

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1894 OF 2018

1. N.H. Securities Ltd.,
A Company registered in accordance with
provisions of the Companies Act 1956 and
having its office at Bhupen Chambers,
Ground Floor, Dalal Street, Fort,
Mumbai 400 023
2. Navindchandra Parekh,
1st Floor, Radha Bhavan, 121, Nagindas
Master Road, Mumbai 400 023
3. Kirtikumar Parekh
1st Floor, Radha Bhavan, 121, Nagindas Master
Road, Mumbai 400 023 ... Petitioners

// Versus //

1. Securities and Exchange Board of India
A statutory body established under the
Securities and Exchange Board of India Act
1992 having its office at SEBI Bhavan,
Plot No. C4-A, G Block, Bandra Kurla Complex,
Bandra (East), Mumbai 400 051
2. State of Maharashtra ... Respondents

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Mr. Amit Desai, Sr. Advocate a/w Mr. Pranav Badheka I/by Mr.
Pradnyesh G. Sabnis for the Petitioners.
Mrs. Anubha Rastogi for the Respondent No.1.
Mr. Sachin A. Sonawane, Officer SEBI is present.
Mrs. M.R. Tidke, APP for the Respondent State.

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**CORAM : PRAKASH D. NAIK, J.
RESERVED ON : 25th JULY, 2018
PRONOUNCED ON : 30th OCTOBER, 2018.**

JUDGMENT

1. Heard both sides for final disposal.
2. This petition is preferred by invoking Article 227 of Constitution of India and inherent powers under section 482 of Code of Criminal Procedure, 1973 to quash the order dated 27th December, 2017 passed by SEBI Special Court at Mumbai in SEBI Special Case No. 219 of 2014 rejecting the application preferred by the petitioners under Section 24A of the Securities and Exchange Board of India Act, 1992 (for short 'SEBI Act').
3. The petitioner No.1 is a company registered under the Companies Act 1956 and petitioner Nos.2 and 3 are purportedly the Directors of Petitioner No.1 who were facing prosecution under Section 24(2) of SEBI Act. The Respondent No.1 conducted investigation into an allegation of acquisition of shares of Shonkh Technologies International Limited by certain entities in excess of the limits prescribed under regulations 7 and 10 of SEBI Regulations 1997. The acquisition of shares by petitioner No.1 was allegedly found to be in violation of the takeover regulations and the respondent No.1 therefore initiated adjudication proceedings against the petitioner No.1. By order dated 27th April, 2003, the Adjudication Officer appointed by Respondent No.1

imposed a penalty of Rs.1,50,000/- for violation of Regulation of 7(1) and (2) of takeover Regulations and Section 15(A)(b) of SEBI Act to be paid within 45 days of receipt of the adjudication order. The petitioner No.1 preferred an appeal before the Securities Appellate Tribunal against the aforesaid adjudication order. The said appeal was dismissed by order dated 9th January, 2007. The petitioner No.1 was unable to pay the entire amount and by letter dated 26th February, 2007 forwarded part payment of the penalty amount by way of demand draft. However, the said demand draft was not encashed and was returned by Respondent No.1. Subsequently, on 14th January, 2013 the Respondent No.1 filed a complaint before the Court of Metropolitan Magistrate at Bandra under Section 26 read with Section 24(2) and Section 27 of SEBI Act on account of non-payment of penalty imposed by Adjudicating Officer. The said complaint was subsequently transferred to SEBI Special Court and is presently pending in the said Court.

4. The petitioners had filed an application before the SEBI Special Court for compounding the offence on 8th December, 2017, expressing their willingness to comply with the terms that may be mandated by SEBI as part of compounding process. The said

application was opposed by Respondent No.1 by filing reply. The application was rejected vide order dated 22nd December, 2017. The petitioners are aggrieved by the said order and thus preferred the present petition challenging the impugned order.

5. Learned Senior Advocate Mr. Amit Desai advanced following submissions

i. The offence alleged against the petitioners is under Section 24(2) of the SEBI Act which provides for imprisonment and fine and hence it is compoundable in accordance with Section 24(A) of the said Act.

ii. Learned Special Judge failed to appreciate that Section 24(A) of the said Act does not anywhere provide that the compounding can be permitted only with consent of SEBI. The section is clear and unambiguous that the power to compound is provided to the Court before which the proceedings are pending and consent of the complainant is of no consequence.

iii. Learned Special Judge failed to appreciate that unlike Section 320 of Code of Criminal Procedure Section 24(A) of SEBI Act does not provide that the compounding can be permitted with the consent of any particular person. If the intent of the statute had been to permit compounding of offence only with the help of

SEBI, the Act would have contained a provision to that effect similar to the provision of Section 320 of Code of Criminal Procedure. The fact that the no such provision is provided shows that the intent of the statute is to provide unfettered power to the Court to compound the offence irrespective of the consent provided by the Respondent-complainant.

iv. The Court failed to appreciate that the action of Respondent No.1 refusing consent for compounding is without any reasons whatsoever and arbitrary. The complaint was only in respect of the failure of the petitioners to pay the penalty amount and not in respect of breach of regulations and no investor is set to have suffered any loss due to non-payment of penalty. Since the grievance of the Respondent No.1 is non-payment it is unconceivable why the Court should refuse to compound such a case if the petitioners were willing to pay the penalty amount with interest and cost.

v. The intention of Section 24(2) is to create deterrence against non-payment towards payment of penalty. The Section does not intend to punish the original breach but only creates a penal consequence for non-payment of penalty imposed during the adjudication proceedings. The intent of the provisions is similar to

Section 138 of Negotiable Instrument Act which contains a penal consequence for an act which is essentially an act of non-payment.

vi. Mr. Desai relied upon the decision of the Supreme Court in the case of **Damodar Prabhu Vs. Sayed Babalal**¹ and submitted that in the said decision it was held that in cases under Section 138 of the Negotiable Instruments Act, Courts must encourage compounding if the accused shows the willingness to pay the amount. The Court also emphasised that compensatory aspect of the remedy must be given priority over the punitive aspect. It is further submitted that in the said decision, it was further observed that the statutory provision should be interpreted in a way to encourage compounding by the Court if the accused is willing to pay the amount. The Court had suggested that the object of the provision being deterrence against default, all efforts should be made towards compounding and not towards continuation of the prosecution. The provision and intent of Section 24(2) of the SEBI Act being similar to the provision of under Section 138 of the Negotiable Instrument Act, the said decision is squarely applicable in the facts and circumstances of the present case.

vii. Learned counsel relied upon the circular dated 20th April, 2017 issued by SEBI relating to guidelines for consent orders and

