

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

FPA-PBPT/1393/MUM/2021

The Deputy Commissioner of Income-Tax,
Mumbai

... Appellant

Versus

1. M/s Dhanrishi Commosales Pvt. Ltd. ... Benamidar
2. Shri Nagin Meghraj Parekh ... Beneficial Owner No. 1
3. Sh. Pradip Shantilal Shah ... Beneficial Owner No. 2
4. The Principal Officer,
Kotak Mahindra Bank ... Interested Party No. 3

Advocates/Authorized Representatives who Argued

For the Appellant : Sh. Manmeet Singh Arora, SPP

For the Respondents No.1 to 3: Sh. Sankalp Sharma, Advocate,
alongwith Sh. Parag Doshi, CA.

CORAM

SHRI BAILESH KUMAR : **MEMBER**
SHRI RAJESH MALHOTRA : **MEMBER**

FINAL ORDER
27.11.2025

Dictated By: Rajesh Malhotra

Present Appeal u/s 46(1) of Prohibition of Benami Property

Transaction Act, 1988 (PBPTA) is filed by the Initiating Officer and Deputy Commissioner of Income Tax, Benami Prohibition Unit-2, Mumbai, against the order dated 18.08.2020 passed by the Adjudicating Authority, whereby the attachment of properties by Appellant vide Reference No. R-1723/2019 was declined. The details of the alleged benami properties not confirmed is as under:

S. No.	Description of property	Date of Registration	Purchaser
1.	Office Unit No.-21, 21 st Floor, Sunshine Tower, Senapati Bapat Road, Dadar (West), Mumbai – 400013 along with five parking spaces.	28.12.2012	M/s Dhanrishi Commosales Pvt. Ltd. (PAN: AAECD2567N)

2. As per the facts of the case, Provisional Attachment Order (PAO) was passed by the Initiating Officer with approval of the Approving Authority u/s 24(4)(a)(ii) of the PBPTA, 1988 on the basis of following materials:

I. Income-tax Returns of M/s Dhanrishi Commosales Private Limited from AY 2013-14 to AY 2018-19

II. Documents available on the database of Ministry of Corporate Affairs.

III. Statement of Shri Ashok Jha recorded on oath under the Income-tax Act, 1961,

IV. Reference received from the DDIT (Inv.), Unit – 7(3), Mumbai dated 15.05.2019.

As per the I.O., M/s Dhanrishi Commosales Pvt. Ltd. the alleged benamidar was incorporated on 14.05.2012. The registered address of this company at the time of incorporation was 52, Weston Street, 4th Floor, Kolkata – 700012, West Bengal. As per the returns of income, the benamidar has shown a different nature of business for every assessment year.

An immovable property was purchased in the benamidar's name. The sale agreement of the alleged benami property was obtained. A description of the said sale agreement is summarized in the table below:

S. No.	Description of property	Date of Registration and Doc No.	Consideration	Purchaser	Purchased from & payment made to
1.	Office Unit No. – 21, 21 st Floor, Sunshine Tower, Senapati Bapat Road, Dadar (West), Mumbai – 400013 along with five parking spaces.	28.12.2012	9,60,00,000	M/s Dhanrishi Commosales Pvt. Ltd. (PAN: AAECD2567N)	Sunshine Housing Development Private Limited

On perusal of Income-Tax Returns (ITRs) for AY 2012-13 to 2017-18, it is seen that the benamidar company had not earned substantial income in any of the previous years. The only source of income declared by the benamidar is in the nature of interest income and income from

house property. The details of income and important financial details of the benamidar from AY 2013-14 to 2017-18 are tabulated below:

A.Y.	2013-14	2014-15	2015-16	2016-17	2017-18
Salary Income	0	0	0	0	0
House Property income	0		0	0	0
Profit from business or profession	0	-9634	0	-578614	3788780
Capital gains	0	0	0	0	0
Income from other sources	0	0	0	0	0
Total Income	0	-9634	0	-578641	3788780

Analysis of the returns of income of the benamidar from AY 2013-14 to AY 2018-19 reveals that the benamidar's nature of business, as declared by the benamidar, has been as follows:

AY	Nature of business
2013-14	Not mentioned
2014-15	0809 – Financial Services Others
2015-16	0204 – Trading Others
2016-17	1001 - Other Sector
2017-18	0714 – Service Sector – Other
2018-19	07005 – Other Real Estate/ Renting Services N.E.C.

Thus, as seen from above, the benamidar has continuously shown a different nature of business for every year in its return of income. This indicates that the benamidar is not conducting any actual business but is only filing statutory compliances.

It is seen from the balance sheet as on the 31st March of 2013 of the benamidar that it had received Rs. 9,02,00,000/- as 'share application money pending allotment'. There are no other sources of funds available with the benamidar as per the balance sheet. Thus, the benami property was purchased out of this amount only. Further, as per the returns of income from AY 2014-15 to 2018-19, the share application money is shown as nil and loans amounting to Rs. 10,36,00,000/- are shown

outstanding. There is no change in the quantum of outstanding loan amount indicating that either the loans have not been repaid or that they have been replaced. Further, as the same amount of loans have been shown outstanding for the last five years, it shows that the benamidar has no intention of repaying the same or that it intends to evergreen the same. As per the balance sheet as on 31.03.2016, the benamidar has shown that the loan of Rs. 10,36,00,000/- has been received from M/s Rudrapriya Dealers Pvt. Ltd. Further, as per the statutory returns for FYs 2015-16, 2016-17 and 2017-18, the auditor has made the following remarks regarding the loan:

“a. Terms of repayment: In absence of any agreement, the terms of the repayment of the unsecured loan are not ascertainable. But as per the management representation, the same would not be repaid in the next 12 months.

b. The company does not have any continuing default in repayment of loans and interest on the balance sheet date.”

The above remarks of the statutory auditor for a continuous period of three years are telling as they show that the benamidar has no actual liability to repay the so-called loans for a very long period as the benamidar, in the auditor's own words, has not defaulted on repayment of loans. This means that the benamidar has neither any interest in repayment of loans nor has the creditor any interest in ensuring repayments.

The directors of the benamidar at various times were as follow:

DIN	Director Name	Appointment date	Cessation date
00229237	Nagin Parekh Meghraj	18.12.2012	Till date
00039978	Pratik Jayesh Vira	03.12.2018	Till date
01058935	Santosh Kumar Das	02.08.2012	21.12.2015
03611869	Subhankar Maje	14.05.2012	16.08.2012
01652657	Pradip Shah Shantilal	18.12.2012	21.12.2015
03442726	Santosh Kumar Choudhary	07.12.2015	04.12.2018
03578389	Animesh Naskar	14.05.2012	16.08.2012
00414725	Saroj Kumar Das	02.08.2012	18.12.2012

A search and seizure action was conducted by the Income Tax Department upon one Shri Ashok Jha. During the search operation, it was found that Shri Ashok Jha was into the business of providing accommodation entries and had floated various shell companies for this purpose. A statement of Shri Ashok Jha was recorded on oath under section 131 of the Income Tax Act, 1961 on 02.03.2015 wherein he admitted his role in providing accommodation entries.

The Directors of the benamidar at various points in time were Shri Saroj Das and Shri Santosh Kumar Das, who were employees of Shri Ashok Jha. Thus, the benamidar is nothing but a shell company, with dummy/ namesake directors, that has been incorporated for the purpose of providing accommodation entries.

