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

+ CRL.M.C. 5236/2017 & CRL.M.A. 20571-20572/2017

KALPATARU AGRO INDIA LTD & ORS Petitioners

Through: Mr. Amit Tiwari with Mr. Rohit
Pandey and Mr. Saransh Tripathi,
Advocates

versus

SECURITIES & EXCHANGE BOARD OF INDIA & ORS

..... Respondents

Through: Mr. Kamal Kr. Ghei, learned APP for
State.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

18.12.2017

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In terms of directions dated 12.12.2017, the Trial Court Record has been received.

Vide the present petition, the petitioner seeks quashing of the order dated 05.12.2017 in Cr. C. 28/2016 passed by learned ASJ, Central, Tis Hazari Courts, Delhi whereby the prayer made by the applicant seeking permission to lead the defence evidence was closed observing to the effect that vide order dated 01.12.2017 the defence evidence had already been closed, it having been noted that no list of witnesses had been filed by the applicant till the date 01.12.2017 and no steps had been taken by the applicant to summon the said witnesses.

It has been submitted on behalf of the applicant that the list of witnesses had been submitted and was on the record and thus the Trial Court

Record was requisitioned which indicates that the said list of witnesses is placed on pages 859-860 of the Trial Court Record. The witness cited at serial no.3 of the list of witnesses is Mr. Ajay Srivastava official of SEBI in relation to whom vide proceedings dated 05.09.2017, it has been recorded to the effect that the summons had been received unserved with the report that the said officer was not residing at the address/office.

It has been submitted on behalf of the respondent no.1 that no necessary efforts were made by the petitioner for summoning of the witnesses and there were delaying tactics adopted by the petitioner as indicated in proceedings dated 10.08.2017 whereby costs had been imposed on the petitioner and on the other accused in the instant case.

On behalf of the petitioner it has been submitted that the petitioner seeks to bring forth the aspect that there have been repayments that have been made by the petitioner to the investors and that the same can be established by the record of the SEBI itself.

It is *inter alia* submitted on behalf of the petitioner that an application under Section 24(A) of the SEBI Act,1992 has also been submitted and qua which it has been submitted by the respondent no.1 that the compounding in terms of the said provisions of the SEBI Act,1992 can take place even at the appellant's steps in relation to which submissions have been made on behalf of the petitioner that the independent auditor has also been appointed by the respondent no.2 for the purpose of verifying that the petitioner has refunded the investments to investors and these aspects are essentially to be brought on record.

Reliance is placed on behalf of the petitioner on a letter dated 29.07.2016 issued by the AGM, North Regional Office of the respondent

no.1 to the petitioner in relation to the said aspect of the appointment of the auditor for verification of the Winding up and Repayment Report (WRR) in the matter of the petitioner.

Taking the said circumstances of the case into account, though the prayer is vehemently opposed on behalf of the respondent and taking into account the proceeding dated 23.09.2015 in CrI. M.C. 455/2011 in relation to the same CC No. 16/10, i.e. the initial number and now bearing CC No. 28/16 pending before the learned ASJ-02, Central, Delhi, it is considered appropriate and essential in the interest of justice to allow the prayer made by the petitioner seeking the setting aside of the order dated 05.12.2017 in CC No. 28/16 which is thus set aside and permission is granted to the petitioner to lead defence evidence by production of the witness i.e. official from the SEBI only as detailed in application on pages 859-860 of the Trial Court Record as now posted with the current address and it is expected that the respondent no.1 would assist in production of the relevant witness in relation to the WRR and all relevant correspondence.

Steps be taken by the petitioner to ensure the production of the defence witness on the next date of hearing to be fixed by the learned trial Court which would be fixed on 21.12.2017.

Learned counsel for the respondent submits that the addresses mentioned at page 861 of the Trial Court Record of the official witness of the respondent no.1 sought to be summoned by the petitioner mentioned as Plot No. C 4-A , G Block, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra 400051 and the address 69, 2Nd Floor Regal Bldg, 16, Sansad Marg, Police Colony, Connaught Place, New Delhi, Delhi 110001 are erroneous and that the correct address of the official witness whom the

petitioner seeks to summon for production of the relevant record in relation to the WRR is the witness with the address at Security Exchange Board of India, 5th Floor, Bank of Baroda Building, 16 Sansad Marg, New Delhi-110001. The petitioner shall ensure that the steps are taken for the official witness of the respondent no.1 at the said address.

Trial Court Record be returned forthwith.

Copy of the order be given *Dasti*, as prayed under the signatures of the Court Master.

ANU MALHOTRA, J

DECEMBER 18, 2017

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