1. 2010 (5) SCC 663

for considering the request for composition of offences. It is submitted that clause 11 of the said circular/guidelines indicates the factors to be considered for consent. It is stipulated that while considering the proposal of consent from any party, the Committee shall have due regard to the objective of the respective statute, the interest of the investors and securities market and factors including but not limited to the factors mentioned therein such as whether violation is intentional, the conduct of the party in the investigation and disclosure of full facts, gravity of the charge i.e charge like fraud, market manipulation or insided trading etc. The reply filed by the Respondent no.1 before the trial Court does not state whether the said guidelines have been considered and if so why the consent has been refused considering that the complaint is solely under Section 24(2) in respect of non-payment of penalty. The Special Judge ought to have considered that the petitioner's case does not deserve rejection of compounding even as per the guidelines issued by the SEBI. The application was preferred by the petitioner in accordance with SEBI regulations. Learned counsel adverted to notification dated 9th January, 2014 with regards to the SEBI (Settlement of Administrative and Civil Proceedings) Regulations 2014 which makes the regulations to

provide for the terms of settlement and the procedure of settlement and matters connected therewith or incidental thereto the said regulations provide for factor to be considered to arrive at the settlement terms such as conduct of the applicant in the investigation, role played by the applicant in case of alleged default, nature gravity and impact of alleged default etc. The regulations also provides for Constitution of High Power Advisory Committee for consideration and recommendations of the terms of settlement. The regulations also provides for the reference of application to internal committees which shall examine whether the proceedings may be settled and if so determine the settlement terms in accordance with regulations and also provides for the procedure to be followed by the High Power Advisory Committee to consider the proposed settlement terms placed before it and action to be initiated on recommendation of High Power Advisory Committee

viii. Learned counsel for the petitioner also invited my attention to notification dated 27th December, 2017 in respect to SEBI (Settlement of Administrative and Civil Proceedings) (Second Amendment) Regulations 2017. It is submitted that the amendment provides for summary settlement procedure and

provision for the issuance of notice of settlement under sub regulation 1 and regulation 14 (A) by the Board in respect of such proceedings and in such cases procedure specified in regulations 14A to apply mutandis mutandis.

ix. The Court failed to appreciate that even the original breach which led to the adjudication proceedings was technical in nature and has not effected any investors nor caused loss to anyone. The original breach had no impact on the stock market as a whole and petitioners have not made any profits from the breach. It is further submitted that the quantum of penalty imposed was an amount being Rs. 1,50,000/- and reflects that the alleged breach is not grave in nature and ought to have been compounded. The Special Judge failed to appreciate that in the past a number of instances of other associate companies have already been settled through consent orders and there is no reason why the present case could be distinguished. Learned counsel relied upon the other orders wherein the consent was accepted.

x. The failure to pay penalty was not willful and resulted from financial distress suffered by the petitioners at the relevant due to several factors. The continuation of prosecution what serve no fruitful purpose as it would deprive the Respondent No.1 which is

public a body of the penalty amount and would unnecessarily involve litigation expense out of public money.

xi. This Court has ample powers under writ jurisdiction as well as inherent powers to quash any proceedings in the interest of justice, if no fruitful purpose would be served in continuing the prosecution. This is fit case to exercise such powers.

xii. Even if the Respondent No.1 had refused to give consent for compounding, the Special Court was not prevented from exercising the powers under Section 24A of SEBI Act and allow compounding of the said proceedings. The consent of Respondent No.1 is not *sine qua non* to compound the proceedings within the spirit of the provision under Section 24 A of the said Act. It is submitted that the conditions which are inherent in Section 320 of Code of Criminal Procedure are not applicable in the present case. This a special statute and the provisions has overriding effect over the procedure prescribed under Code of Criminal Procedure.

xiii. It is submitted that Section 24A of SEBI Act makes it clear that the power of compounding offences has been provided only to the Securities Appellate Tribunal and the Court. The said Section nowhere mandated that consent of SEBI is pre-requisite condition for exercise of powers either by the Court or the Tribunal under

Section 24A. It is submitted that in the case of **Sahara India Real Estate Corporation and other Vrs. SEBI and anothers²**, it has been observed that the SEBI Act is a special law, a complete Code in itself containing elaborate provisions to protect interest of the investors. The SEBI Act is a special act dealing with the specific subject which has to be read in harmony with the provisions of Companies Act, 1956. It is thus submitted that Section 24A contains non-abstante clause with regards to the provisions of Criminal Procedure Code which provides that only those sections mention therein are compoundable and also provides for the procedure of compounding. The compounding of offences of SEBI are to be done within the parameters of Section 24A of SEBI and the consent as stipulated in section 320 of Cr.P.C. is not applicable in the present proceedings. In the case of offence of SEBI Act, the legislature has chosen to do away with requirement of consent of the victim by giving powers of compounding to the Securities Appellate Tribunal or the Court. The power of SEBI to settle is provided only in relation to where proceedings are limited to persons against whom the proceedings have been initiated or may be initiated under Sections 11, 11B, 11D, Section 12(3) or Section 15-I only and not once the prosecution has been initiated.

2. 2013(1) SCC 1

xiv. In the decision of the Supreme Court delivered in **VLS Finance Limited -Vrs- Union of India**³, the Court has dealt with the powers embodied under Section 621-A of the Companies Act. Learned counsel placed reliance on the observations Supreme Court in paragraphs 15 to 19 of the said decision. It is observed by the Supreme Court that the powers under Section 621(1)(7) and 621 A are parallel powers to be exercised by Company Law Board or the authorities mentioned therein and prior permission of the Court is not necessary for compounding the offence, when power of compounding is exercised by the Company Law Board.

xv. The guidelines and regulations notified by SEBI highlight the intent to have matters settled through consent mechanism wherever appropriate. The guidelines for consent orders and for considering the request for composition of offences dated 20th April, 2007 clearly highlight the intent of SEBI to encourage settlement and compounding. Clause 11 of the said guidelines set out various factors that have to be considered by SEBI while deciding whether to provide the consent or not for an application for compounding. The said guidelines have acquired force of law and are in any event binding on SEBI as their own internal guidelines.