Shri Nagin Meghraj Parekh and Shri Pradit Shantilal Shah became directors of the benamidar on 18.12.2012. It is seen that all the directors and shareholders of the benamidar before them were based out of Kolkata whereas Shri Nagin Meghraj Parekh and Shri Pradip Shantilal Shah are based at Mumbai. It is also noticed that soon after their appointment as directors of the benamidar, the benami properties were purchased on 28.12.2012. It is indeed telling that although the benamidar is based at Kolkata, the benami properties were purchased in Mumbai and no investments in properties have been made in Kolkata, till date. Further, it is also seen that soon after the acquisition of benami properties, the shareholding of the benamidar got changed and Shri Nagin Meghraj Parekh and Shri Pradip Shantilal Shah became the shareholders of the benamidar. This transfer took place at face value even though an immovable property worth crore of Rupees was in the name of the benamidar with no actual liabilities on the date of transfer of shares. This

suggests that the acquisition of the benami properties in the name of the benamidar is nothing but a well-planned arrangement where unaccounted income was introduced in the books of the benamidar as share application money/loans from various shell entities to purchase the benami properties. Thus, it is evident from the above facts and observations:

- (i) That the benamidar is not conducting any business and therefore has no channel of any actual business revenue. Any revenue earned by the benamidar is nothing but passive income from the benami property itself.
- (ii) That, the benamidar was newly incorporated. Nevertheless, the benamidar had received huge amounts as share application money.
- (iii) That the financials of the benamidar indicate that it is a shell company.
- (iv) That pursuant to a search and seizure operation by the Income-Tax Department on the Entry Operator – Shri Ashok Jha, it was found that the benamidar is involved in providing accommodation entries.
- (v) That the source of consideration for the purchase of benami property was through bogus share application money which is subsequently converted to loans.
- (vi) That the source of consideration paid towards acquisition of benami property is also bogus, as evident from the statement of Shri Ashok Jha.
- (vii) That the funds used to purchase the benami property do not belong to the benamidar and that some other person has provided the consideration and has used the benamidar's name for purchase of the benami property.
- (viii) That the directors of the benamidar are for namesake purposes and all operational and managerial decisions are taken by Shri Ashok Jha, who is a known accommodation entry provider, at the behest of the beneficial owner. It is evident from the statement of Shri Ashok Jha that he used the benamidar to route unaccounted money into informal channel so as to camouflage the origin of the money and thereby evade lawful obligations.
- (ix) That the benamidar has no actual business activities as evident from nil revenue and unsubstantial business expenses. Further, since the benamidar is a shell company, the income from benami property, although shown in books, is actually meant for the benefit of some other person/s which in this case are Shri Nagin Meghraj Parekh and Shri Pradip Shantilal Shah, who are the beneficial owners of the benami property, as they are the persons who have purchased the shares of the benamidar at face value, even though, by virtue of the benamidar being the owner of a substantial amount of immovable property, the Fair Market Value of the shares of the benamidar would have been much higher.

(x) That the shareholding of the company was changed at face value. It is quite dubious that the shares of a company, which is the owner of a substantial amount of immovable property, got transferred at face value.

From the reading of Section 2(9) and 2(26) of PBPTA, 1988, it is clear that transaction of acquisition of the said immovable property entered into by M/s Dhanrishi Commosales Private Limited is a benami property transaction under section 2(9) of PBPTA, 1988 as all the events required to purchase the said immovable property were carried out as per the desire and instruction of someone other than benamidar and the sources of funds used for the purchase of the benami property do not belong to it.

Accordingly, the Initiating Officer concluded that the benamidar and the shareholding companies have purposefully entered into a transaction which is squarely covered u/s 2(9)(A) of PBPTA, 1988 as under:

S. N.	Particulars	Details
1.	Benami Property u/s 2(9)(A) of the PBPT Act, 1988 (akin to pre-amended Section 2(a) The Benami Transactions (Prohibition) Act, 1988)	Money infused as share application money in the benamidar company against the consideration paid by beneficial owner to the entry operation; along with the Immovable property acquired from such benami property which represents benami property in converted from or its proceeds.
2.	Benami Transaction	Transaction of infusion of share capital along with the premium in the benamidar company against the equivalent consideration paid by beneficial owner to the entry operation; along with the transaction of purchase of immovable property for which consideration has been paid by beneficial owner through bogus share premium.
3.	Benamidar	M/s Dhanrishi Commosales Private Limited
4.	Beneficial Owner	Shri Nagin Meghraj Parekh and Shri Pradip Shantilal Shah.

He further concluded that without prejudice to the above, the transaction of purchase of aforesaid immovable properties is also benami transaction as per Section 2(9)(D) of PBPTA, 1988 as under:

S. N.	Particulars	Details
1.	Benami Property u/s 2(9)(D) of the PBPT Act, 1988	Immovable property acquired by the Benamidar as the consideration for the purchase of the aforesaid property has come from fictitious entities.
2.	Benami Transaction	Transaction of purchase of immovable property by the benamidar entity.
3.	Benamidar	M/s Dhanrishi Commosales Private Limited
4.	Beneficial Owner	Shri Nagin Meghraj Parekh and Shri Pradip Shantilal Shah.

Accordingly, the Initiating Officer issued Show Cause Notice (SCN) u/s 24(1) of PBPTA, 1988, dated 31.05.2019 to M/s Dhanrishi Commosales Pvt. Ltd., as to why the property purchased in the name of the said company should not be treated as benami transaction. In response to the said SCN, the company submitted its replies on 10.06.2019, 14.06.2019 and 25.03.2019. After perusal of the said replies, the I.O. opined that –

(ii) The benamidar has claimed that the source of consideration of the benami property has been received by the benamidar as a loan from M/s Rudrapriya Dealers Private Limited and thus there is no involvement of black money. At this juncture, it is stated that the SCN clearly brought out the overreaching role of a known accommodation entry provider in the affairs of the benamidar. These facts cast a massive cloud of doubt regarding the genuineness of the transactions in which the benamidar is involved especially during the period during which dummy directors such as Shri Santosh Kumar Das were at the helm of the affairs of the benamidar. It is also noted that the ITRs for AY 2013-14 and 2014-15, the time period when loans were received by and benami properties were purchased in the name of the benamidar, are verified and signed by Shri Santhosh Kumar Das. The benamidar has merely claimed that the consideration is paid using loans and has self-attested the authenticity and genuineness of such loans by merely making self-declaratory statements without backing them with concrete evidence. The benamidar has not provided any documentary evidence such as loan agreements, bank statements, confirmation of loans and answers to logical questions as to how the benamidar got in contact with its creditor, how the creditor advanced an interest free loan to the benamidar which was, as per

benamidar's own claim, repaid for the first time in part after a lapse of almost 7 years. In absence of such documents and answers, the benamidar has failed to prove that the so-called receipt of loan is a genuine financial transaction and not a farce employed to deceive the authorities and to camouflage the actual origins of money.

(iii) M/s Rudrapriya Dealers Private Limited was incorporated on 10.02.2012 at 42, Burtolla Street, Kolkata. Its directors since inception till 2017 were Hiralal Maity and Debrata Naskar. It is seen from the return of income for AY 2012-13 and 2013-14 that the sources of funds available with M/s Rudrapriya Dealers Private Limited come solely from its issued capital and share premium. During FY 2011-12, M/s Rudrapriya Dealers Private Limited has allotted equity shares of face value Rs. 1 at a premium of Rs. 999 per share. The total amount received by M/s Rudrapriya Dealers Private Limited as share premium as on 31.03.2012 is Rs. 11,48,85,000/-. Since the consideration for benami property is Rs. 9.60 crores, all of which comes as loan from M/s Rudrapriya Dealers Private Limited, it may be safely concluded that the origin of the consideration is through the said share premium. On perusal of the records of M/s Rudrapriya Dealers Private Limited available with MCA, I.O. observed that it has received share premium from the following companies on 27.03.2012:

S. No.	Name & occupation of Allottees	Address of Allottees	Nationality of Allottees	Number of share allotted	Total Amount paid (including premium)	Total amount to be paid on calls (including premium outstanding)
1.	Anmol Conclave Pvt. Ltd.	47, Hariram Goenka Street, 3 rd Floor, Kolkata – 700007	Indian	20600	2,06,00,000	N.A.
2.	Baba Iron Industries Pvt. Ltd.	232, S.K.B. Sarani, Chasipara, 4 th Floor, Kalindi, Flat No. 4A, Kolkata – 700007.	Indian	1900	19,00,000	N.A.

