**HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

**Criminal Petition Nos.8364 and 8365 of 2010**

**ORDER** :

The petitioner in Crl.P.No.8365 of 2010 is the A.1 of C.C.No.38 of 2008 on the file of the Spl. Judge for Economic Offences, Hyderabad outcome of complaint of the 1st respondent-the Registrar of the Companies, for the offences punishable under Sections 58(A)(1) and (2) of the Companies(Acceptance of Deposit) Rules,1975(for short 'Rules,1975'). Similarly the petitioner in Crl.P.No.8364 of 2010 is the A.2 in C.C.No.341 of 2009 on the file of the same Court supra which is also outcome of complaint of the 1st respondent-Regional Director, Southern Region Ministry of Corporate Affairs, rep. by Registrar of Companies, Andhra Pradesh, for the offences punishable under Sections 58(A)(1) and (4) of the Companies Act, 1958 r/w the Rules, 1975.

2. The grounds urged in the two quash petitions almost similar and through the same advocate are that the trial Court ought to have realized that the Rules 1975 enable the company to receive moneys towards share application money pending enhancement of authorized capital and allotment of shares and the petitioner company bonafidely and legally received the amount thereby not contravene Section 58(A) of the Companies Act, for there is no provision in the Companies Act which prohibits the Company to accept the share application money vis-à-vis authorized capital. Company can at any time increase its authorized capital before allotment of shares as per the business

requirements. The complaint filed is only on assumptions with no basis, the complaint ought to have seen that Section 58(A) (5) would apply to cases where company fails to make repayment of deposits by the time of show cause notice and complaint is filed and in the cases on hand, the amounts received are towards share application money was admitted repaid in 1996 and 1997 respectively and thereby there is no offence constituted under Section 58(A) of the Act, leave about even assuming there was any infraction of the compliance of the provisions since later rectified by repayment and the proceedings initiated long subsequent to it and thereby liable to be quashed, that too when the provision is meant to discourage the companies to invite or accept deposits from public by offering highest and attractive rate of interest beyond prescribed limit and to minimize the loss being caused to the public in general and in the event of company suffers losses or goes in liquidation and the case on hand is not one such. It is also the contention that there is no averment that the respective petitioners of the quash petitions are responsible to the day-to-day affairs or in charge of day-to-day affairs of the company and in the absence of such allegation, there is no question of fastening liability vicariously on them and thereby the complaint proceedings and cognizance orders are liable to be quashed.

3. The learned Asst.Solicitor General representing the 1st respondent and the learned Public Prosecutor representing the 2nd respondent–State respectively sought for dismissal of the quash

petitions showing there is a statutory violation as mentioned in the respective complaints in detail with specific averment how respective accused are personally liable and the Court rightly taken cognizance of the two cases for the offences supra against the respective accused and thereby there is nothing to quash and both the quash petitions are liable to be dismissed.

4. The core issue in deciding two petitions are that:-

> Whether the receiving of the share capital and repayment, even otherwise within no time, is prone to criminal prosecution by treating as if a deposit from public with penal consequences of Section 58(A) of the Act r/w Rules 1975, and even otherwise the prosecution maintained alleging of the deposits received in 1995 and repaid in 1996 and 1997 for the prosecution filed in 2008 and 2009 are sustainable and liable to be continued in any way to subserve the ends of justice even maintained after long lapse on 14 to 15 years to it?

5. In fact, Rule 2(b) of the Rules, 1975 defined deposit as deposit means any deposit of money with, and includes any amount borrowed by a company, **<u>but does not include</u>**-

> (i) any amount received from the Central Government or a State Government, or any amount received from any other source and whose repayment is guaranteed by the Central Government or a State Government, or any amount received from a local authority or a foreign Government or any other foreign citizen, authority or person ;
>
> (ii) any amount received as a loan from any banking company or from the State Bank of India or any of its subsidiary banks or from a banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949 (10 of 1949), or a corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition

and Transfer of Undertakings) Act, 1970 (5 of 1970), or from a co-operative bank as defined in clause (b-ii) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) ;