3. 2013(6) SCC 278

xvi. Learned counsel also placed reliance on the decision of the Supreme Court in the case of Meters and Instruments Private Limited and another Vrs. Kanchan Mehta⁴ and another decision of the Supreme Court in the case of Indian Bank Associates and others Vrs. Union of India and others⁵. Learned counsel also relied upon the letter dated 12th March, 2009 forwarded to the Legal Officer Division of Regulatory Action Enforcement Department regarding consent application dated 1st August, 2008 filed on 5th August, 2008 in the matter of Shonk Technologies International Limited on behalf of the entities mentioned therein. In the said letter, it was stated that the Central Government on the basis of investigation carried out under section 237 of the Companies Act in exercise of its right under Section 401 of the Act filed company petition before Company Law Board against the entities mentioned therein and pursuant to that the Company Law Board has passed ex-parte interim order dated 23rd December, 2008 restraining the Directors of the said entities from functioning as Directors of the said entities. It was therefore submitted that in view of the said order the entities are desirous from proceeding in legal matters before SEBI as all the Directors of the entities are

4. 2018(1) SCC 560

5. 2014(5) SCC 590.

unable to sign and to represent on their behalf. Learned counsel also pointed out the letter dated 24th March, 2009 issued by Assistant legal Advisor SEBI to the Advocate stating that the application filed on behalf of N.H. Securities Limited and others requesting SEBI to adjourn the matters cannot be considered as SEBI circular dated 20th April, 2007 does not provide for adjournment of concerned matters and hence, the caption applications are disposed off as withdrawn and the proceedings are kept in abeyance in terms of the said circular. It is submitted that thus the SEBI had relied upon the said circular which provides for the procedure for dealing with the concerned applications.

6. Ms. Anubha Rastogi, the learned counsel appearing for Respondent No.1 submitted that the petition is devoid of merits. In the reply filed before the Special Judge, it was stated that considering the facts and circumstances of the case and material available on record against the accused, SEBI has decided that the matter should not be compounded against accused Nos.1 to 4 and it was prayed that the application for compounding be rejected in the interest of justice. The trial Court has assigned reasons for rejecting the compounding application. The order dated 27th December, 2017 clearly demonstrates that the trial Court has

exercised its discretion and on the basis of the same rejected the application. The petitioners had purportedly forwarded correspondence dated 26th February, 2007 to demonstrate their willingness to pay the penalty but inability to pay the entire amount due to financial reasons. The petitioner did not move the authority for modification of order permitting them to make payment in part. In the absence of any such modification and in compliance with the rules, SEBI returned the said demand draft to the petitioner company as there was no procedure for accepting payments in part. Petitioner company alongwith other group of companies had attempted to make part payment on the second occasion which was again returned due to lack of any modification of order and in compliance with the rules which were binding on SEBI. It is submitted that ten complaints similar in nature and arising out of same adjudication were filed specifically arraying each company and its Directors as accused in the matter under Section 24(2) of SEBI Act, 1992. The Petitioner No.3 is an accused in three more matters arising out of same adjudication proceedings and all three petitioners are arrayed as accused in different proceedings pending under Section 24(1) of the SEBI Act, 1992. The conduct of the petitioners is also required to be

noted. It is submitted that a set of eleven matters were being heard together and separate set of 17 matters were heard together pertaining to the same set of accused persons, including the petitioners herein for different alleged violations. The matter was pending for appearance before the SEBI Special Court on 17th January, 2015. An application for issuance of summons was issued on behalf of SEBI. The appearance on behalf of the accused was made through Advocate on 18th February, 2016 when the matter was taken on board on their request. On 8th March, 2016 bail application was preferred by accused Nos.2 and 4 (Petitioner Nos.2 and 3) which was allowed. On 29th March, 2016, the accused were absent and bail conditions were not complied. The accused appeared through their advocate on 6th April, 2016 and sought extension of time for complying bail condition. The said prayer was granted on 3rd May, 2016 and 7th June, 2016. Neither the accused nor their lawyers appeared for the next five subsequent dates. On 22nd June, 2017 fresh Vakalatnama was filed by the new advocate alongwith application for extension of time to furnish surety. The same was allowed. On 20th July, 2017 all the accused were absent and Court proceeded to pass order, wherein the application for exemption was rejected and observed

that if such applications are entertained there will be no framing of charge. The accused are expected to attend the Court as undertaken by them while getting released on bail. SEBI was directed to initiate the process against the accused. Application for issuance of NBW was adjourned for passing orders on 4th August, 2017 and also for framing charge. On the next date, the matter was adjourned. On 22nd August, 2017, the advocate of the accused was present but the accused was not present and no application for exemption was preferred on their behalf. On 7th September, 2017, time was sought by both the parties as the stages in the various cases which were being heard together were to be determined. On 18th September 2017 the advocate for the accused was present but the accused were absent and the application undertaking to keep all of them present on the next date was filed which was taken on record. On 28th September, 2017 the accused were again absent while their advocate was present and the application for exemption was preferred. The said application was opposed by the Respondent No.1 and the same was rejected. On 4th October, 2017 Respondent No.1 was directed to take appropriate steps. On the next date i.e 3rd November, 2017 the non-bailable warrant issued against the accused were

cancelled and charge against the accused was framed. Respondent No.1 was directed to lead evidence without fail. Thereafter, the matter was posted for recording of evidence. The Court also imposed costs on the prosecution since evidence was not led. The accused then moved an application for compounding on 8th December, 2017. Identical applications were filed by the accused in ten connected matters including the matter in which the accused was under trial. It is submitted that the aforesaid aspects be taken into consideration. The accused are habitual offenders and in the interest of the securities market and considering the overall conduct of the accused, the Respondent No.1 decided to refuse the compounding application and stated in its reply. It is further submitted that the offence under Section 24(2) of SEBI Act attracts the imprisonment of atleast one month or upto 10 years or fine upto Rs. 25 crores or both. It is submitted that the prosecution is launched for an offence under SEBI Act. The present proceedings have been initiated under section 24(2) of SEBI Act and the complainant has power to recover the amount under Section 28(A) of SEBI Act, 1992. Both the proceedings are different. The orders relied upon by the petitioners wherein the applications for compounding were allowed, were the cases where

the prosecution has not been initiated. The petitioners opted for consent process but did not follow the mandated procedure. It is submitted that the judgments relied upon by the petitioners were most of them concerned with the offence under Negotiable Instrument Act and same are not applicable in the present case. It is further contended that the prosecution under Negotiable Instrument Act is between two private parties and the dispute is of individual nature. The parameters laid therein are thus not applicable in the present case. SEBI is concerned to protect the rights of investors. It is not purely a dispute between SEBI and the accused. SEBI is the custodian of the interest of the investors and is the regulator of the securities markets. Thus, the judgments relied upon by the learned counsel for the petitioners are not applicable in the present case. It is submitted that the offences under the SEBI Act are economic offences. The scope and object of the Negotiable Instrument Act and the SEBI Act is completely different. The intent of the two legislations are absolutely distinct in nature. The trial court has exercised its discretion and passed the impugned order. The fact that the SEBI has refused to compound the present matter has been considered by the Court as material fact and therefore trial Court has rejected the application

for compounding. The roznama of the trial Court is required to be taken into consideration. The recommendation of the SEBI is always based upon the facts and circumstances of the case and the conduct of the accused. One of the object of the SEBI is to protect the interest of the investors. SEBI recommended for rejection of compounding application after considering the facts and circumstances of the case and conduct of the accused.