3.	Coolhut Infra Ventures Pvt. Ltd.	7A, Bentick Street, 4 th Floor, Kolkata – 700001	Indian	28300	2,83,00,000	N.A.
4.	Exotic Commosales Pvt. Ltd.	105, Cotton Street, Kolkata – 700007	Indian	21400	2,14,00,000	N.A.
5.	Flowtop Trexim Pvt. Ltd.	9, Lal Bazar Street, Block-A, 3 rd Floor, Kolkata – 700001	Indian	23300	2,33,00,000	N.A.
6.	Scorpion Nirman Pvt. Ltd.	47, Hariram Goenka Street, 3 rd Floor,	Indian	19500	1,95,00,000	N.A.
	Total			1150000	11,50,00,000	

(iv) Even a cursory perusal of the entities subscribing to the shares of M/s Rudrapriya Dealers Private Limited will reveal that the subscribers are nothing but shell entities having no creditworthiness of their own and are nothing but pass through entities. The facts regarding the subscribing companies that bring out the above is produced below for ready reference:

S. No.	Name of subscriber	Date of incorporation	Directors at the time of allotment	Source of funds available as on 31.03.2012
1	Anmol Conclave Pvt. Ltd.	08.11.2011	Prabir Bhattacharyay and Naresh Kumar Jain	50,06,50,027 (Almost entirely as share premium)
2	Baba Iron Industries Pvt. Ltd.	08.04.1988	Prachin Kumar and Harekrushna Sahoo	97,01,18,423 (Almost entirely as share premium)
3	Coolhut Infra Ventures Pvt. Ltd.	27.01.2012	British Rajak and Santosh Kumar Babna	22,47,10,000 (Almost entirely as share premium)
4	Exotic Commosales Pvt. Ltd.	28.12.2011	Ashok Kumar Jha and Ranjan Kumar Jha	25,90,50,000 (Almost entirely as share premium)
5	Flowtop Trexim Pvt. Ltd.	27.01.2012	Bharat Goenka and Tarak Dey	14,32,00,000 (Almost entirely as share premium)
6	Scorpion Nirman Pvt. Ltd.	11.11.2011	Prabir Bhattacharyay and Naresh Kumar Jain	63,36,50,569 (Almost entirely as share premium)

(v) As seen from above, almost all the subscribers were incorporated only a few months ago from the date of allotment and the sources of funds available with them is from external sources only clearly indicating that these are nothing but passing through entities. Further, it is also noticed that Shri Prachin Kumar, director of M/s Baba Iron Industries Pvt. Ltd. is also a director of M/s Amit Auto Credit Company Pvt. Ltd. along with Shri Ashok Jha. It is also noticed that Shri Santosh Kumar Babna, director of

M/s Coolhut Infra Ventures Private Limited is also a director of M/s Metroplex Tie-up Private Limited which is a company directly controlled and managed by Shri Ashok Jha and this has been admitted in his statement. Thus, it can be seen that most of the companies subscribing to the shares of M/s Rudrapriya Dealers Private Limited are directly linked to Shri Ashok Jha.

(vi) Further, it is also seen that M/s Rudrapriya Dealers Private Limited is not conducting any business of its own and has almost advanced its entire capital as interest free loans majorly to the benamidar. This can be seen from the returns of income of M/s Rudrapriya Dealers Private Limited, the important parameters of which is reproduced below for reference:

A.Y.	Total Turnover	Expenses	Profit
2012-13	0	19319*	-19319
2013-14	0	21124*	-21124
2014-15	0	25918*	-25918
2015-16	0	20600*	-20600
2016-17	0	19650*	-19650
2017-18	0	2815*	-2815
2018-19	0	4915*	-4915

*Expenses are in the nature of Audit fee and Compliance related expenditure.

(vi) M/s Rudrapriya Dealers Private Limited was incorporated on 10.02.2012 and had received huge share premium within the next few months of its incorporation. It can be safely assumed that a genuine business conducting entity would use any share capital raised for its own benefit and the act of advancing the same as interest free loans without any foreseeable benefit or economic rationale casts a massive doubt about the conduct of such an entity. Thus, M/s Rudrapriya Dealers Private Limited has undertaken financial transactions that are not beneficial but rather completely harmful to its own interests. Therefore, M/s Rudrapriya Dealers Private Limited is nothing but a shell entity used for introduction

of unaccounted money and to advance the same as loans to be used as consideration for the benami properties and this entire scheme is nothing but an arrangement made with a view to enter into a benami transaction.

viii) Thus, the above discussion clearly negates the contention of the benamidar that no unaccounted money is involved. Further, in PCIT (Central) v. NRA Iron & Steel Pvt. Ltd. India (Special Leave to Appeal (C) No.29855/2018), the Hon'ble Supreme Court has clarified the nature of onus and the extent of burden cast upon the company which has received share premium. The relevant extracts of the judgment are reproduced below:

-"The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee."

Although the above case law pertains to matters under the Income Tax Act, 1961 and the share premium has been received by an intermediary party, the *ratio decidendi* of the case with regard to the requirement of proof of the genuineness of loans advanced using share premium received upon subscription of shares via private placement are nonetheless the same. Hence, it is the benamidar who is obligated to prove the genuineness of the transactions with parties from whom it is receiving loans.

On the basis of the material placed and the findings of the search and seizure action and reply of the benamidar, the IO concluded that

source of consideration for the benami properties does not belong to the benamidar. As a result, the purchase of the benami properties by M/s Dhanrishi Commosales Private Limited is a benami transaction as per clauses 2(9)(A) of the PBPT Act, 1988 and the beneficial owners are Shri Nagin Parekh and Shri Pradip Shantilal Shah. Further, without prejudice to what is stated before, this is a benami transaction as per clause 2(9)(D) of the PBPT Act, 1988, as the consideration comes from M/s. Rudrapriya Dealers Private Limited and other fictitious shell entities.

Accordingly, based on the investigation and material on record, the IO provisionally attached the properties vide order dated 31.05.2019 under Section 24(3) of PBPTA, with the prior approval of the Approving Authority. Thereafter, he passed the Provisional Attachment Order dated 31.07.2019 u/s 24(4)(a)(i) of PBPT Act, 1988. Thereafter, he sent the reference no. 1723/2019 before the Adjudicating Authority for confirmation of the PAO under Section 26 of PBPTA.

The Adjudicating Authority after going through the reference issued the Show Cause Notice to the noticees. Thereafter, after receiving their replies and hearing the rival submissions, the Adjudicating Authority declined for confirmation of the reference vide impugned order dated 18.08.2020.

Aggrieved by the said order, the appellant DCIT filed the present appeal.

3. During the arguments, Ld. Counsel for the appellant DCIT pointed out that returns of income of M/s Dhanrishi Commosales (benamidar) for the A.Y. from 2013-14 to 2017-18 were analyzed by Deputy Director of Income Tax, which revealed that the said benamidar company had not

earned substantial income in any of the previous years. The benamidar purchased the benami property (as detailed in para no. 1 above) on 28.12.2012. The source of funds, as per balance sheet on 31.03.2013 is in the form of '*share application money pending allotment*' amounting Rs.9.02 crores. This company was incorporated on 14.05.2012, at Mumbai and its original shareholders were Sh. Subhankar Majee and Animesh Naskar. Except the share application money, no fund was available with the benamidar company M/s DCPL as per the balance sheet. However, as per the balance sheet as on 31.03.2016, the benamidar has shown loan of Rs. 10.36 Crores received from M/s Rudrapriya Dealers Pvt. Ltd., instead of share application money, or premium. The said interest free loan had never been serviced, as per Auditors remarks pertaining to financial year 2015-16, 2016-17 & 2017-18 (three consecutive years). He contended that lender M/s Rudrapriya Dealers Pvt. Ltd. had allotted the equity shares and the total amount received as share capital and premium was Rs. 11,48,85,000/- from six different entities, out of which five had been incorporated around same time, when M/s Rudrapriya Dealers Pvt. Ltd. came into existence. Since the consideration for benami property is Rs.9.60 crores, all of which comes as loan (previously treated as share application money) from M/s Rudrapriya Dealers Private Limited, it points towards a direction that the origin of the consideration is through the said share premium. On perusal of the records of M/s Rudrapriya Dealers Private Limited available with the MCA, it is seen that it has received share premium from various companies, which were incorporated only a few months ago from the date of allotment of the shares of M/s RDPL and the sources of funds available with them is from external sources only clearly indicate that these six entities are nothing but passing through entities. Almost all the subscribing

companies are directly controlled and managed by one Shri Ashok Jha, a known accommodation entry provider. Therefore, M/s Rudrapriya Dealers Private Limited is nothing, but a shell entity used for introduction of unaccounted money and to advance the same as loans to M/s DCPL to be used as consideration for the benami properties.

He pointed out that a search and seizure action was conducted by the Income Tax Department upon Shri Ashok Jha. During the search operation it was found that Shri Ashok Jha was into the business of providing accommodation entries and had floated various shell companies for this purpose. Statement of Shri Ashok Jha was recorded on oath under section 131 of the Income Tax Act, 1961 on 02.03.2015, wherein he admitted his role in providing accommodation entries.

The directors of the benamidar M/s Dhanrishi Commosales Pvt. Ltd. at various points in time were Shri Saroj Das and Shri Santosh Kumar Das, who were employees of Shri Ashok Jha.

