

BENAMI LAW UPDATE

“A COMMERCIAL TRANSACTION ENTERED INTO COURSE OF BUSINESS BY INDEPENDENT ENTITY CANNOT BE COLORED AS A BENAMI TRANSACTION”

AN ANALYSIS OF THE ORDER PASSED BY ADJUDICATING AUTHORITY UNDER THE PROHIBITION OF BENAMI TRANSACTION ACT, 1988 IN THE MATTER OF:

INITIATING OFFICER

Versus

M/s DEJA VU FARMS PVT. LTD. and SH. SHAH RUKH KHAN

BRIEF FACTS

- A.** M/s Deja Vu Farms Pvt. Ltd., (**DVF**) which is a company purchased agriculture land using agriculturist status of its director, for that additional collector granted permission to purchase agriculture land on the basis that, that director was agriculturist.
- B.** Shareholder of DVF, Sh. Shah Rukh Khan (**SRK**) has provided the unsecured loan to the DVF and DVF purchased the agriculture property from that fund.
- C.** The Initiating Officer had held **DVF** (M/s Deja Vu Farms Pvt. Ltd) as Benamidar and **SRK** (Sh. Shah Rukh Khan) as the Beneficial Owner mainly on the ground that the DVF has incorporated on the instruction of SRK as SRK was interested in buying property for purpose of construction of farm house and DVF has purchased said property from the fund of unsecured loan given by SRK in capacity of shareholder but for the purpose of this transaction, shares are transferred to SRK and GK from the previous shareholders and Sh. Moreshwar Rajaram Ajgaonkar (agriculturist) was made director to take benefit of his status as agriculturist to purchase agriculture property and perform all the formalities at the instruction of SRK and during investigation, land owner stated that she met SRK for all the execution of sale and at time of execution, she came to know that sale

agreement has to be made with DVF. Further construction on said land was done from unsecured loan received from SRK. Consequently, the Initiating Officer attached aforesaid property purchased by DVF and declared **DVF** is Benamidar and **SRK** is the Beneficial Owner and thereby filed its Reference and Provisional Attachment Order with the Adjudicating Authority.

D. In the proceeding before the Adjudicating Authority, few things were pointed out that SRK and GK paid amount towards purchase of share and same was shown in annual returns of the books of next year of share purchase and SRK has given unsecured loan to DVF in capacity of shareholder and same was reflected as an unsecured loan in the annual accounts of the company and with the permission to purchase agriculture land under Maharashtra Tenancy and Agricultural Land Act, DVF purchase the agriculture land with the status of one of its agriculturist director in the name of DVF and it through duly stamped and registered deed purchased the property from its respective owner.

E. **DVF** defended its case by replying that main object of the company as mentioned in MOA are to acquire, purchase, develop, bring up, maintain and deal in farms of all type, to carry business of agriculture and to deal in all kind of agriculture and horticultural farms and to carry on business of setting up farms houses etc and from incorporation company intention was that company should be owned by SRK and GK, so the shares from their first shareholder was transferred to SRK and GK and for that SRK and GK has paid the amount to purchase the shares and same was reflected. And as DVF make object is to purchase property and for that DVF required money, so the shareholder SRK lend money for aforesaid purpose by way of unsecured loan and same was reflected in the annual accounts of company in the books of company and further company with the permission to purchase agriculture land under Maharashtra Tenancy and Agricultural Land Act, DVF purchase the agriculture land with the status of one of its agriculturist director in the name of DVF and it through duly stamped and registered deed purchased the property and mere fact that DVF has purchase property from borrowed fund from shareholder and as per companies law there was no prohibition against shareholder granting loan to company out of shareholder's owned fund. So DVF(M/s Déjà vu Farms Pvt. Ltd.) is the real

and absolute owner of the aforesaid properties and not a Benamidar as alleged by the Initiating Officer and the aforesaid property is not Beneficial property even as per new provisions of the Benami Law. And notice of IO is contrary to article 20(1) of Constitution of India as penal status can never be interpreted to have retrospective effect.

- F.** The Adjudicating Authority agreed with the contentions of the **DVF** and rejected the Reference of the Initiating Officer and released the Attachment Order passed by the Initiating Order on the following grounds:
- a) Property purchased is in name of DVF.
 - b) Amount paid by SRK is unsecured loan in capacity of shareholder and as per companies law this is allowed.
 - c) Registered deed is in name of DVF.
 - d) Amount paid by SRK as unsecured loan is reflected in annual account.

The Authority said that it was "beyond doubt" that the property was acquired and held by the company in its own right and independent of any other person.

"There is nothing to raise the inference or presumption in law that the property owned by a company can be said to be held for the benefit of its shareholder," the Authority ruled, absolving Khan of the criminal charges under the stringent law.

“Thus a commercial transaction entered into course of business by an independent entity M/S Deja Vu Farms Pvt. Ltd. cannot be colored as a benami transaction.”

However, an appeal was filed by the Initiating Officer before the Appellate Tribunal contesting the aforesaid order passed by the Adjudicating Authority.

For Detailed Analysis and guidance contact:-

CA Lavina Vidhani

Partner- Economic Offences

lavina@rngca.com

+919358812016