7. It is submitted that as far as interpretation of Section 15(J) (B) of SEBI Act is concerned it has to be noted that for the purpose of the present proceedings the relevant provisions are under Section 24, 24A and 27 of the said Act. Section 15(J)(B) deals with circumstances which are before the criminal prosecution is launched and not after. The provision relates to settlement of administrative and civil proceedings and does not apply to Criminal Proceedings. The accused by not complying the adjudication order dated 22nd April, 2003 and the order of said dated 9th January, 2007, subsequent communication of SEBI evading of service of summons,ailable warrants, non-ailable warrants had addresses which continued to be the addresses of the petitioners and the directions of the Court from time to time shows that the petitioners had utter disregard to the judicial system. The

compounding application filed by the accused were neither bonafide nor genuine. The conduct of the accused in the cases filed against them is different from the conduct of the accused where SEBI has consented for compounding. Learned counsel placed reliance on the decision of this Court in the case of **Shilpa Stock Broker Private Limited and Anr. Vs. SEBI**⁶. The said decision of Division Bench of this Court lays the foundation of the manner in which cases affecting the Securities Market can be compounded. The decision deals with the factors to be considered while deciding compounding application in accordance with guidelines of 2009. The factors to be considered are identical in the 2014 regulations and the case of the petitioners would in any case gets rejected on the basis of those factors since they have been found to be habitual offenders and have more than one case / proceedings pending against them. SEBI is the custodian of the interest of investors and the securities market has been held and reiterated by the Court in the decision of the **SEBI Vs. Ajay Agrawal 2010(3) SCC 765, N.Narayanan Vs. Adjudicating Officer**,⁷. The impact that the market abuse and manipulation of the securities market has on the economy of the nation and the

6. 2012 (6) Bombay Cases Reporter 808

7. SEBI 2016 (6) SCC 368

confidence of the investors has been highlighted in the said judgments and directions were issued to SEBI to ensure that the same is protected. It is thus submitted that the petition be dismissed. In addition to the oral submissions, both the sides have tendered written submissions. As counter to the submissions tendered by the Respondent No.1 it was contended that in para 20 of the written submission the Respondent No.1 has considered the legal position that discretion to compound an offence in accordance with Section 24 A of SEBI Act is with the Court before which the prosecution is pending. It is thus, contended by Petitioners that the Respondent has agreed with the legal position that it is for the Court and not for SEBI to decide whether particular offence can be compounded or not and on that ground the impugned order has to be set aside.

8. Having heard both the sides and on scrutinizing the documents on record and also perusal of the written submissions tendered by both the sides, it is apparent that the Respondent No. 1 had conducted investigation into an allegations of acquisition of shares of one Shonkh Technologies International Limited by certain entities in excess of limits prescribed under regulations 7 and 10 of SEBI (Substantial Acquisition of Shares and Takeovers)

and Regulations 1997. The adjudication order dated 22nd April, 2003 list down the various entities which were being investigated in the adjudication proceedings which includes the petitioner No.1 company and petitioner No.2 and 3. The petitioner No.2 and 3 also feature as Directors and/or shareholders of the other entities which were the subject matter of the adjudication proceeding. On the basis of analysis of evidence, the Adjudicating Officer held that the entities and the persons involved were acting in concert with each other and that the acquisitions of shares cannot be looked into in isolation for each entity. The Adjudicating Officer applied the principle of lifting of Corporate veil to reveal the violation of law under the garb of being separate entities. The petitioner No.1 company features specifically in the adjudication orders in the table showing the violations of regulations 7(1) of SEBI (SAST) Regulations 1997. The order also refers to the date when the petitioners had violated the said regulations as 30th September, 2000. The order also specifies that since the violation was committed before the amendment dated 29th October, 2002, the unamended provision will be applicable to determine the penalty in the present case which were not exceeding Rs. 5000 for every day during which such failure continues. The adjudicating officer

reaches the conclusion regarding the violation specifically committed vis-a-vis the petitioner company. It is stated that as per Section 15A (a) the maximum penalty is Rs.1.5 lacs. The Securities Appellate Tribunal by order dated 9th January, 2007 upheld the adjudication order. The petitioners then forwarded communication dated 26th February, 2007 showing their willingness to pay the penalty but inability to pay the entire amount due to financial reasons. However, the petitioner did not move the Appellate Authority for modification of order permitting them to make payments in part. The demand draft forwarded by the petitioner was not encashed and was returned by the Respondent No.1. By notice dated 3rd July, 2008, the petitioners were intimated about initiation of prosecution proceedings against them for non-payment of penalty amount under Section 26 read with Section 24(2) and 27 of the SEBI Act.

9. On 14th January, 2013, the Respondent No.1 filed the complaint before the Court of Additional Chief Metropolitan Magistrate, 9th Court Bandra, Mumbai which was numbered as CC No. 22/SW/2003. The complaint refers to the adjudication order dated 22nd April, 2003, the order passed by the Appellate Authority 9th January, 2007 and also the letter dated 26th

February, 2007 forwarded by the petitioner for part payment of the amount which was returned vide letter dated 18th April, 2007 alongwith the demand draft which was duly acknowledged by the accused. It is further mentioned that the accused opted for consent process which was rejected by the complainant. Despite repeated reminders by Respondent No.1, the petitioners failed to make payment of the penalty amount as directed by adjudicating order till the date of filing of the complaint and therefore the accused/petitioner had committed offence under Section 24(2) of SEBI Act, 1992. It was further alleged that the failure of the accused in making payment of the penalty amount is clear and deliberate violation of the orders of the adjudicating officer by the accused and deserves most severe punishment as prescribed under Section 24(2) of SEBI Act. The accused No.2 to 4 were Directors / Officers of accused No.1 company when the offences were committed and therefore they are responsible for the conduct of the business. They are deemed to be guilty under the provisions of Section 27 of the Act. Section 24(2) of SEBI Act, 1992 reads as follows :-

“If any persons fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of directions or orders, he shall be punishable with imprisonment for term which shall not be less than

one month, but which may extent to 10 years or fine which may extent to 20 crores rupees or both.”

10. The Respondent No.1 has contended that there are 10 complaints similar in nature and arising out of same adjudication order which were filed specifically impleading each company and its Directors as accused in the matter under Section 24(2) of the SEBI Act, 1992. Petitioner No.3 is an accused in three more matters arising out of the same adjudication proceedings and all other three petitioners are impleaded as accused in different proceedings pending under Section 24(1) of the SEBI Act, 1992. The case was transferred to SEBI Special Court. On 17th January, 2015 an application for issuance of summons was made by Respondent No.1. Thereafter, the matter was adjourned from time to time. On several occasions, the accused were absent. Non-bailable warrants were issued against the accused. Report was issued in respect to the non-bailable warrant issued against the accused No.2 and 4 which indicated that the person who are mentioned in the warrants are not residing the place mentioned in the address. By order dated 4th October, 2017 SEBI was directed to take appropriate steps for the same. The matter was adjourned to 3rd November, 2017 for framing charge. On the next date i.e 3rd November, 2017 the charge was framed against the accused.