He contended that after the acquisition of benami property by DCPL, the shareholding of this benamidar company got changed and Shri Nagin Meghraj Parekh and Shri Pradip Shantilal Shah, both residents of Mumbai became the shareholders of the benamidar. The new shareholders got the ownership of a company along with immovable property as asset by transfer of shares at face value. This very fact that the new shareholders were able to purchase the shares at face value from a Kolkata based company indicates that such transfer of shares resulting in indirect ownership of the benami property is nothing but a well thought out arrangement. Hence, it is clear that the acquisition of the benami property by the benamidar company is solely for the benefits of Shri Nagin Parekh

and Shri Pradip Shantilal Shah. As these benami transactions have been made to benefit Shri Nagin Parekh and Shri Pradip Shantilal Shah, who are the ultimate beneficial owners, it is evident that these transactions were entered into by the benamidar upon the instructions of Shri Nagin Parekh and Shri Pradip Shantilal Shah in collusion with accommodation entry providers like Shri Ashok Jha.

He argued that there is no reason or rationale that how a newly incorporated company DCPL at Kolkata attracted high share premium and thereafter the said share premium was duly applied for acquisition of immoveable property, soon after the shares were transferred at face value.

He contended that in view of the above facts, it is clear that the benami properties were purchased from the bogus share premium subsequently treated as loan. The benamidar did not have any other source of funds for purchase of the benami properties. The benamidar company is a shell corporation that has been incorporated at the behest and instance of an entry operator, Sh. Ashok Jha, and thereafter, used as SPV by the beneficial owners no.1 & 2 to park funds in immoveable property through high magnitude of share premium/loan entry in benamidar company which had no intrinsic worth. As a result, the purchase of the benami properties by M/s Dhanrishi Commosales Private Limited is a benami transaction as per clause 2(9)(A) of the PBPT Act, 1988 and the beneficial owners are Shri Nagin Parekh and Shri Pradip Shantilal Shah. Ld. counsel for the appellant submitted that without prejudice to what is stated before, alternatively this can also be covered as a benami transaction as per clause 2(9)(D) Of the PBPT Act, 1988, in case of any doubt regarding the beneficial owners, as the consideration comes from M/s Rudrapriya Dealers Private Limited and other fictitious shell entities.

Accordingly, Reference no. R-1723/2019 was sent to the Adjudicating Authority along with the relied upon documents for confirmation of PAO dated 31.07.2019.

Ld. Counsel for the Appellant DCIT pointed out that the Adjudicating Authority after perusal of reference and documents issued Show Cause Notice dated 27.08.2019 under Section 26(1) of PBPT Act against the defendants. After receiving the replies and hearing the rival submissions, the Adjudicating Authority vide impugned order dated 08.08.2020, declined the reference for confirmation and accordingly, Appellant DCIT filed the present appeal.

After pointing out the above facts, during the arguments Ld. Counsel for the Appellant submitted that the Adjudicating Authority wrongly declined the confirmation of the PAO vide the reference no. 1723/2019, without appreciating the true facts and the legal position. He stressed that there is basic breakdown of risk/reward principles, where the benamidars and its shareholders have not received rewards commensurate the shareholding to the risk associated with their shareholding. The Adjudicating Authority has stated in para 5 of the order as below: -

"However, nothing is adduced and established that the beneficial owners have provided any amount for or towards the loans given by M/s Rudrapriya Dealers Pvt. Ltd. to M/s Dhanrishi through, or otherwise, the instrumentality of Ashok Jha"

Ld. counsel for the appellant submitted that this is factually incorrect, as the IO has clearly brought on record that the funds available with M/s Rudrapriya Dealers Pvt. Ltd. are in fact through the entry operator Sh. Ashok Jha. On page 23 & 24 of the order of the Adjudicating Authority, it is clearly mentioned that IO had brought on record the source of funds for M/s Rudrapriya Dealers Pvt. Ltd., and consequently, established that the companies/entities subscribing to shares of M/s

Rudrapriya at a premium are in fact linked to Sh. Ashok Jha. Further, the Adjudicating Authority has stated in para 5 of the impugned order as below:

"No material is adduced by way of any enquiry or statement recorded under section 19 of the PBPT Act"

He argued that this is erroneous finding. The IO has conducted an in-depth inquiry and presented facts in a cogent manner tracing the funds into M/s Rudrapriya and from M/s Rudrapriya to the benamidar M/s Dhanrishi. The IO is not required to record statement u/s 19 of the PBPT Act, if the facts that have been marshaled speak for themselves, being based on the documentary evidence. Recording of statements u/s 19 is not a sine qua non to hold a property/transaction as benami, if the facts speak otherwise, or are inspiring.

Ld. Counsel for the Appellant pointed out that the Adjudicating Authority has stated in para 6 of the order as below: -

"Admittedly, the consideration for buying of the property was made by D-1, the benamidar. The benamidar company is very much in existence and is not a fictitious company. In fact, the benamidar has adduced the evidence by way of the audited accounts that benamidar is earning substantial rent from the said premises after its acquisition".

The Adjudicating Authority has erred in reading the facts presented by the IO. It is clear that benamidar M/s Dhanrishi has paid to buy the property. This fact was never in dispute. Ld. Counsel for the Appellant stressed that the question is from where and how did the benamidar receive funds to pay and buy the property in question. The funds received by benamidar is shrouded in taint and circumstantially linked to several persons, who are mere name lenders and operate to provide fictitious entries, or accommodation entries. Further, post-acquisition the

benamidar company has made an effort to regularize by reporting rental income, this in itself cannot be a ground to dismiss the benami nature of acquisition.

He contended that after the acquisition of benami properties, the shareholding of the benamidar got changed and Sh. Nagin Meghraj Parekh & Sh. Pradip Shantilal Shah became the shareholders of the benamidar. The new shareholders got the ownership of a company along with immovable property as asset, by purchase of shares of M/s Dhanrishi at face value. This very fact that the new shareholders were able to purchase the shares at face value from a Kolkata based company M/s Rudrapriya, indicates that such transfer of shares resulting in indirect ownership of the benami property is nothing, but a well thought out arrangement. Hence, it is clear that the acquisition of the benami property by the benamidar is solely for the benefits of Sh. Nagin Meghraj Parekh & Sh. Pradip Shantilal Shah. As these benami transactions have been made to benefit Sh. Nagin Meghraj Parekh & Sh. Pradip Shantilal Shah, who are the ultimate beneficial owners, it is evident that these transactions were entered into by the benamidar upon the instructions of Sh. Nagin Meghraj Parekh & Sh. Pradip Shantilal Shah in collusion with accommodation entry providers like Shri Ashok Jha. He argued that interestingly the erstwhile shareholders were benevolent enough to spot/identify the respondents at Mumbai from a distance of 2025 km approximately and give up their valuable security of Rs 9,02,00,000/- magnitude at face value. This extreme philanthropic virus seems to be running through and emanated in a host of references identified and developed by BPU.

Ld. Counsel for the Appellant submitted that the Ld. Adjudicating Authority erred in holding that there would indeed be a strict requirement

for the IO to prove that the funds have been received by a benamidar from the beneficial owners in contradistinction to the provisions of section 2(9)(A) of the PBPT Act, 1988, which states that funds can be either directly paid, or these can be provided by the beneficial owner to the benamidar, and therefore, either of the two events will be sufficient to hold that funds have been received from beneficial owner. Be as it may, in all probabilities, the alternative application of Section 2(9)(D) has been wrongly discarded. Assuming the reason of "strict requirement to establish flow of funds from coffers of BO" to refute the contentions of the IO/BPU are true, then the Ld. Adjudicating Authority has gone on a tangent to discard the applicability of Section 2(9) (D).

Ld. Counsel for the Appellant argued that the IO without any prejudice had made a proposition to treat the transaction, as benami transaction u/s 2(9)(D). The same ought not to be held contradictory to section 2(9)(A). The IO had brought on record the nature and the way the funds have flown from the entities operated by an accommodation entry provider. The very nature of the accommodation entry provider is to use name-lenders and benamidar. The name-lenders are indeed fictitious persons. Since the funds flowing into benamidar M/s Dhanrishi are routed through fictitious entities, the provisions of section 2(9)(D) can be applied. This is a benami transaction as per clause 2(9)(D) of the PBPT Act, 1988 as the consideration comes from M/s. Rudrapriya Dealers Private Limited and other fictitious shell entities. The Adjudicating Authority failed to adjudicate on this aspect before coming to conclusion whether 2(9)(D) is applicable or not.

He further argued that the Ld. Adjudicating Authority erred in holding the impugned transaction as a genuine commercial transaction,

without appreciating the incredulous nature of facts and circumstances surrounding the transaction and the manner in which the transaction has been accomplished.