(iii) any amount received as a loan from the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948 (15 of 1948), or from a State Financial Corporation established under the State Financial Corporations Act, 1951 (63 of 1951), or from the Shipping Development Fund Committee constituted under section 15 of the Merchant Shipping Act, 1958 (44 of 1958) or from the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or from the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964), or from an Electricity Board constituted under the Electricity (Supply) Act, 1948 (54 of 1948) or from the Life Insurance Corporation of India constituted under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or from the Rehabilitation Industries Corporation of India Limited or the State Trading Corporation of India Limited or the Minerals and Metals Trading Corporation of India Limited or the Rural Electrification Corporation Limited or the Agricultural Finance Corporation Limited or the Industrial Reconstruction Corporation of India Limited or the Industrial Credit and Investment Corporation of India Limited or the National Industrial Development Corporation of India Limited or the Tamil Nadu Industrial and Investment Corporation Limited or the State Industrial and Investment Corporation of Maharashtra Limited "or from the General Insurance Corporation of India and its subsidiaries, namely, the National Insurance Company Limited, the New India Assurance Company Limited, the Oriental Fire and General Insurance Company Limited and the United Fire and General Insurance Company Limited" or from the Gujarat Industrial Investment Corporation Limited or from any financial company wholly owned by the Central Government or State Government or from the Oil Industry Development Board or Housing Development Finance Corporation Limited, or from any other Financial Company or Public Financial Institutions which may be notified by the Central Government in this behalf in consultation with the Reserve Bank of India.

(iv) any amount received by a Company from any other Company.

(v) any amount received from an employee of the company by way of security deposit ;

(vi) any amount received by way of security or as an advance from any purchasing agent, selling agent, or other agents in the course of or for the purposes of the business of the company or any advance received against orders for the supply of goods or properties or for the rendering of any service;

(vii) any amount received by way of subscriptions to any shares, stock, bonds or debentures such bonds or debentures as are covered by sub-clause (x) pending the allotment of the said shares, stock, bonds or debentures and any amount received by way of calls in advance on shares, in accordance with the Articles of Association of the Company so long as such amount is not repayable to the members under the Articles of Association of the Company ;

(viii) any amount received in trust or any amount in transit ;

(ix) any amount received by a private company from a person who, at the time of the receipt of the amount, was a director, relative of director or member:

Provided that the director or member, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting from others;

6. Once it is the contention of received towards the share application money pending enhancement of authorized capital and allotment of shares, however, the same was even otherwise repaid within a span of 12 months or so and not a case of public borrowing by way of deposit, there is nothing to show transgression to Section 58(A) of the Act, and the Rule 2(b) of the Rules, 1975. In this regard the judgment of Karnataka high Court, in **G.M.Mohan Vs. Registrar of Companies**[1]**,** it reads even any amount borrowed once repaid, the same cannot be a violation of law intentionally u/sec.58(A) of the Act,

[1] (1985) 56 CompCas 265Kar

to make company liable for prosecution. Similarly in **Suresh Vs. Mahadevappa Shivappa Danannava[2],** it was observed that a complaint filed after more than 11 years can be quashed at the threshold to subserve the ends of justice.

7. In view of the above discussion and expressions apart from no offence made out even assuming for the amounts taken as if borrowed that was repaid in 1996 and 1997 of the prosecution maintained in 2008 and 2009 respectively after long lapse of 12 to 13 years, the prosecution is liable to be quashed.

8. Accordingly and in the result, both the Criminal Petitions (Crl.P.No.8364 of 2010 and 8365 of 2010) are allowed by quashing the proceedings in C.C.No.341 of 2009 and C.C.No.38 of 2008 respectively against the respective petitioners, on the file of the special Judge for Economic Offences, Hyderabad) and respective petitioners are acquitted and their bail bonds are cancelled.

9. Consequently, pending miscellaneous petitions in both the Criminal Petitions, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:23.08.2017
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[2] AIR 2005 SC 1047