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

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Date of decision 21.12.2017

+ CO.A(SB) 58/2014

M/S REEBOK INDIA COMPANY & ORS..... Appellant

Through Mr.Abhinav Vashisht, Sr.Adv. with
Mr.Niraj Singh, Mr.Alok Kr.Srivastav and
Ms.Priya Singh, Advs.

versus

REGISTRAR OF COMPANY Respondent

Through Mr.Amit Mahajan, CGSC for UOI.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This petition has been filed under section 10F of the Companies Act, 1956 seeking to impugn the order dated 15.09.2014 passed by the Company Law Board dismissing the application of the appellant under section 621A of the Companies Act, 1956. The case of the appellant is that in the Financial Year 2011-12 the management of the company faced complications and difficulties arising out of financial irregularities which surfaced in January 2012 committed by the erstwhile senior Executive, namely, Subhinder Singh Prem, Managing Director and Vishnu Bhagat, Chief Operating Officer whose services were terminated on 26.3.2012. It is stated that the said Managing Director Subhinder Singh had indulged in large scale financial

irregularities. The company appointed a Financial Expert, Ernst & Young Pvt. Ltd.Co. to carry out internal investigation. Investigations have shown serious irregularities in the account. FIR No.99/2012 dated 21.5.2012 has been lodged. Appellant No.2 has now taken over charge of the company as Managing Director on 28.3.2012. On account of these financial irregularities, it is pleaded that holding of the Annual General Meeting (AGM) for the Financial Year 2011-12 was delayed. The appellant company applied for grant of extension of three months for holding the AGM. The ROC granted time upto 30.11.2012 and thereafter upto 31.12.2012. Meeting was actually held on 11.4.2013 which is stated to be the earliest possible date when all information could be gathered, corrected and collated. The balance sheet and profit and loss account was accordingly submitted to ROC on 10.5.2013 i.e. within one month of AGM. In the meantime, ROC is said to have issued a Show Cause Notice on 29.1.2013 for defaults under the Companies Act relating to failure to placing the Annual Accounts and balance sheet of the company before the AGM and then to the ROC, as required under section 159 of the Companies Act. ROC also thereafter filed a complaint in this regard to CMM Tis Hazari Courts for offences under section 159 of the Companies Act, 1956, which is pending adjudication. The appellant filed an application for compounding before the ACMM which was dismissed on 18.12.2013 with the observation that the ROC does not want to compound the matter on account of pending criminal cases.

2. Investigation is also said to have been conducted by SFIO who has also filed a complaint before Ilaka Magistrate, Gurgaon under various provisions of the Companies Act & IPC. The appellants No.2 to 5 were not

arrayed as accused in the complaint by SFIO. However, summons were issued only to appellant No.2. This issue of summons was challenged before the higher court and the said order issuing summons is said to have been stayed.

3. Hence, the present petition was filed under section 621A of the Companies Act before the Company Law Board for seeking necessary relief of compounding of offences under section 159 of the Act for late filing of Annual Return for the Financial Year ending 31.3.2012. The Company Law Board by its impugned order noted that there has been a financial scam in the appellant company and investigations conducted by officials of SFIO have reported the volume and nature of the financial scam. The ROC has also filed a complaint in the Courts which is pending. Apart from that, a criminal complaint has also been filed in Gurgaon SFIO. It is stated that there has been a falsification of the books of accounts of the company and a fraud was committed to the extent of Rs.1425.53 crores and the matter is pending trial. Noting also that the court had declined to permit the compounding application, the Company Law Board dismissed the present application.

4. I have heard learned counsel for the parties.

5. Learned senior counsel appearing for the appellant has relied upon the order of the NCLAT where it is alleged that the main culprit who is behind the entire fraudulent transaction, namely, Shri Shubhinder Singh Prem had filed a similar petition under section 621A for compounding of various offences under the Companies Act. The NCLT had dismissed the application. The NCLAT, however, noted the plea of the Registrar of Companies that they have no objection if the offences are compounded

subject to outcome of the investigation conducted by SFIO. It was also noted that the offences compounded cannot affect the cases pending before courts for commission of offences under IPC. Hence, the NCLAT came to the conclusion that merely on the ground that investigation by SFIO is going on or some other cases are pending would not be a ground to reject the application.

6. Section 621A of the Companies Act reads as follows:-

“621A. Composition of certain offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by the Central Government on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sums as that Government may prescribe.