Respondent No.1 was directed to lead evidence without fail. Charge was framed Exh.17 whereas plea of accused No.2 and 4 was recorded vide Exh.19 and 20. The matter was posted for recording evidence on 17th November, 2017 and 22nd November, 2017. On 8th December, 2017, the application was moved by the accused for taking the matter on board to file compounding application. Identical compounding application were filed by the accused in 10 connected matters including the matter in which one of the accused was under trial which was expediated by this Court. On 13th December, 2017 Respondent No.1 moved an application for production of documents vide Exh.27. Accused were permitted to file their say on the application of SEBI under Section 294 of Code of Criminal Procedure. The application under Section 66 of Evidence Act was also filed by SEBI. Accused had filed their say. In the order dated 13th December, 2017 it was observed that the Court has to take hard efforts to bring the case to the stage of evidence by shutting all the doors of adjournments. In this background SEBI entertains the compounding application for endless period for giving handle to the adjournments defeating the purpose and object of SEBI Act, 1992. It was further observed that the Respondent No.1 shall take note upon their failure on the

next date it will be presumed that they are not interest to compound the case and case will be proceeded for evidence. On 26th December, 2017 the reply to the compounding application was filed on behalf of SEBI. The application was then adjourned to 27th December, 2017. The arguments were heard and by order dated 27th December, 2017 the application for compounding was rejected.

11. In the reply filed by the Respondent No.1 before the Special Judge opposing the application for compounding it was contended that considering the facts and circumstances of the case and material available on record against the accused, SEBI has decided that the matter should not be compounded against the accused. It was therefore prayed that the application for compounding be rejected in the interest of justice. The learned Special Judge while rejecting the said application for compounding was pleased to observe that Section 24A of SEBI Act specify the jurisdiction to entertain compounding in certain offences. The said provision indicates two forums. The first before the institution of criminal case if compounding is preferred, securities Appellate Tribunal can entertain the compounding and second if after the institution of any proceedings like the prosecution, the Court before which such

proceedings are pending can entertain the compounding. It was further observed that all the accused had preferred compounding before SEBI authorities at the relevant time prior to launching of prosecution which application was rejected. Now during pendency of the trial, the accused No.1 to 4 had again preferred the application for compounding. The Court can entertain such application but the offence has to be compounded by SEBI. It was decided by SEBI not to compound the offence. Hence, the Court cannot force and compel SEBI to compound the offence. It is clear that SEBI had taken a decision not to compound the offence and have refused to accept the compounding proposal of the accused. Whether their act is legal or illegal in rejecting the compounding proposal of the accused cannot be adjudicated by Court. It was further observed that none mention of reasons for rejection, not giving reply parawise and non-application of mind while rejecting the proposal etc cannot be adjudicated before the Court for the simple reason that SEBI being statutory authority and custodian of the rights of the investors with the laudable object of SEBI Act, 1992 acting as an institution accountable to the investor public and accessible and responsive to complaints and decides not to compound the offence, the Court cannot compel them to accept

the proposal of accused for compounding the offence.

12. In the present case, the petitioners had preferred the compounding application before SEBI authorities prior to launching of the prosecution. Said application was returned and stand rejected. After the proceedings were initiated and matter was due for recording evidence another application was preferred before the Special Judge where the prosecution was pending on 8th December, 2017. In the said application, it was contended that the offence under Section 24 of the said Act is compoundable as per Section 24A of the Act. The offence does not provide mandatory imprisonment and not barred by Section 24A which provide for compounding. The intention behind legislature in enacting SEBI Act is to provide opportunity to do good for any default committed by the accused in accordance with section 24 A of the Act. Without prejudice and without admitting guilt, the petitioners are ready to pay the subject matter being the penalty imposed by SEBI alongwith interest and such other necessary cost. It would be pertinent to note that the adjudication order was passed on 22nd April, 2003. The said order was challenged before the appellate Authority which appeal was dismissed on 9th January, 2007. The accused forwarded the letter dated 26th

February, 2007 for making part payment. The said request was turned down. The complaint was filed for non-compliance of the adjudication order on 14th January, 2013. It is thus, clear that the adjudication order was passed about 15 years ago. The application for compounding was preferred again before the Special Court on 8th December, 2017. The prayer clause of the said application it was stated that offence be compounded under Section 24A of the SEBI Act, 1992 and in terms of SEBI Circular dated 20th April, 2017 and SEBI Regulation 2014 dated 9th January, 2014. From the Roznama reproduced in the written submissions tendered by the Respondent No.1 it is crystal clear that the proceedings were dragged for lengthy period and ultimately the charge could be framed and the matter was kept for evidence and at that point of time the application was preferred by the petitioners. The petitioners are now trying to contend that to save the cost and time of the Court and without admitting guilt the petitioners had preferred the application for compounding. Thus, the petitioners have preferred the application as per their preference belatedly in 2017 by making an offer to pay the entire amount. The Respondent No.1 has used its discretion and decided to oppose the compounding of the said offence. From the reply

filed by the Respondent No.1 referred to herein above, it is clear that considering the facts and circumstances of the case and material available on record against the accused, the Respondent No.1 has decided that the matter should not be compounded against the accused.

13. It is the contention of the petitioner that despite opposition by SEBI the Court ought to have allowed the application for compounding. The Court has rejected the application on the ground that it has been opposed by SEBI. It is also contended that in accordance with guidelines the compounding should be supported and SEBI has no choice but to support the application for compounding. It is further adjudicated that the Court could have allowed the application irrespective of the opposition by Respondent No.1. Lastly, it is contended that in exercise of power under Section 482 of Code of Criminal Procedure, this Court can entertain the said application and allow compounding vide Section 24A of the said Act. In the light of the reply filed by the Respondent No.1, the observation made in the adjudication of order, the order passed by the appellate authority dismissing appeal, the time when the application was preferred, the conduct of the petitioners, the pendency of the prosecution since 2013 are

all the factors which would rejection of the application preferred by the petitioners. The Respondent No.1 cannot be a mute spectator to the application for compounding preferred by the petitioners. The prosecution was initiated for inaction on the part of the petitioners in complying order dated 22nd April, 2003. The offer of part payment made in 2007 was turned down and thereafter the application was preferred for seeking compounding of the application after the period of 10 years from the date of the first offer. The Respondent No.1 is the statutory authority and custodian of rights of investors. The object of SEBI Act 1992 is to protect the interest of the investor public. The Respondent No.1 is supposed to look into the complaints of the aggrieved persons and inspite of the default on the part of the wrongdoer, the applications for compounding cannot be supported mechanically. The petitioners cannot claim parity with regards to the consent given by Respondent No.1 in other complaints. Apparently, consent was given in different circumstances. The Respondent No.1 is within its right to oppose the application for compounding. The Special Judge has intended to reject the application with an observation that the decision of Respondent No.1 refusing to accept the compounding proposal cannot be adjudicated by the

