

ITEM NO.36+37

COURT NO.7

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (CrI.) Nos.8338-8339/2019
(Arising out of impugned final judgment and order dated 04-09-2019
in WP No.4144/2019, 04-09-2019 in WP No.4145/2019 passed by the
High Court Of Judicature At Bombay)

UNION OF INDIA & ANR.

Petitioner(s)

VERSUS

N. SAMPATH GANESH ETC.

Respondent(s)

(FOR ADMISSION and I.R.; IA No.140092/2019 - FOR EXEMPTION FROM
FILING C/C OF THE IMPUGNED JUDGMENT; and, IA No.141068/2019 - FOR
PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

SPECIAL LEAVE PETITION (CRIMINAL) Diary No.33399/2019
(FOR ADMISSION and I.R.; IA No.143387/2019 - FOR EXEMPTION FROM
FILING C/C OF THE IMPUGNED JUDGMENT; and, IA No.143385/2019 - FOR
PERMISSION TO FILE PETITION)

Date : 26-09-2019 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. Tushar Mehta, SG
Ms. Gauri Rasgotra, Adv.
Mr. L. Vishwanathan, Adv.
Mr. George Varghese, Adv.
Mr. Aditya Sikka, Adv.
Mr. Karan Khanna, Adv.
M/s. Cyril Amarchand Mangaldas AOR

For Respondent(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. D.J. Khambata, Sr. Adv.
Mr. V.P. Singh, Adv.
Ms. Anannya Ghosh, AOR
Mr. Aditya Mehta, Adv.
Mr. Aditya Jalan, Adv.
Mr. Raghav Seth, Adv.
Ms. Anshula Laroiya, Adv.
Mr. Aman Sharma, Adv.
Ms. Vanya Chhabra, Adv.
Ms. Devanshi Singh, Adv.

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

Permission to file the special leave petition is granted.

The order presently under challenge was passed by the High Court on 04.09.2019 in Criminal Writ Petition Nos.4144/2019 and 4145/2019.

After considering the submissions advanced on behalf of the parties, the High Court recorded a *prima facie* opinion that the matter had raised arguable points; that the matter required to be dealt with elaborately; and, that the matter called for a response from respondents no.1 and 2 in the writ petitions. The operative part of the order was:

"14. In above circumstances, we defer the hearing on the writ petitions. Stand over to 3rd October 2019. Till next date, by way of ad-interim relief we pass following order:

(a) The Respondents and/or their agents and/or their servants are restrained from continuing any further proceedings qua the petitioners under Section 140(5) of the Act in Company Petition No.2062 of 2019.

(b) No coercive action shall be taken qua the Petitioners in Criminal Complaint filed before the Special Court, being CC No.20/2019 titled *SFIO v. IL&FS Ltd. & Ors.* in the Court of Ld. Additional Sessions Judge-cum-Special Judge (Companies Act) at Greater Mumbai.

We heard Mr. Tushar Mehta, learned Solicitor General in support of the special leave petitions and Mr. Mukul Rohatgi, learned Senior Advocate for the respondents on caveat.

Since the order passed by the High Court is ad-interim in nature and the matter has been directed to be taken up for hearing on 03.10.2019, we see no reason to interfere in the matter.

However we are of the view that the controversy in question and the issues that have been raised before the High Court need to be considered at an early date. We therefore direct the petitioners before us to put in their affidavits in reply by 27.09.2019 and direct that the original writ petitioners shall file their affidavits in rejoinder by 01.10.2019. The parties have assured us that they will not seek any adjournment on any count and shall be ready to go ahead with final hearing on 03.10.2019.

These directions are passed so that the matter could be taken up for final disposal by the High Court on 03.10.2019.

Mr. Mehta, learned Solicitor General submitted that after the resignation of the original writ petitioners, the Company had passed a resolution on 11.07.2019 appointing M/s. Mukund M. Chitale & Co., Chartered Accountants as Statutory Auditors of the Company, to fill the resultant vacancy but said M/s. Mukund M. Chitale & Co., Chartered Accountants have expressed their inability to take up the assignment which would in turn mean that fresh appointment is required to be made to fill up the vacancy.

We see no reason why steps in that behalf could not be undertaken with promptitude so that the interest of the company is not prejudiced on any count.

Learned Solicitor General submits that appropriate application shall be moved before the NCLT. We grant liberty for moving such an application. If such an application is moved, the matter shall be dealt with in accordance with law.

With the aforesaid observations, the special leave petitions are disposed of.

Pending application(s), if any, shall stand disposed of.

(MUKESH NASA)
COURT MASTER

(SUMAN JAIN)
BRANCH OFFICER