He submitted that the Ld. Adjudicating Authority erred in not appreciating that surrounding circumstances and test of human probabilities have to be invariably taken into consideration to determine the actual state of affairs than projected affairs, as laid down in the case of **Sumati Dayal v. CIT** (1995) 214 ITR 801, reiterating the law laid down in **CIT v. Durga Prasad More** (1971) 82 ITR 540 (SC) deserve due application and analysis.

4. On the other hand, Ld. Counsel for the respondents submitted that in the PAO, it was wrongly alleged that M/s Dhanrishi Commosales Pvt. Ltd. was a benamidar of Sh. Nagin Meghraj Parekh & Sh. Pradip Shantilal Shah, the beneficial owners in relation to the investment made by M/s Dhanrishi in purchase of an under-construction property, being office number 21 in Sunshine Tower. He argued that the Adjudicating Authority rightly passed the well-reasoned and detailed order as the said transaction is not covered under any provision of Section 2(9) of the PBPT Act. He pointed out that the alleged beneficial owners are holding the shares of the alleged benamidar company and are rightly earning the rewards commensurate to the risk associated with their shareholding. No funds have been provided by the beneficial owners to the lender M/s Rudrapriya Pvt. Ltd., but to the alleged benamidar company by purchasing its shares. The whole case is formulated by the IO on the basis of information provided by Income Tax Department after the search conducted at the premises of Mr. Ashok Jha and statement recorded thereafter. IO has not conducted any independent enquiry to verify the true facts. He stressed that the

alleged beneficial owners are not covered in the said definition as they have not provided any consideration to acquire the aforesaid property in the name of alleged benamidar. The rental income of the purchased property received by M/s Dhanrishi is being utilized for discharge of loan liability, and never passed on to the alleged beneficial owners. He pointed out that the alleged beneficial owners were inducted as Directors on 18.12.2012, whereas the under-construction property was purchased thereafter vide agreement dated 27.12.2012 for total sale consideration of Rs. 9.60 crores. The said amount was out of the loans taken from M/s Rudrapriya Dealers Pvt Ltd. The alleged beneficial owner had no role in the management of M/s Rudrapriya Dealers Pvt. Ltd. He pointed out that after taking the possession in 2015, the property was given on rent from time to time and the rental income was utilized for incurring expenditure. He contended that in order to repay the loans to the lender M/s Rudrapriya, M/s Dhanrishi has taken OD facility from Kotak Mahindra Bank to the extent of 3 crores, which was paid to the lender. Subsequently, the rental income was utilized for the repayment of OD facility. This falsify the contention of the appellant that the loan taken from Rudrapriya was not repayable. He pointed out that one of the alleged beneficial owners Sh. Pradip Shantilal Shah has resigned as Director of M/s Dhandrishi w.e.f. 21.12.2015 and also sold his shares to Sh. Pratik Jayesh Vira on 27.12.2018 and thus, he was no longer Director or shareholder of the company at the time issuance of the Show Cause Notice or the passing of PAO in the year 2019. He argued that if Sh. Pradip Shantilal Shah were the alleged beneficial owner, then he would not have sold his shares to Sh. Pratik Jayesh Vira on face value. He stressed that even otherwise, when the loan was taken with an obligation for repayment, it would not be covered within the ambit of consideration, alleged to be provided by the beneficial owners through M/s

Rudrapriya. Accordingly, he argued that Sh. Nagin Meghraj Parekh & Sh. Pradip Shantilal Shah, are not the beneficial owners in any manner, as alleged. He argued that as there was no intention to be the beneficial owners of the benami property, as alleged, they are not liable under PBPTA as is stated in the case of **Thakur Bhim Singh v. Thakur Kan Singh**, 1980 3 SCC 72. He further argued that the property purchased by the M/s Dhanrishi was not purchased for immediate or future benefits of Sh. Nagin Meghraj Parekh & Sh. Pradip Shantilal Shah, the alleged beneficial owners/shareholders in individual capacity, and hence, the said transaction is not covered u/s 2(9)(A) of PBPT Act, in any manner. He contended that the alleged beneficial owners are reputed chartered accountants and managing the day-to-day affairs of the company and there is nothing on record that either M/s Dhanrishi or its Directors are fictitious persons, and hence, section 2(9)(D) of PBPT Act is also not applicable in the present case. He submitted that even otherwise an incorporated company holding any property in its name cannot be termed as benamidar, simply because the funds are invested by its shareholders, alongwith the loan amount, which have been utilized for purchasing the property. In support of this contention, he relied upon the judgment of Hon'ble High Court of Rajasthan in the case titled as **M/s Shri Kalyan Buildmart Pvt. Ltd. & Ors. v. The IO, DCIT (Benami Prohibition) Jaipur & Ors.**, S.B. Civil Writ Petition No. 11176/2020 dated 04/09/2021 and Hon'ble Supreme Court of India in case of **Pawan Kumar Gupta v. Rochiram Nagdeo** 1999 (4) SCC 243. He argued that DCIT failed to discharge its burden of proof that DCPL is benamidar and its directors are beneficial owners. In support of the same, he cited the judgment of Hon'ble Supreme Court of India in the case of **Jaydayal Poddar v. Mst. Bibi Hazra and Ors.**, 1973 SCC Online SC 318. He further argued that the

amendments made in the PBPTA, 1988 will not be applicable retrospectively for the past transactions. In support of his contention, he relied upon the judgments namely, **R. Rajagopal Reddy v. Padmini Chandrasekhran** 1995 213 ITR 340 ; **Star India v. Commissioner of Central Excise** 2005 (7) SCC 203 and **Union of India v. Ganpati Dealcom Pvt. Ltd.**, 1 (2023) 3 SCC 315. Prayer is accordingly made to dismiss the present appeal being devoid of any merits.

5. After hearing the rival submissions, we have given our thoughtful consideration to the same. The submissions made by Ld. counsel for Respondent No. 1 to 3 appears to be logical. However, for reaching the truth of the case, it will be necessary to analyze the facts of the case in correct perspective. The directors of the alleged benamidar M/s Dhanrishi Commosales Pvt. Ltd. at various times is tabulated as under:

DIN	Director Name	Appointment date	Cessation date
03611869	Subhankar Maje	14.05.2012	16.08.2012
03578389	Animesh Naskar	14.5.2012	16.08.2012
00414725	Saroj Kumar Das	02.08.2012	18.12.2012
01058935	Santosh Kumar Das	02.08.2012	21.12.2015
00229237	Nagin Parekh Meghraj	18.12.2012	Till date
01652657	Pradip Shah Shantilal	18.12.2012	21.12.2015
03442726	Santosh Kumar Choudhary	07.12.2015	04.12.2018
00039978	Pratik Jayesh Vira	03.12.2018	Till date

Bank account of DCPL at page 152 annexed with reply of respondent no. 1 reflect opening balance of Rs. 0 and deposit entry of Rs. 10,000 on 27.08.2012, which was apparently on account of share value of the shares purchased by two shareholders/directors. On the said date DCPL was not having any other cash in hand. Thereafter, on 29.08.2012 onwards, DCPL received the transfer entries from RDPL.

As per the facts of the case, the under-construction property mentioned in para no. 1 above was stated to be purchased on 28.12.2012

by DCPL vide agreement dated 28.12.2012 for sum of Rs. 9.60 Crores and received the possession of the same in year 2015. Sh. Nagin Meghraj Parekh & Sh. Pradip Shantilal Shah were inducted as directors in M/s Dhanrishi Commosales Pvt. Ltd. (DCPL) on 18.12.2012, however shares were transferred in their name only on 01.02.2013 at its face value. It is also an admitted fact that Sh. Pradip Shantilal Shah left the post of director in DCPL on 21.12.2015, but the shares in his name were transferred to the new director Prateek Jayesh Vira on 27.12.2018, but Nagin Meghraj Parekh, remained the director of DCPL till date. The statement of account sent by the lender M/s Rudrapriya Dealers Pvt. Ltd. (RDPL) to the loanee M/s DCPL reflects following amounts advanced to the loanee company:-

On 29.08.2012 Rs. 10 Lakhs; on 05.10.2012 Rs. 25 Lakh; on 09.10.2012 Rs. 45 lakhs, Rs. 25 lakhs and Rs. 10 lakhs; on 11.10.2012 Rs.25 lakhs, Rs. 45 lakhs and Rs. 25 lakhs; on 17.10.2012 Rs. 44 lakhs, Rs. 47 lakhs, Rs. 21 lakhs and Rs. 38 lakhs; on 18.10.2012 Rs. 20 lakhs and Rs. 30 lakhs; on 06.11.2012 Rs. 38 lakhs, Rs. 32 lakhs, Rs. 39 lakhs and Rs. 41 lakhs; on 07.11.2012 Rs. 20 lakhs and Rs. 30 lakhs; on 15.11.2012 Rs. 35 lakhs, Rs. 30 lakhs and Rs. 35 lakhs; on 23.11.2012 Rs. 45 lakhs, Rs. 35 lakhs and Rs. 20 lakhs; on 05.12.2012 Rs. 30 lakhs; on 22.12.2012 Rs. 30 lakhs and Rs. 20 lakhs; on 27.12.2012 Rs. 9 lakhs; on 28.12.2012 Rs. 3 lakhs. The above figures reflect that DCPL received sum of **Rs. 9.02 Crores** up-to **28.12.2012**.