Court. The impugned order indicates that whether it is the discretion of Respondent No.1 to support the proposal of the compounding initiated by the accused or not to support the same. From the submissions of respondent No.1, it is implicit that it was decided not to support the application. The trial Court has rightly observed that the decision of SEBI and reason for not supporting compounding application cannot be adjudicated. In any case from the submission put forth by respondent No.1, the said decision has been justified. The Adjudicating Officer has held that the entities and the person involved were persons acting in concert with each other that the acquisition of shares cannot look into entity each other. The penalty was imposed in 2003. Apparently, 10 complaints similar in nature and arising out of the same adjudication were filed against each company and its Directors as accused under Section 24 of the SEBI Act. The petitioner No.3 is an accused in three other cases arising out of the same adjudication proceedings and all three petitioners were impleaded as accused in different proceedings pending under Section 24(1) of SEBI Act. The Respondent No.1 has stated that the petitioners being habitual offenders and in the interest of securities in the market and considering overall conduct of the accused before the

trial Court, the Respondent No.1 had decided to refuse the compounding application and thus it is stated so in the reply that the facts and circumstances of the case and material available on record against the accused, the Respondent No.1 has decided that the matter should not be compounded against the accused. The trial Court has assigned the cogent reasons for rejecting the application preferred by the petitioners. The decision of the Special Court is in consonance with the ratio laid down by this Court in the case *Shilpa Stock Brokers Pvt. Ltd., Vs. Securities and Exchange Board of India (supra)* SEBI Act provides for recovery proceedings and even in cases where penalty amount has been recovered the prosecution continuous as the offence of non-payment of penalty was committed irrespective of the same.

14. The object of the SAST Regulations mandating disclosure of requisition / sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interest. The disclosure assumes all the more significance in view of the fact that the same could not be in the knowledge of the public. Accused would not have prejudged the reaction of the investors. By virtue on the part of the accused to make necessary disclosures the fact remains that the investors were deprived of the

important information at the relevant point of time. By not making the disclosure the accused had concealed the vital information from the investors. In the case of **Shilpa Stock Brokers** (supra), this Court has dealt with SEBI guidelines for consent order dated 20th April, 2007. In the said petition, a mandamus was sought directing SEBI to enforce the willingness conveyed in the letter of the said petitioners. It would be relevant to quote paragraphs 6,7 and 8 of the said decision.

“6. The Guidelines make it abundantly clear that an application for consensual resolution can be moved even before a proceeding is instituted under Clause 9(I). An application for settlement can also be moved where a proceeding is pending. Any person who is notified or has reasonable grounds to believe that civil or administrative proceedings may be instituted against him or any party to a proceeding already instituted, is empowered to move a proposal with an offer of consent. Similarly, a person who has been notified or who has reasonable ground to believe that a criminal proceeding may or will be instituted against him, may before the filing of a criminal complaint by SEBI, propose a consensual resolution. Once a criminal complaint is filed it can only be compounded in accordance with law. Before a complaint is filed a person who has reasonable grounds to believe that he would be subject to criminal action, can move SEBI with an offer of settlement that will, if accepted, obviate the filing of a complaint. During the pendency of proceedings either before the Securities Appellate Tribunal or before a Court, the same consent process can be undertaken. SEBI, as a regulator has an enabling power to settle a dispute. The guidelines merely streamline the exercise of a power which already vests in a regulator. But SEBI cannot be compelled to settle a dispute. The object and purpose of the Guidelines is to enable SEBI to resolve disputes where the

regulator does not consider it necessary to pursue adjudicatory or criminal remedies. The exercise of the discretion which is conferred on SEBI is structured by the considerations which are elaborated in Clause 11 of the Guidelines. The factors which are to be considered by SEBI are as follows:

I. Whether a violation is intentional;

ii. The party's conduct in the investigation and disclosure of full facts;

iii. The gravity of the charge: whether a charge involves fraud, market manipulation or insider trading;

iv. History of non-compliance. Whether there is a good track record of the violator i.e. it had not been found guilty of similar or serious violations in the past;

v. Whether there were circumstances beyond the control of the party;

vi. Whether the violation is technical and /or minor in nature and whether the violation warrants penalty;

vii. Consideration of the amount of investors' harm or party's gain;

viii. Processes which have been introduced since the violation to minimize future violations/lapses;

ix. Compliance schedule proposed by the party;

x. Economic benefits accruing to a party from delayed or avoided compliance;

xi. Conditions where necessary, to deter future non-compliance by the same or another party;

xii. Satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them;

xiii. Compliance of the civil enforcement action by the accused;

xiv. Whether the party has undergone any other regulatory enforcement action for the same violation; and

xv. Other factors necessary in the facts and circumstances of the case.

7. Whether a dispute should be resolved or whether the wider public interest in ensuring regulatory compliance requires that proceedings should be initiated and, if initiated should be followed to their logical conclusion, is a matter which falls within the discretion of SEBI. As a matter of first principle, a person against whom action has been initiated by SEBI or a person who apprehends that action will be initiated by SEBI has no vested right to insist that the dispute be resolved in terms of a consensual settlement. SEBI has been constituted as an expert regulator to ensure the stable and orderly functioning of the securities market. Acting as a regulator of the securities market, decisions taken by SEBI impact upon the economy and financial stability. SEBI is vested with statutory powers, in the public interest and the exercise of power must, therefore, be guided by the public interest that SEBI is vested with the power to protect. The considerations which are spelt out in clause 11 provide some indication of the nature of the power that is exercised. Amongst the circumstances which are to be borne in mind is whether the violation is intentional, the conduct of the party during the course of investigation, the gravity of the charge, the track record of the violator, whether a violation is technical or minor, the extent of harm that may be caused to investors, processes which have been adopted to minimize future violations, proposed compliance schedule, economic benefits that have accrued from delayed or failure in compliance, conditions necessary to deter future non-compliance, satisfaction of claims of investors and compliance of civil enforcement action. These factors indicate that the question as to whether a dispute should be resolved by a consensual settlement does not merely involve a private lis between

the violator and the regulator but involves a consideration of wider issue of public interest. The securities market impinges upon investor wealth. Investors as a body represent the collective wealth of numerous individual investors. Trading on the Stock Exchanges and the business conducted by Stock Exchanges has a material impact on investors, both institutional and individual. Actions of stake holders in the securities market have consequences not merely for the role and position of the stake holder and his relationship with SEBI as regulator. Those actions have serious consequences for the overall well being of the securities market and those whose wealth and investment is impacted by the stock market. SEBI is vested with the power to protect and streamline the functioning of the securities market. A person who is alleged to be in breach of the Regulations or statutory provisions which are designed to protect the public interest can have no vested right either to insist upon SEBI settling a dispute or in enforcing compliance of the terms of a proposed offer of settlement.

