THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL APPEAL No.412 of 2016

JUDGMENT:

Heard the learned counsel for the appellant, the learned counsel for respondents 1 to 4 and the learned Public Prosecutor for the 5th respondent. With the consent of the learned counsel for the petitioner as well as the learned counsel for the respondents, the criminal appeal is disposed of at the admission stage.

2. This Criminal Appeal is filed under Section 378 (4) read with Section 482 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), questioning the correctness of the order, dated 13.07.2007, passed in C.C.No.05 of 2006, on the file of the Special Judge for Economic Offences at Hyderabad, whereunder the respondents/A.1 to A.4 were found not guilty for the offence punishable under Section 629-A of the Companies Act, 1956 (for short, 'the Act'), for the contravention of Section 94(2) of the Act and were acquitted.

3. The brief facts that are necessary for disposal of the present appeal may be stated as follows:

A complaint came to be filed by the Registrar of Companies, Kendriya Sadan, Hyderabad, under the Companies Act, 1956, for violation of Section 94(2) of the Act against A-1 to A-4. During the course of inspection conducted by P.W.1, it was observed that A-1 company has increased its authorized capital from Rs.8 crores to Rs.10.50 crores without passing a resolution in General

Body Meeting. Hence, it is contended that A-1 company has violated the provisions of Section 94 of the Act. A-2 is the Managing Director, A-3 is the Technical Director and A-4 is the whole-time Director of A-1 company. A-2 to A-4 were the officers in default of A-1 company during the relevant and material period of offence. The office of the appellant had issued a show cause notice, dated 07.12.2005, to the accused to show cause as to why prosecution should not be launched against them for the above said violations. As the reply given by the accused was not satisfactory, the present complaint came to be filed.

4. During the course of trial, the complainant examined P.Ws 1 and 2 and got marked Exs.P-1 to P-5.

5. After completion of the evidence on behalf of the complainant, A-1 to A-4 accused were examined under Section 313 Cr.P.C., for which they denied the incriminating circumstances appearing against them in the evidence of prosecution witnesses. A-2 is examined as D.W.1 and Exs.D-1 to D-7 were marked.

6. After considering the evidence on record, the trial Court found the accused not guilty of the offences and accordingly acquitted them. Challenging the same, the present appeal is preferred by the complainant.

7. P.W.1 in his evidence deposed that he has inspected
A-1 company during 11.04.2005 to 16.04.2005. After completing the inspection, P.W.1 issued a letter to the company and to all its directors on 26.04.2005 drawing their attention to the violations noticed by him during

the course of inspection. In response to the said letter, A-1 gave a reply in its letter, dated 19.05.2005. Thereafter, P.W.1 prepared a report and submitted the same to the Ministry of Company Affairs, New Delhi for examination. The Ministry of Company Affairs then addressed a letter to Registrar of Companies together with relevant extract of the inspection report, dated 08.11.2015, to prosecute the accused. P.W.1 further stated that one such violation was under Section 94(2) of the Act. It is noticed during inspection that the company has increased its authorized capital from Rs.8 crores to Rs.10.50 crores without passing of a resolution by the general body. The company has filed Form No.5 for increasing the authorized capital by passing Board resolution on 28.03.2005. Authorized capital can be increased by passing resolution in the annual general body. Thus, A-1 did not comply with the provision under Section 94(2) of the Act. During cross-examination P.W.1 denied the suggestion that the company has not contravened Section 94(2) of the Act as the company has increased the authorized capital as per directions of BIFR.

8. The evidence of P.W.1 reads that there was a violation of Section 94(2) of the Act since resolution was not passed in the general body meeting for increase of authorized capital of A-1 company from Rs.8 crores to Rs.10.50 crores. It is further stated that even though A-1 to A-4 have violated Section 94(2) of the Act, while increasing authorized capital of A-1 company, the said action of A-1 to A-4 is saved by Section 32(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for

short, 'the SIC Act').

9. Learned counsel for the appellant mainly submits that the allegations made in the complaint do *prima facie* make out a case against the accused. He further submits that under Section 32(1) of the SIC Act, the appellant has to obtain the resolution of the Board before increasing the share capital. It is firmly disputed by the learned counsel for the appellant stating that since the share capital was raised pursuant to a scheme, obtaining approval from the Board would not arise.

10. In order to appreciate the same, it may be useful to refer to EX.D-2, which is the order of BIFR, dated 27.01.2005, sanctioning modified rehabilitation scheme to A-1 company. As per Clause (8) of Ex.D-2, BIFR directed the provisions of the scheme shall have effect notwithstanding anything inconsistent in any other law (except the provisions of Foreign Exchange Regulation Act, 1973 and Urban Land (Ceiling and Regulations) Act, 1976) for the time being in force. Clause (8) of Ex.D-2 reads as under:

> "The Board directs that the provisions of this scheme shall have effect notwithstanding anything inconsistent therewith contained in any other law (except the provisions of the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulations) Act, 1976) for the time being in force or in the Memorandum and Articles of Association of the sick industrial company, i.e., S.S. Organics Ltd. (SSOL) or any other instrument having effect by virtue of any law other than the Sick Industrial Companies (Special Provisions) Act, 1985."

11. Further Section 32(1) of the SIC Act states

that the provisions of this Act, rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 and Urban Land (Ceiling and Regulation) Act, 1976, for the time being in force or in the Memorandum of Articles of Association of an Industrial company or any other instrument having effect by virtue of any other law other than this Act. Section 32(1) of the SICA Act reads as under:

> "The provisions of this Act and of any rules or schemes made there under shall have effect not withstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Urban Land (Ceiling and Regulations) Act, 1976, (33 of 1976) for the time being in force or in the Memorandum and Articles of Association of an industrial Company, or any other instrument having effect by virtue of any law other than this Act."

12. Section 32(1) of the SIC Act coupled with Clause (8) of Ex.D-2 order and as A-1 company increased authorized capital from Rs.8 crores to Rs.10.50 crores, as per BIFR order, the complainant is not justified in contending that the increase of the authorized capital is in violation of Section 94(2) of the Companies Act, 1956, since resolution was not passed by the general body in the general meeting. The action of A-1 to A-4 in increasing authorized capital of A-1 company without passing resolution of the general body in general meeting is saved by Section 32(1) of SIC Act, as A-1 to A-4 did so as per the directions of BIFR.

13. Having regard to the facts and circumstances of the case and this being an appeal against acquittal, I

see no reason to interfere with the judgment of the trial Court.

14. Accordingly, the Criminal Appeal is dismissed at the stage of admission, confirming the judgment, dated 13.07.2007, in C.C.No.5 of 2006, on the file of the Special Judge for Economic Offences, at Hyderabad. Miscellaneous petitions, if any, pending in this criminal appeal shall stand closed.

C.PRAVEEN KUMAR, J

Date: 6th April, 2016

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THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

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