On 16.04.2013 Rs. 2 lakhs and Rs. 22 lakhs; on 05.02.2014 Rs. 32 lakhs, Rs. 25 lakhs and Rs. 18 lakhs; on 06.02.2014 Rs. 35 lakhs. Thus, DCPL received sum of **Rs. 1.34 Crores** from **April 2013 to Feb 2014**.

The said amounts are also reflected in the bank account statement of RDPL which is at page 138 to 147 of the reply and the same is also summarized by RDPL at page 136 of the reply. Thus, DCPL received total sum of **Rs. 10.36 Crores** from RDPL.

6. As per the case of appellant Department, the Income Tax Returns of DCPL were analyzed by Deputy Director of Income Tax for the AY 2013-14 to 2017-18, which revealed that the said company had not earned any substantial income in any of the previous years. The source of funds, as per balance sheet on 31.03.2013 is in the form of '*share application money pending allotment*' amounting to Rs. 9.02 Crores.

Now coming to the source of money with M/s RDPL, Ld. Counsel for the Appellant Department pointed out that this company was incorporated in the year 2012 and collected the share premium from six constituents @ share premium vale of Rs. 999 per share on **27.03.2012** against the face value of Rs. 1. The details of shareholders of M/s RDPL is tabulated as under:

Sl. No.	Name & occupation of Allottees & Address of Allottees	Number of Share Allotted	Total Amount Paid (including premium) (in Rs.)
01	Anmol Conclave Pvt Ltd. 47, Hariram Goenka Street 3" Floor Kolkata-700007	20600	2,06,00,000/-
02	Baba Iron Industries Pvt Ltd 232, S.K.B. Sarani Chasipara 4 Floor Kalindi Flat no.4A Kolkata-700007	1900	19,00,000/-
03	Coolhut Infra Ventures Pvt Ltd 7A, Bentick Street 4 Floor Kolkata 700001	28300	2,83,00,000/-
04	Exotic Commosales Pvt Ltd 105 Cotton Street Kolkata-700007	21400	2,14,00,000/-
05	Flowtop Trexim Pvt Ltd 9 Lal Bazar Street, Block -A 3 Floor Kolkata-700001	23300	2.33,00,000/-
06	Scorpion Nirman Pvt Ltd 47, Hariram Goenka Street 3 Floor Kolkata-700007	19500	1,95,00,000/-
Total		1,15,000	11,50,00,000/-

It is evident from the perusal of the entities subscribing to the shares of RDPL that the subscribers are nothing but shell entities having no credit worthiness of their own and are pass through entities. The facts regarding the subscribing companies are reflected in the following table:

S. N.	Name of subscriber	Date of incorporation	Directors at the time of allotment	Source of funds available as on 31.03.2012 in
1	Amol Conclave Pvt. Ltd.	08.11.2011	Prabir Bhattacharyay and Naresh Kumar Jain	50,06,50,027 (Almost entirely as share premium)
2	Baba Iron Industries Pvt. Ltd.	08.04.1988	Prachin Kumar and Harekrushna Sahoo	97,01,18,423 (Almost entirely as share premium)
3	Coolhut Infra Ventures Pvt. Ltd.	27.01.2012	British Rajak and Santosh Kumar Bubna	22,47,10,000 (Almost entirely as share premium)
4	Exotic Commosales Pvt. Ltd.	28.12.2011	Ashok Kumar Jha and Ranjan Kumar Jha	25,90,50,000 (Almost entirely as share premium)
5	Flowtop Trexim Pvt. Ltd.	27.01.2012	Bharat Goenka and Tarak Dey	14,32,00,000 (Almost entirely as share premium)
6	Scorpion Nirman Pvt. Ltd.	11.11.2011	Prabir Bhattacharyay and Naresh Kumar Jain	63,36,50,569 (Almost entirely as share premium)

The date of incorporation of these six entities reflects that the said subscribers of RDPL, except M/s Baba Iron Industries Pvt. Ltd., were incorporated only few months before the allotment of shares to the aforesaid six shareholders of M/s RDPL. As per contention of Appellant Department, the sources of funds available with the said shareholders was from external sources only, which indicated that these are nothing, but passing through entities used to layer money. Ld. counsel appellant department contended that the said shell entities are just paper entities with dummy directors incorporated at dummy addresses and are fictitious and untraceable in nature. Perusal of statement of account of M/s Rudrapriya from page 138 onwards annexed with the reply filed by respondent no.1 reflects that the said company received the sum of Rs. 10 lakhs on 27.08.2012 from Pinpoint Vyapar Pvt. Ltd.; Rs. 25 lakhs on 06.09.2012 from Helot Merchants Pvt. Ltd.; Rs. 50 lakhs on 08.10.2012 from Ade sales Pvt. Ltd; Rs. 15 lakhs on 08.10.2012 from Uday Vintrade Pvt. Ltd.; 35 lakhs on 09.10.2012 from FAVEO Marketing Pvt. Ltd.; Rs. 8,00,000 on 09.10.2012 from Glitter Tie Up Pvt. Ltd.; Rs. 6 lakhs on 09.10.2012 from Strong Dealers Pvt. Ltd.; 3 lakhs on 10.10.2012 from glitter Tie Up Pvt. Ltd.; 21 lakhs on 11.10.2012 from Raghupati suppliers Pvt. Ltd.; 20 lakhs on 16.10.2012 from Sai tie Up Pvt. Ltd.; 15 lakhs on 16.10.2012 from strong Dealers Pvt. Ltd.; 14 lakhs on 16.10.2012 from Strong Dealers Pvt. Ltd.; 8,50,000 on 17.10.2012 from FAVEO Marketing

Pvt. Ltd.; 22 lakhs on 17.10.2012 from Tirupati wholesale Traders; 3,50,000 on 17.10.2012 from Sai Tie Up Pvt. Ltd.; Rs.5 lakhs on 17.10.2012 from Natraj Dealtrade Pvt. Ltd.; 90,00,000 on 17.10.2012 from Shivashiv Dealtrade; 11 lakhs on 17.10.2012 from Frontier Tie Up Pvt. Ltd.; 33 lakhs on 18.10.2012 from Gajadhar Vyapar Pvt. Ltd.; 11 lakhs on 18.10.2012 from Jaladhi Marketting Pvt. Ltd.; Rs.31.50 Lakhs on 03.11.2012 from FAVEO Marketing Pvt. Ltd.; 26 lakhs on 05.11.2012 from Broadway Wincom Pvt. Ltd.; 27 lakhs on 05.11.2012 from Strenuous suppliers Pvt. Ltd.; 14 lakhs on 05.11.2012 from Bangkali Mercantile Pvt. Ltd.; 28,50,000 on 06.11.2012 from Passion Dealtrade Pvt. Ltd.; 10,50,000 on 06.11.2012 from Bangkali Mercantile Pvt. Ltd.; 5,50,000 on 06.11.2012 from Dolphin Equipment Traders Pvt. Ltd.; 12,50,000 on 07.11.2012 from Passion Deal Trade Pvt. Ltd.; 15 lakhs on 07.11.2012 from Gajadhar Vyapar Pvt. Ltd.; 36 lakhs on 12.11.2012 from Naba Kiran Vinimay Pvt. Ltd.; Rs. 17 lakhs on 12.11.2012 from Sai Tie Up Pvt. Ltd.; 14,50,000 on 12.11.2012 from Dharapati Traders Pvt. Ltd.; 25,50,000 on 14.11.2012 from Bangkali Mercantile Pvt. Ltd.; 7 lakhs on 17.11.2012; 2,50,000 on 21.11.2012 from HELOT; 30,50,000 on 21.11.2012 from Sai Tie Up Pvt. Ltd.; Rs. 7 lakhs on 21.11.2012 from Sai Tie Up Pvt. Ltd; Rs. 5 Lakhs on 22.11.2012 from FAVEO Marketing Pvt. Ltd.; 10 lakhs on 22.11.2012 from Dolphin Equipment Traders Pvt. Ltd.; 11 lakhs on 22.11.2012 from Bangkali Mercantile Pvt. Ltd.; 19 lakhs on 23.11.2012 from Sai Tie Up Pvt. Ltd; 4 lakhs on 23.11.2012 from Ultimo Commotrade Pvt. Ltd.; 11 lakhs on 23.11.2012 from Bangkali Mercantile Pvt. Ltd.; Rs. 9 lakhs on 22.12.2012 from Jaladhi Marketing Pvt. Ltd.; 3 lakhs on 28.12.2012 from Jaladhi Marketing Pvt. Ltd.; 12,50,000 on 03.12.2012 from Sai Tie up Pvt. Ltd.; 17,50,000 on 03.12.2012 from FAVEO; 10 Lakhs on 19.12.2012 from Naba Kiran Vinimay Pvt. Ltd.; 15,50,000 on