8. *If the matter is considered from this perspective, it is evident that the High Court in the exercise of its jurisdiction under Article 226 of the Constitution would not be justified in issuing a mandamus to SEBI to act upon a settlement or to accept a settlement as proposed. The guidelines which have been framed by SEBI are administrative in character. Since the judgment of the Supreme Court in G.J. Fernandez v. State of Mysore it has been a settled principle of law that if administrative guidelines issued by an authority have no statutory force, they can confer no right on an individual that could be enforced by a writ of mandamus. This principle was reiterated in a subsequent decision of the Supreme Court in J.R. Raghupathy v. State of A.P. But, apart from this position, it is equally fundamental, while analyzing the provisions of the guidelines to emphasise that where the guidelines have conferred a discretionary power upon SEBI to resolve a dispute which has still not reached the stage of adjudication or criminal action, or a dispute for that matter which is pending proceeding, it is for SEBI, on a considered view of all the circumstances of each case, to*

determine as to whether the dispute merits an amicable solution.”

Thus, the ratio of the said decision is that the Respondent No.1 cannot be compelled to settle the dispute. The guidelines makes it clear that an application for consensual resolution can be moved before the proceeding instituted. An application can also be moved where proceeding is pending. However, once a criminal complaint is filed, it can only be compounded in accordance with law. Before a complaint is filed, a person who has a reasonable ground to believe that he would be subjected to criminal action can move SEBI with an offer of settlement that if accepted it would obviate filing of complaint. SEBI as a regulator has an enabling power to settle a dispute. It is further observed that the object and purpose of the guidelines is enable SEBI to resolve the dispute where the regulator does not consider it necessary to pursue adjudicatory or criminal remedies. The exercise of the discretion which is conferred on SEBI is structured by the consideration which are elaborated in clause 11 of the said guidelines. It is also observed that whether a dispute should be resolved or whether a wider public interest in ensuring regulatory compliance requires that proceeding should be initiated and if initiated should be followed to their logical conclusion is a matter which falls within the

discretion of SEBI. As a matter of first principle, a person against whom action has been initiated by SEBI or a person who apprehends an action will be initiated by SEBI has no vested right to insist that the dispute be resolved in terms of consensual settlement. The SEBI has constituted an expert regulator to ensure that the stable and orderly functioning of the securities stock market. Acting as a regulator of the Securities Market, the decision taken by the SEBI impact upon the economy and financial stability. SEBI is vested with a statutory power in the interest of public and exercise of power must therefore be guided by public interest that SEBI be guided with public interest power to protect. It was further observed that the guidelines which have been framed by the SEBI are administrative in character. The High Court in exercise of jurisdiction under Article 226 of the Constitution would not be justified in issuing mandate to SEBI act upon a settlement or to accept a settlement as proposed. This Court had further observed in the that the guidelines are intended to enable SEBI to obviate the reports to time consuming proceedings in appropriate cases, so that its time an effort can be devocated to those cases which truly merits its attention. The guidelines do not become available to overturn the judicial verdict

which has attained finality. Besides that it would not advance the basic purpose of the adjudication and litigation. Once a litigation has taken place and final judicial order has been passed by the Court a settlement which would negate that order cannot be fasted on SEBI. The guidelines thus recognized the enabling power to SEBI to resolve certain cases which in view of SEBI can be said at best without compromising either an issue of principle or public interest. The guidelines do not confer a vested right in any person to insist on a settlement of proposed terms. Thus, in the light of the observations made by this Court, the Special Judge has rightly rejected the application issue preferred by the petitioners. The petitioners however contended that the said decision was only dealing with the guidelines of 27th April 2007 and the Court had not considered the scope of Section 24A of the SEBI Act. It is also contended that the factual aspect of the said decision indicate that proceedings had attained finality and in the light of the said circumstances, the Court has made certain observations. It is further contended that Section 24A of the SEBI Act is still confers power on the Court to compound and it cannot rest at the discretion of Respondent No.1.

15. The decision in the case of Damodar Prabhu (supra) relates

to the guidelines / directions issued to encourage litigants in cheque dishonoured cases to opt for compounding during early stage of litigation to ease chocking of Criminal Justice system or graded scheme imposing cost on the parties for unduly delay compounding of offences and for controlling of filing of complaints in multiple jurisdiction reletable to the same transaction. The observation and guidelines issued therein were concerning the proceedings under section 138 of the Negotiable Instruments Act. The said guidelines or observations of the Apex Court are to be applied to such cases considering the scope and object of the said provision. Learned counsel for the petitioner had drawn supported from the said decision by relying upon the observation therein. It would be pertinent to note that the Negotiable Instrument Act contains the provision for compounding of offences by incorporating Section 147 in the said Act, which stipulates that notwithstanding anything contained in the Code of Criminal Procedure, every offence punishable under that Act shall be compoundable. Learned counsel submitted that the said provision is similar to Section 24A of the SEBI Act as even in respect to Section 147 of the Negotiable Instrument Act, the provisions under Section 320 are not applicable and thus it is paramateria Section

24A of SEBI Act. In the said decision, it was observed that Section 147 of the Negotiable Instrument Act is in nature of enabling provisions which provides for the compounding of offences prescribed under the same Act thereby serving as an exception to the general rule incorporated in Sub-Section 9 of Section 320 of Code of Criminal Procedure. A bare reading of the provision would lead to the inference that offences punishable under laws other than penal code cannot be compounded. However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of section 320(9) of Code of Criminal Procedure especially keeping in mind that Section 147 carries a non-obstinate clause. It would be relevant to note that the object of bringing Section 138 into the statute was to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable Instrument. It was to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalty in case of bouncing cheques due to insufficient arrangement made by the drawer with adequate safeguards to prevent harassment of honest drawers. If the cheque is dishonoured for the insufficiency of funds in the drawers account or if it exceeds to arrange the amount arranged to be paid

from the account, the drawer is to be punished for imprisonment for a term which may extent to two years or with fine which may extent to twice of the amount of the cheque or with both. In the said decision the Apex Court has also referred to another decision of the Apex Court in the case of **Vinay Devanna Naik Vs. Ryot Seva Sarkari Bank Limited 2008 (2) SCC 305** wherein it was observed that the provision of Section 138 was intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds. It does seek to promote the efficacy of bank operations. In paragraph 11 of the said decision, it was also observed that certain offences are very serious in which compromise or settlement are not permissible. Some other offences, on the other hand, are not so serious and the law may allow the parties to settle them by entering into a compromise. The compounding of an offence signifies that the person against whom an offence has been committed has received some gratification to an act as an inducement for its abstaining from proceedings further with the case. It is relevant to note that unlike for other forms of crime the complainant's interest lies primarily in recovering the money rather than seeing drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery.

