IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO.30 OF 2016
IN
CLB COMPANY PETITION NO.280/621A/MB/2015
WITH
COMPANY APPEAL NO.31 OF 2016
IN
CLB COMPANY PETITION NO.281/621A/MB/2015
WITH
COMPANY APPEAL NO.32 OF 2016
IN
CLB COMPANY PETITION NO.282/621A/MB/2015
WITH
COMPANY APPEAL NO.33 OF 2016
IN
CLB COMPANY PETITION NO.283/621A/MB/2015
WITH
COMPANY APPEAL NO.34 OF 2016
IN
CLB COMPANY PETITION NO.284/621A/MB/2015

Cushman & Wakefield Advisory Asia
(India) Pvt. Ltd. & Ors. ...Appellants
(Original Petitioners before CLB)
vs.
The Chairman, Company Law Board,
New Delhi Bench, New Delhi ¼Respondent
¼..

Mr. Zal Andhyarujina, a/w. Ms. Sanjana Chandrasekhar, i/b. Bimal Rajasekhar, for the Appellants in COAPP/30/16.

Ms. Sanjana Chandrasekhar, i/b. Bimal Rajasekhar, for the Appellants in Company Appeals/31/16, 32/16, 33/16 and 34/16.
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CORAM : S.C. GUPTE, J.

22 DECEMBER, 2016

P.C. :

. Heard learned Counsel for the Appellants. None appears for the Respondent - Chairman of Company Law Board.

2. These appeals challenge an order passed by Company Law Board, New Delhi Bench (CLB) allowing the Appellants to compound their respective offences under (i) Sections 166, 167 read with Section 168, (ii) Sections 159, 160, 161, read with Section 162(1), (iii) Section 220(3) read with Section 162(1), (iv) Sections 210 (1) to (4), (v) Section 383A(1A) of the Companies Act, 1956 ordering maximum penalty payable for such compounding. The thrust of the appeals is that the learned member of CLB has come to a categorical finding that none of the offences was committed with any *mens rea* and that the offences deserve to be compounded with payment of fine to meet the needs of justice. It is submitted that, despite this clear finding, what is levied is the maximum fine leviable under the Act for the concerned offences and that too without indicating any reasons for such levy.

3. Learned Counsel is right in his submission that there is a clear finding of absence of *mens rea* and yet without discussing any reason for imposing the maximum fine leviable in respect of each of the offences, such fines are imposed. The Supreme Court in the case of **Hindustan Steel Ltd. vs. State of Orissa**[1] has, in the context of Section 9(1) read with Section 25(1)(a) of the Orissa Sales Tax Act, 1947, held that the liability to pay penalty does not arise merely upon proof of default and that an order imposing penalty for failure to carry out a statutory obligation being the result of a quasi-criminal proceeding, the Court or Tribunal must determine

1 Civil Appeal Nos.883-392 of 1966 decided on 4/8/1969.

whether the accused acted deliberately in defiance of law or in complete disregard of his obligations or is guilty of any contumacious conduct. The measure of penalty would depend on these aspects, none of which is unfortunately considered in the impugned order. No doubt this Court in the case of **Securities and Exchange Board of India vs. Cabot International Capital Corporation**[2] has held that for breach of obligations such as Regulations 3, 3(1) and 3(4) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, which is really civil in nature, *mens rea* is not essential and penalty may well be imposed without any finding as to *mens rea*. So also, even the Supreme Court in the case of **SEBI through its Chairman vs. Roofit Industries Ltd.**[3] upheld minimum levy of penalty provided for in Section 15A (as amended) of SEBI Act for non-furnishing of any document, return or report to the Board as required by the SEBI Act or any rules or regulations made thereunder. What is important, however, to note is that the relevant provisions of the Companies Act under which the Appellants were to be prosecuted do provide for criminal liability, though the offences are said to be compoundable. These fines can only be as a result of proceedings which are in the nature of quasi-criminal proceedings. Maximum penalty provided for these crimes cannot be ordered by way of componding of such offences.

4. In the premises, the impugned orders cannot be sustained and the matter will have to be remanded to the Competent Authority for fresh determination of the fine to be levied for compounding of these offences. Accordingly, the appeals are disposed of in terms of the following order :-

2 [2005] 123 CompCas 841 (Bom)

3 SCC Civil Appeal Nos.1364-1365 of 2005

(i) The common order passed by the Company Law Board on 26 November 2015 in respect of the various offences, which is impugned in the appeals, is quashed and set aside and the matter is remanded to the appropriate authority for a fresh consideration of the quantum of fine for compounding the respective offences in accordance with law and after taking into account the observations made in this order.

(ii) No order as to costs.

(S.C. Gupte, J.)