21.12.2012 from Broadway Vincom Pvt. Ltd.; 17,00,000 on 22.12.2012 from FAVEO Marketing Pvt. Ltd.; 7,50,000 on 22.12.2012 from Jaladhi Marketing Pvt. Ltd..

Thus, the above receipts by M/s RDPL in the bank accounts do not reflect any payment from its six constituents, who allegedly purchased its shares with share premium of Rs.999 against the face value of Rs.1. Therefore, the pumping of funds in M/s RDPL through large number of shell entities is apparent on record, even in absence of deeper investigation on this aspect by the IO, which may be due to the fact that the said entities are also untraceable to the IO. This fact is also corroborated by Shri Ashok Jha, the accommodation entry provider, who was operating and managing many companies either himself or through his employees, though his statement is silent with respect to the six constituents of RDPL and the companies pumping the funds in RDPL.

Moreover, Shri Ashok Jha, the accommodation entry provider is a director in one of the companies providing share premium to M/s. Rudrapriya Dealers Private Limited viz. M/s. Exotic Commosales Private Limited. Thus, there is direct involvement of Shri Ashok Jha in conversion of unaccounted money used as consideration for the benami property and thus his statement is highly relevant and has evidentiary value. The share premium paying companies of RDPL have no ownership over the money since they are nothing but pass through entities. As they have no ownership over the indirectly paid bogus premium, they cannot pass the same to M/s. Rudrapriya Dealers Private Limited which itself cannot pass the same to the benamidar. Therefore, the legal principle- Nemo dat quod non habet i.e. 'No one can give what it does not have' is clearly applicable in the present case. All these circumstantial evidences create an

undeniable preponderance of probability that the share premium with RDPL is 'bogus and is a mere arrangement for introducing unaccounted income in DCPL in the form of share application money, and then subsequently shown as outstanding loan. Thus, the consideration of the benami property is clearly paid by DCPL from the funds from the bogus shell companies through RDPL, which in turn received the funds from many companies other than its six constituents as apparent from the bank statements of RDPL.

7. **M/s DCPL** was incorporated on **14.05.2012** and the founder Directors and shareholders were Shri Animesh Naskar and Shubhankar Majhi, who were later-on replaced by **Suroj Kumar Das & Santosh Kumar** on 16.08.2012. **Shri Ashok Jha**, CA admitted the fact that Saroj Kumar Das and Santosh Kumar Das were **his employees** at the relevant time. At the time of entry of the two alleged beneficial owners namely, Sh. Nagin Meghraj Parekh & Sh. Pradip Shantilal Shah, as directors on 18.12.2012, they have not invested any amount in DCPL, as they became shareholders with effect from 01.02.2013 by tendering the face value of the share without any premium. On 18.12.2012, M/s DCPL was not having any property in its name and there were only funds with respect to '*share application money pending allotment*' from RDPL for sum of Rs. 9.02 Crores, which was utilized for purchasing the property mentioned at para no. 1 above on 28.12.2012. However, DCPL failed to allot any shares in favour of RDPL.

8. Interestingly, M/s DCPL in the balance sheet as on **31.03.2016** has shown loan of Rs.10.36 crores received from RDPL, instead of '*share application money pending allotment*'. It is pertinent to mention here that this particular status was altered by DCPL from '*share application money*

pending allotment' to loan as an afterthought strategy, when **search** was conducted at premises of **Ashok Jha** and his statement was recorded by the Income Tax Authorities on **02.03.2015** under Section 131 of Income Tax Act, 1961. Though, there was no specific time limit for allotment of shares as per Companies Act 1956, which was replaced by new Companies Act 2013 w.e.f. 29.08.2013, which prescribes the time limit of 60 days for allotment of shares. Section 42 of the Companies Act, 2013 is reproduced as under:

“42. Issue of shares on private placement basis.”-- (1) A company may, subject to the provisions of this section, make a private placement of securities.

(2) A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as identified persons), whose number shall not exceed fifty or such higher number as may be prescribed excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of sub-section (1) of section 62, in a financial year subject to such conditions as may be prescribed.

(3) A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed:

Provided that the private placement offer and application shall not carry any right of renunciation.

Explanation I.-- "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

Explanation II.-- "qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992, (15 of 1992).

Explanation III.-- If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

(4) Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person alongwith subscription money paid either by cheque or demand draft or other banking channel and not by cash:

Provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8).

(5) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company:

Provided that, subject to the maximum number of identified persons under sub-section (2), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

(6) A company making an offer or invitation under this section shall allot its securities **within sixty days** from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be **liable to repay that money with interest at the rate of twelve per cent.** per annum from the expiry of the sixtieth day:

Provided that monies received on application under this section **shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—**

(a) for adjustment against allotment of securities; or
 (b) for the repayment of monies where the company is unable to allot securities.

(7) No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

(8) A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(9) If a company defaults in filing the return of allotment within the period prescribed under subsection (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

(10) Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

(11) Notwithstanding anything contained in sub-section (9) and sub-section Section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall be applicable.]"

Thus, the above Section highlights -

- **Time limit for allotment:** A private company that has received application money for shares must allot them within 60 days. If the allotment is not made, the company must refund the application money within the next 15 days [as per Section 42(6)].
- **Interest on delayed refunds:** If the company fails to refund the money within the 75-day period (60 days + 15 days), it is liable to repay the amount with interest at a rate of 12% per annum from the 61st day [as per Section 42(6)].
- **Penalties for contravention:** Companies and their directors who violate the rules can face significant penalties, which could include fines of up to ₹2 crore or the amount raised, whichever is higher. The company is also required to refund all money to subscribers within 30 days of the penalty order [as per Section 42 (10)].

Thus, if money received by a company (such as share application money or advances for goods/services) is not refunded or appropriately adjusted on time, the entire amount is treated as a "**deposit**" under **Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014**, read with **Section 73** of the Companies Act, 2013.

9. In the present case the Respondent Nos. 1 to 3 failed to produce any document to show that share application money was ever converted into deposit or loan money, on account of non-allotment of shares to RDPL, though the same was the share application money mis-utilized by DCPL for purchase of under construction property vide agreement for sale dated 28.12.2012. The said the share application money was not kept in any bank account, till the allotment of shares. Even after execution of the sale agreement of the property in favour of DCPL, it received additional sum of Rs. 1.34 crores in the month of April, 2013 to Feb. 2014. There is no explanation how the said additional amount was utilized by DCPL and why the shares were not allotted to RDPL.

10. Now, coming to the provisions under PBPT, Act, **Benami Property** is defined under Section 2 (8) of PBPT Act, as under:

(8) “*benami property*” means any property which is the subject matter of a *benami transaction* and also includes the proceeds from such property;

The Benami Transaction is defined under Section 2 (9) of PBPT Act as under:

(9) “*benami transaction*” means,—

(A) a transaction or an arrangement—

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family; 1. Ins. by Act 43 of 2016, s. 2 (w.e.f. 1-11-2016). 2. Subs. by s. 3, *ibid.*, for sub-section (1) (w.e.f. 1-11-2016). 3. Subs. by s. 4, *ibid.*, for section 2 (w.e.f. 1-11-2016). 5,

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as jointowners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

Explanation.—For the removal of doubts, it is hereby declared that benami transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), if, under any law for the time being in force,—

(i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;

- (ii) stamp duty on such transaction or arrangement has been paid; and
- (iii) the contract has been registered.

