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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 11th May, 2017

\+ **CRL.M.C. 399/2017 and Crl. M.A. No. 1776/2017 (Stay)**

M/S. INSTRUMENTATION LABORATORY INDIA PVT LTD ..... Petitioner

Represented by: Mr. Sarwar Raza, Mr. Mahendra Pratap and Mohd. Waseem Akram, Advocates.

versus

UNION OF INDIA & ANR. ..... Respondents

Represented by: Mr. Sanjeev Narula, CGSC with Mr. Abhishek Ghai and Ms. Anumita Chandra, Advocates.

\+ **W.P.(CRL) 534/2017**

SURESH KUMAR CHAUHAN ..... Petitioner

Represented by: Mr. Sandeep Gupta, Advocate.

versus

REGISTRAR OF COMPANIES & ORS. ..... Respondents

Represented by: Mr. Sanjeev Narula, CGSC for ROC with Mr. Abhishek Ghai and Ms. Anumita Chandra, Advocates.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By these two petitions the petitioners have challenged the order dated 21st October, 2016 passed by the learned Special Judge on an appeal filed by the petitioner in Crl. M.C. No. 399/2017, that is, Instrumentation Laboratory

India Pvt. Ltd. (hereinafter 'the company') against the order dated 19th April, 2016 passed by the learned ACMM compounding the offence punishable under 162 for contravention of Section 159 of the Companies Act, 1956. Grievance of the petitioners is that though the compounding fees was reduced from ₹15,00,000/- each as imposed by the learned ACMM to ₹8,00,000/- each, however, still the same was on the higher side.

2. The facts leading to the filing of the present petitions are that a complaint was filed under Section 162 read with Section 159 of the Companies Act, 1956 was filed by the respondent No.2 i.e. Registrar of Companies, before the learned ACMM on the allegations that there was a delay in filing of the annual return under Section 159 of the Companies Act for the years, 2009, 2010, 2011 and 2012 which were not filed till 22nd December, 2015. There was also an allegation of delay in filing the balance sheet under Section 220 of the Companies Act and the balance sheet of the years 2009, 2010, 2011, 2012 and 2013 were not filed till December/January, 2016.

3. As per the complaint itself based on the delay which could be compounded by paying a maximum fee of ₹500/- per day delay, the respondent No.2 noted that the maximum fine imposable on the company was ₹61,48,000/-. On applications filed by the company and Suresh Kumar Chauhan before the learned ACMM for the composition of the offences alleged in the complaint filed by the respondent No.2 vide order dated 19th April, 2016 composition was allowed subject to each of the petitioners paying ₹15,00,000/- as the compounding fee.

4. Aggrieved by the said order dated 19th April, 2016 the company filed an appeal before the learned Additional Sessions Judge which was disposed

of vide impugned order dated 21st October, 2016. Upholding the composition, the learned Additional Sessions Judge noting the facts held that compounding fee of ₹15,00,000/- imposed upon both the petitioners, that is, the company and Suresh Kumar Chauhan, its Director was on a bit higher side and thus he reduced the same to ₹8,00,000/- each to be paid by the company and Suresh Kumar Chauhan.

5. Learned counsel for the petitioners and respondents inform that Mr. Jordi Preixens Forte the other accused being accused No.2 in the complaint has since passed away, so the complaint was proceeding only against the company and Suresh Kumar Chauhan.

6. As noted above on a calculation of ₹500/- per day delay in filing the annual return and the balance sheet, the composition amount required to be paid by the company and its Director was approximately ₹61,00,000/- however, the learned Trial Court fixed the same at ₹15,00,000/- which would amount to a composition fee approximately of ₹125/- per day delay which has been further reduced by the learned Additional Session Judge to ₹8,00,000/- which would approximately amount to ₹80/- per day delay.

7. The principle of proportionality is fundamental to the sentencing for a crime as well as penalty for misconduct. Though no straight jacket formula can be laid down however, the judicial discretion has to be exercised with rationality. The Courts have time and again held that neither too much of leniency nor too strict standards can be said to be just and fair.

8. The Supreme Court in the decision reported as 2006 (2) SCC 359 *Shailesh Jaswantbhai & Anr. vs. State of Gujarat & Ors*, held that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and the

society cannot long endure under such serious threats. Thus, it was the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. In the decision reported as 2013 (7) SCC 545 Gopal Singh vs. State of Uttarakhand while focusing on the concept of the principle of proportionality between the crime and punishment, Supreme Court held:

> *"18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect — propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real*

requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment."

9. Similarly, in service law the Supreme Court in the decision reported as 2007 (4) SCC 669 *Coimbatore District Central Cooperative Bank vs. Coimbatore District Central Cooperative Bank Employees Assn. & Anr.* emphasized on the constitutional requirement for judging the question of reasonableness and fairness on the part of statutory authority having regard to the factual matrix in each case. It was held:

"Doctrine of proportionality

17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality".

18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The *doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.*

19. de Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative Action (1995), pp. 601-05, para 13.085; see also Wade & Forsyth: Administrative Law (2005), p. 366.]

20. In Halsbury's Laws of England (4th Edn.), Reissue, Vol. 1(1), pp. 144-45, para 78, it is stated:

> *"The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness."*

21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no "pick and choose", selective applicability of the government norms or unfairness, arbitrariness or *unreasonableness. It is not permissible to use a "sledgehammer to crack a nut". As has been said many a time; "where paring knife suffices, battle axe is precluded".*

10. In the present case, the petitioners sought compounding of the offence. When certain offences in various enactments are compoundable, concept of payment of compounding fees is prescribed as in offence punishable under Sections 162/220 (3) of the Companies Act, 1956. As noted above in the complaint itself the respondent No.2 Registrar of Companies sought the maximum compensation fee which the learned Trial Court rightly declined to grant keeping in view the circumstances. On an appeal being filed the same has been further reduced.

11. The prayer in the present petitions is for further reduction of the same. Considering the default in filing the annual returns and the balance sheets which amount to the offences punishable under Section 162/220 (3) of the Companies Act, applying the doctrine of proportionality, negligible imposition of composition fee would also not serve the purpose. It cannot be held that the composition fee of ₹8,00,000/- on each of the petitioners imposed by the learned Additional Sessions Judge was not a fair and just exercise of the discretion. This Court in a petition under Section 482 Cr.P.C. or Article 226 of the Constitution of India would interfere in the order of the Court below only if the same results in failure of justice or the discretion is exercised contrary to the settled principles of law.

12. Considering the fact that the composition fee has been brought down considerably by the learned Additional Sessions Judge, this Court finds no merit in the petition.

13. Crl. M.C. No. 399/2017, Crl. M.A. No. 1776/2017 and W.P. (Crl.) 534/2017 are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 11, 2017
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