It was also suggested that as a large number of investors, numbering several thousands are existing and the properties are also large in number, it is preferable that the said exercise of disposal of the properties and disbursement will have to be entrusted to some Special Committee consisting of a retired Judge of the Supreme Court or the High Court to be assisted by a retired District Judge of his/her choice.

However, since the properties were attached by the CBI for the purpose of proceeding with the prosecution against the appellants, as directed in our judgment dated 12.3.2013 passed in the Civil Appeal, the response of the CBI as to in what manner its interest can be protected for the purpose of proceeding with the prosecution while lifting the attachment made by the CBI. In that perspective, in our order dated 11.3.2015, we impleaded CBI also as a party respondent to enable this Court to pass appropriate orders in this application in the presence of the CBI. Pursuant to the said order, Mr. B.V. Balram Das, learned counsel, seeks to appear for CBI. We direct CBI to file its response taking into account the above course of action which this Court wants to adopt for the implementation of our judgment dated 12.3.2013.

We also direct Respondent No.2/S.E.B.I. to submit its proposals as to the safeguards or appropriate directions to be issued while appointing a Special Committee for carrying out the exercise of disposal of the properties and the disbursement to be ultimately effected to the investors, both from out of the funds collected from the sale of the immovable properties as well as the amounts lying in various bank accounts of the appellants. Such proposal may be submitted by Respondent No.2/S.E.B.I. by furnishing a copy in advance to the appellants as well as Union of India. The appellants are also directed to file their response to the proposal of Respondent No.2/S.E.B.I. before the next hearing date."

Pursuant to our above order an affidavit dated 26th March, 2015 has been filed by the Superintendent of Police, CBI, wherein it has been pointed out as under in paragraph 11:-

"That CBI has seized papers (including some photocopies) of 348 properties of PGF and more than 14000 properties of PACL and others, all of which may not be title deeds. In the above affidavit dated 22.12.2014, the appellant has provided indicative list of 25 properties, said to be attached by CBI. In this regard, it is submitted that out of indicative list of 25 properties also, original title documents only in respect of 7 properties viz. SL. No. 10, 17, 18, 19, 20, 21 & 25 have been seized by CBI, while papers of 7 properties viz. SL. No. 2, 3, 4, 7, 9, 14 & 22 are 'Agreement To Sell" only and papers of 3 properties viz. SL. No. 11, 12 & 23 are Xerox copy only. Papers of remaining 8 of the said 25 properties do not figure in the list of papers seized by CBI. Similar discrepancies may be expected in remaining property papers also."

It is also prayed on behalf of the CBI that permission to part with the papers of Bank instruments as well as the properties be accorded to CBI with liberty to use photocopies of these documents (secondary evidence) as primary evidence in all Court related matters. There is a further prayer that the appellants be directed to submit unequivocal undertaking in these proceedings that they will not oppose the use of those photocopies of the documents as primary evidence by CBI in any of the

proceedings pending as well as to be lodged.

We find justification in the said claim of CBI. Accordingly, both the prayers are allowed. It is however, open to the appellant to replace any of such documents relied upon and filed by the CBI before the court proceedings with certified copies which shall be permitted by the concerned Court. It is, however, made clear that in the absence of any certified copy being filed by the appellants, whatever photocopies relied upon and filed by the CBI shall be treated as primary evidence in the respective proceedings.

We also direct the CBI to handover all seized papers referred to in paragraph 11 including the fixed deposit receipts.

When we come to the affidavit filed on behalf of S.E.B.I. by its Assistant General Manager, it is suggested therein that in the event of a Special Committee being appointed, the Committee can be directed to be entrusted with the task of releasing the fixed deposits and dispose of the immovable properties and other properties of the appellant seized by the CBI and entrusted with the Special Committee for making the disbursement to the investors/claimants. Mr. Kapil Sibal, learned senior counsel appearing for the appellant also has no objection

for the above course being followed.

Taking into account our orders passed in the Civil Appeal, wherein while directing the second respondent S.E.B.I. to proceed with the Investigation/Inquiry and inspection of the appellant as well as all its other offices and other premises to be carried out in accordance with law, we also directed to take all necessary steps for ensuring the refund of the monies collected by the PGF Limited in connection with the sale and development of land to its various customers; and also having regard to the magnitude of the investments in the form of lands, as well as, by way of fixed deposits invested in various banks, we are of the view that realisation of the monies and disbursement to the large number of investors would require considerable length of time and effort, for which a separate and independent Special Committee needs to be constituted consisting of retired Judges of High Courts, who can be invested with the required power and authority for the sale of the immovable properties after ascertaining the saleability, apart from liquidating the fixed deposits seized by the CBI for the purpose of disbursement to be made to the various investors.

Accordingly, we appoint Mr. Justice K. Ramamoorthy and Mr. Justice Eshwar, Retired Judges of the Madras High

Court and Delhi High Court respectively. We suggest that the modalities to be followed by the Special Committee can be as suggested by S.E.B.I. in the affidavit dated 30th March, 2015 contained in sub-para (iii) by way of Phase I and Phase II. We make it clear that the said modality to be followed by the Special Committee is not exhaustive. It is for the Special Committee to chalk out its own programme to ensure that the realisation of the monies by way of sale of the immovable properties as well as liquidation of fixed deposit receipts are carried out in a phased manner, for the purpose of collecting sufficient amount for disbursement. Having regard to the nature of work and time factor, we leave it to the members of the Special Committee to determine their remuneration as well as other expenses which shall be borne by the appellant as per directions by the members of the Special Committee.

We also permit the Special Committee to engage the services of any Experts like Chartered Accountant or other Experts for the purpose of ascertaining the value of the property or such other allied nature of works, as well as for effectuating the disbursements to be made to the investors/claimants. Whatever expenses incurred on that account shall also be borne by the appellant as and when any direction is given by the members of the Special

Committee.

We only suggest that having regard to the nature of investments made by the investors, it will be appreciated that the Special Committee bestows its valuable time and interest in carrying out the above said exercise at the earliest possible time. Any further direction required by the Special Committee can be sought for by filing necessary application in this Court.

In order to enable the Special Committee to carry out the above said exercise we direct the CBI to handover all the seized documents such as the fixed deposit receipts and other relevant documents to the senior member of the Special Committee, namely, Hon'ble Shri Justice K. Ramamoorthy through their counsel by filing necessary statement of details. Similarly, if any documents or other details are required by the Special Committee to be furnished by the appellant or S.E.B.I. the same shall also be duly submitted by the appellant and S.E.B.I. as and when called for.

If the Committee requires any other details relating to the various transactions which is in the possession of CBI they may address to the CBI who shall furnish whatever available details with them to enable the Committee to carry out its exercise effectively.

The appellant as well as S.E.B.I. are permitted to appear before the Committee and render all assistance for carrying out the exercise with their counsel and if need be even a Chartered Accountant.

The Application stands disposed of on the above terms.

.....J
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J
[SHIVA KIRTI SINGH]

NEW DELHI
APRIL 1, 2015.