Benamidar is defined under Section 2 (10) of the PBPT Act as under:

(10) "benamidar" means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name;

Beneficial Owner is defined under Section 2 (11) of the PBPT Act as under:

"(12) "beneficial owner" means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar;"

11. Now, coming to the facts of the present case, no loan agreement was ever executed between RDPL and DCPL and this fact is also admitted by Ld. counsel for the respondents. There is no year-to-year acknowledgment of outstanding loan by DCPL in favour of RDPL. Accordingly, the loan advancement made by RDPL on various dates as mentioned above became time-barred after the expiry of the period of three years from the date of respective advancement of amount to DCPL.

A time-barred debt is one for which the statute of limitations has expired, making it legally unenforceable in court. However, the debt's liability still exists. The Indian Contract Act (specifically Section 25(3)) allows for the revival of a time-barred debt through a new, written, and signed promise from the debtor to repay all or part of the debt, under which the debtor becomes liable for the new promise. Similarly, the acknowledgment of the outstanding debt is required in favor of the creditor before the expiration of period of limitation, as per Section 18 of the Limitation Act. Both the sections are reproduced as under:

Section 25 of the Indian Contract Act, "An agreement made without consideration is void, unless (3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in

part a debt of which the creditor might have enforced payment, but for the law for the limitation of suits."

reproduced below:

Section 18 of the Limitation Act, "1) *Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*"

In the present case, there is nothing on record that any written and signed contract acknowledging the debt was executed by DCPL in favor of RDPL as per Section 25(3) of the Contract Act after the expiry of period of limitation, or any acknowledgment was issued by DCPL in favour of RDPL regarding the outstanding dues as per Section 18 (1) of the Limitation Act. Therefore, technically RDPL lost its legal right to recover the said loan advanced to DCPL. This points towards direction that the amount tendered by RDPL to DCPL is apparently a benami property and the transaction as a benami transaction, which was utilized for purchasing the property as mentioned in para no.1 above. Our view is fortified with the fact that the said amount was tendered for purchase of shares, which were never allotted by DCPL. Later-on the said amount was shown as unsecured interest free loan. Therefore, there is no pecuniary advantage to RDPL in any manner against the investment of Rs. 10.36 Crores in DCPL, rather it caused loss to RDPL on account of depreciation of amount due to inflation. As per record of RDPL, it has not earned any profit for making the investment with DCPL, which was later on shown as loan without interest and without security.

12. Now the issue arises that if the said transaction is a Benami Transaction, then under which clause of section 2(9) it is covered. To

analyse this issue, we cannot ignore the fact that RDPL received the share premium from six different entities on 27.03.2012, out of which, five entities were incorporated from Nov. 2011 to Jan. 2012. All the six entities tendered the premium of Rs.999/-, against the share value of Rs.1. We failed to see any justification on the part of six entities of RDPL to tender the huge premium of Rs.999/-, when in fact this newly incorporated RDPL was not engaged in any high profitable business and for years thereafter. Therefore, pumping of the black money by some unknown persons in RDPL is quite discernible. RDPL is also not a Beneficial Owner, as in fact this is a shell company of its six shareholders. The identity of the six shareholders was revealed during the investigation of this case, but they were not impleaded as beneficial owners and even otherwise, RDPL and its shareholders lost the valuable legal right to recover the outstanding dues from DCPL, being time barred debt. It is not clear as to how and why the six shareholders procured the huge amount from various entities for pumping the funds into the newly incorporated RDPL, which was further transferred to DCPL without any security, written agreement or clause for interest. Therefore, even the six constituents of RDPL are not the real investors. We fail to appreciate that when RDPL was not doing any profitable business, in any manner, then why they purchased the shares of RDPL at premium of Rs. 999, by obtaining the funds from various other entities.

13. Now the issue arises whether Shri Nagin Meghraj Parekh & Sh. Pradip Shantilal Shah, respondent no. 2 & 3 are the Beneficial Owners of the property. There is no investigation on the part of the Initiating Officer in tracing out the link between unknown investors and the alleged Beneficial Owners. When they were inducted as directors and shareholder

of DCPL in December, 2012, then certainly at that time there was nothing on record to say that they got any pecuniary advantage as beneficial owners under the garb of shareholders/directors, as DCPL was liable to allot the shares to RDPL. But seeing the fact that the shares were not allotted to RDPL and the said share money given by RDPL became time-barred, we can clearly draw an inference that they indirectly became the Beneficial Owners of the property, being the only shareholders of the benamidar company. In addition to the above fact, Nagin Parekh & Associates received many transfer entries from M/s DCPL viz. Rs. 5651 on 03.05.2019; Rs. 3,88,802 on 20.05.2019; Rs. 3,89,000 on 16.08.2019, as apparent from the statement of account of DCPL from page 131-133 of the reply of Respondent no.1, though the complete statement is not available on record for deeper scrutiny. It is pertinent to mention here that even the current second director, Sh. Pratik Vira, who stepped into the shoes of Sh. Pradip Shantilal Shah, received Rs.20,000 from DCPL on 02.05.2019 and his another company, M/s Vira Capital Pvt. Ltd. received Rs.1,77,000 on 02.05.2019. It is further interesting to note running page 56 of the reply of respondent no 1, that Nagin Parekh & Associates received sum of Rs. 10 lakhs on 08.12.2015 and 15 lakhs on 21.01.2016 and shown the said entries as repayment. But respondent DCPL has not clarified that when the said payment was received from Nagin Parekh and Associates and the purpose of the same along with the bank statement reflecting the transfer entry. It is also interesting to note that on the same page, there is one entry of Rs. 30 lakhs reflecting loan to Namah Renaissance on 07.09.2016. We fail to understand that a company which is allegedly indebted to RDPL for sum of Rs. 10.36 Crores is giving loan to some other entity, without discharging its own loan liability. This also points towards the fact that DCPL in fact has no outstanding liability towards RDPL and

Nagin Parekh and Pradip Shantilal Shah are apparently the beneficial owners of the property in the name of DCPL. We also failed to understand that if DCPL was enjoying the unsecured interest free loan facility from RDPL, then why it took the OD facility of Rs. 3 Crores from Kotak Mahindra Bank on 28.02.2019, for making part payment to RDPL and thereby making itself liable to pay interest to Kotak Mahindra Bank. Further, we fail to appreciate that why the part payment of Rs. 3 Crores was tendered to RDPL in the month of May- July 2019, instead of repaying the full amount of Rs. 10.36 Crores. This shows that this particular loan facility of Rs. 3 Crores was availed by DCPL as an eyewash to escape from the rigours of the proceedings under PBPT Act. Accordingly, this case is clearly covered within the definition of Section 2(9)(A) of PBPT Act. Accordingly, the judgments relied upon by respondents are not applicable to the facts of the present case.

14. In order to show the said benami transaction as a loan transaction and to frustrate the attachment proceedings under PBPTA, DCPL took a loan of Rs. 3 Crore on 28.02.2019 from Kotak Mahindra Bank. Some amount was returned to RDPL and the remaining was utilized for its own purposes. Accordingly, the right of Kotak Mahindra Bank needs to be protected irrespective of the fact of benami transaction, as the show cause notice was issued on 31.05.2019 and the Provisional Attachment Order was passed on 31.07.2019, after grant of OD facility by the Kotak Mahindra Bank, without any knowledge that the properties are likely to be attached under PBPT Act. Appellant DCIT is also at liberty to initiate separate proceedings qua Sh. Pratik Vira, who stepped into the shoes of former director/beneficial owner Sh. Pradip Shantilal Shah from the date of transfer of shares on 27.12.2018.

15. In sequel to our discussion in para nos. 5 to 14, the impugned order dated 18.08.2020 passed by the Adjudicating Authority is hereby set-aside and thereby the present Appeal is hereby allowed and the attached property is hereby declared as Benami property. This order is subject to the right of Kotak Mahindra Bank and consequences to follow accordingly. However, it is made clear that this order is subject to final outcome of the case Union of India v. Ganpati Dealcom Pvt. Ltd. in Civil Appeal No. 5783 of 2022 in Special Leave Petition (C) NO. 2784/2020, pending before the Hon'ble Supreme Court of India w.r.t. the issue of retrospective application of amended provisions under the PBPT Act.

Appeal Allowed.

Pronounced on this 27th Day of November, 2025.

(Rajesh Malhotra)
Member

'AK'

(Balesh Kumar)
Member