Provided that the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in prescribing the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 611 shall be taken into account.

7. The afore-noted section prohibits compounding only when an offence is punishable with imprisonment only or with imprisonment and also with fine. When fine is an alternative to imprisonment it is well within the jurisdiction of the Tribunal to compound the offences. The NCLT in its

judgment itself noted the judgment of the Supreme Court in ***V.L.S.Finance Limited vs. Union of India and Others, (2013) 6 SCC 278*** which reads as follows:-

“15. From the conspectus of what we have observed above, it is more than clear that an offence committed by an accused under the Act, not being an offence punishable with imprisonment only or imprisonment and also with fine, is permissible to be compounded by the Company Law Board either before or after the institution of any prosecution. In view of Sub-section (7) of Section 621A, the criminal court also possesses similar power to compound an offence after institution of the prosecution.

16. Now the question is whether in the aforesaid circumstances the Company Law Board can compound offence punishable with fine or imprisonment or both without permission of the court. It is pointed out that when the prosecution has been laid, it is the criminal court which is in seisin of the matter and it is only the magistrate or the court in seisin of the matter who can accord permission to compound the offence. In any view of the matter, according to the learned Counsel, the Company Law Board has to seek permission of the court and it cannot compound the offence without such permission. This line of reasoning does not commend us. Both Sub-section (1) and Sub-section (7) of Section 621A of the Act start with a non-obstante clause. As is well known, a non-obstante clause is used as a legislative device to give the enacting part of the section, in case of conflict, an overriding effect over the provisions of the Act mentioned in the non-obstante clause.

17. Ordinarily, the offence is compounded under the provisions of the Code of Criminal Procedure and the power to accord permission is conferred on the court excepting those offences for which the permission is not required. However, in view of the non-obstante clause, the power of composition can be exercised by the court or the Company Law Board. The legislature has conferred the same power to the Company Law

Board which can exercise its power either before or after the institution of any prosecution whereas the criminal court has no power to accord permission for composition of an offence before the institution of the proceeding. The legislature in its wisdom has not put the rider of prior permission of the court before compounding the offence by the Company Law Board and in case the contention of the Appellant is accepted, same would amount to addition of the words "with the prior permission of the court" in the Act, which is not permissible.

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8. Hence, there are no reasons as to why the matter should not have been compounded. Merely because the court did not compound the matter cannot be a ground for the CLB to not compound the offence.

9. It is also manifest from the aforesaid judgment of the NCLAT in the case filed by Shri Shubhinder Singh Prem that ROC appears to have taken a stand that it has no objection to compounding of the offences where one of the co-accused is Shubinder Singh Prem. I see no reason as to why other appellants herein should also not be granted the same benefit as that of Shubinder Singh Prem. At best, the appellant herein are similarly situated as of Shubinder Singh Prem, if not better off. Even otherwise, the appellant has been able to place on record sufficient facts to prima facie justify as to why the delay took place in conveying the AGM and subsequent filing of the necessary documents before the ROC. In my opinion, it is a fit case where company law board ought to have allowed the petition under section 621A for compounding.

10. Accordingly the appeal is allowed. The alleged offences committed under section 159 of the Companies Act, 1956 are compounded. ROC will communicate the compounding fees to the appellant. On receipt of such a

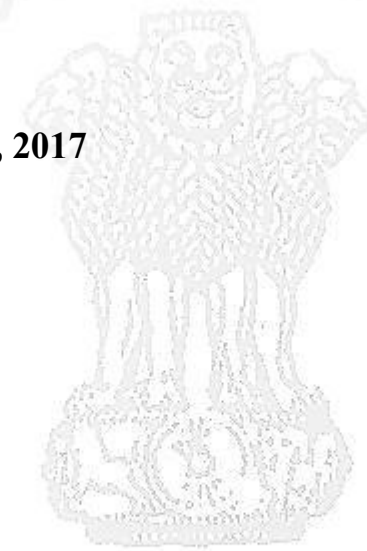
communication the fees shall be deposited within six weeks. The ROC is directed to withdraw the complaint which is pending before the Court of ACMM Tis Hazari Courts. It is made clear that compounding of the offence as above will not come in the way of investigation by SFIO and other proceedings that may be pending against the appellants under Indian Penal Code or under any law.

11. Petition stands disposed of.

DECEMBER 21, 2017

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JAYANT NATH, J



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