As against the accused who is willing to go undergo jail term, there is little remedy available for the holder of the cheque. The Apex Court thus in Damodar Prabhu (supra) case observed that it is obvious that with respect to offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect.

16. Halsbury defines crime as an unlawful act or default which is an offence against the public and which renders the perpetrator of the act or default liable to legal punishment. Crime is an act or omission which the law thinks fit to render liable to punishment. An act or omission may be against the interest of society or may be sinful and yet the law may not have declared it a crime. On the other hand an act or omission may not be against the interest of the society or may not be a sinful or yet a rule of positive law may regard it as a crime punishable under the law for the time being in force. Crime is essentially a wrong against the society and the State. Any compromise between the accused and the individual victim of the crime should not absolve the accused from criminal responsibility. Where the offences are of essentially private nature and relatively not quite serious, the Court considers it expedient to recognize some of them as compoundable offences and some other

as compoundable only with the permission of the Court. However, the distinction is drawn as far as the offence under Section 138 of the Negotiable Instruments Act, considering the fact that the aggrieved party is interested in return of his money and not in sending the person to jail. The Respondent No.1 is the regulatory authority. The Respondent No.1 is concerned with the interest of the public. Primarily the affected party are the investors. However, being the statutory authority Section 24A has been incorporated under the said Act. The discretion will have to be exercised depending upon the case and it cannot be applied randomly and powers of compounding are not expected to be exercised in every case. In **V.L.S Finance Limited** (supra) the order passed by the High Court dismissing appeal assailing the order of the Company Law Board allowing the compounding of offence under the Companies Act was under challenge. Reference was made to Section 21A of the Companies Act which relates to composition of certain offences notwithstanding anything contained in the Code of Criminal Procedure. The said provisions envisages the compounding of offences which are punishable under the Companies 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 either before or after the institution of any prosecution. In the light of the provisions under the Companies Act, the Court had observed that ordinarily the offences compoundable under the provisions of the Code of Criminal Procedure and the power to accord permission is conferred on the Code accepting 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 on 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 proceedings. The legislature in its wisdom has not put the rider of prior permission of the Court before compounding the offence by Company Law Board and incase the contention of the Appellate is accepted the same would amount to addition of the words with the prior permission of the Court in the Act which is not permissible. Thus, the Court was considering the issue that the powers under Sub-Section 1 Sub-Section 7 of Section 621-A are parallel powers to be exercised by the Company Law Board or the

authority mention therein and prior permission of the Court is not necessary for compounding the offence when power of the compounding is exercised by the Company Law Board. There is no dispute about such an issue in the present proceedings. In the case of **Sahara India Real Estate** (supra), the Apex Court has observed that SEBI Act is a special law a complete Code in itself containing elaborate provisions to protect the interest of the investors. Section 32 of the Act provides that the act shall be in addition to and not in derogation of the provisions of any other law. The SEBI Act is a special act dealing with specific subject which has to be read in harmony with the provisions of Companies Act, 1956. The 2002 Amendment Act of the SEBI Act further re-emphasis the fact that some of the provisions of the SEBI Act will continue to operate without prejudice to the provisions of Companies Act qua few provisions says that notwithstanding the regulations and order made by SEBI, the provisions of Companies Act dealing with the same issues will remain unaffected. Both the Acts will have to work in tandem in the interest of investors, especially when public money is raised by the issue of security from the people at large.

17. The powers and functions of SEBI are dealt with in Chapter IV of the SEBI Act. Section 11 states subject to the provision of the

Act it shall be duty of SEBI to protect the interest of investors in securities and to promote the development of and to regulate the securities market. SEBI is duty bound to prohibit fraudulent and unfair trade practices relating to securities markets, prohibiting insided trading in securities etc.

18. In the case of **Meters and Instruments Pvt. Limited & Anr.** (Supra), the Supreme Court has observed that where the cheque amount with interest and costs as assessed by the Court is paid by specified date, the Court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 of Code of Criminal Procedure. The normal rule for trial of the cases under Chapter XVII of the Act is to follow the Summary Procedure and Summons trial procedure can be followed where sentence exceeding one year may be necessary taking into account the fact that compensation under Section 357 of Code of Criminal Procedure with sentence of less than one year will not be adequate having regard to the amount of cheque and conduct of the accused and other circumstances. It was also observed that the object of provision under Section 138 of Negotiable Instrument Act, being primarily compensatory, punitive ailment being mainly with the object of enforcing the

compensatory relevant, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court. The directions issued in the said decision were in the light of the scope and object of the provisions under Section 138 of the Negotiable Instrument Act. It would be pertinent to note that the object of the provision was described as both punitive as well as compensatory. The intention of the provision was to ensure that the complainant received the cheque by way of compensation. Though proceedings under Section 138 of Negotiable Instruments Act would not be treated as a civil suits for recovery the scheme of the provisions provides for imprisonment or with fine which could extent twice the amount of the cheque or both which makes the intention of the law very clear. Thus, the observations and the directions in the said decision cannot be applied to the present proceedings. Similarly, in the case of Indian Bank Associations and others (supra), the Supreme Court has issued directions in respect to the proceedings under Section 138 of the Negotiable Instruments Act. Learned counsel for the petitioner is taking support of the observations made in the said decision to adjudicate the submission that the

ultimate object of such proceedings is to compound the offences and the provisions of compounding is incorporated in the special law with non-obstinate clause which is parimateria with the provisions under the SEBI Act. However, in the light of the observations made in the said decision itself and considering the scope and object of the provisions of Section 138 of the Negotiable Instruments Act, the principle enunciated qua the said decision cannot be adverbatim made applicable to the present prosecution.

19. Section 24 A of the SEBI Act which is quoted herein above indeed stipulates that notwithstanding anything contained in the Code of Criminal Procedure any offence punishable under the SEBI act not being an offence punishable imprisonment only or with imprisonment or also with fine may either before or after the institution of any proceedings be compounded by Securities Appellate Tribunal or Court before which such proceedings are pending. The interpretation of the said provision would not mean that whenever an application is preferred by the accused such offences has to be compounded or that the prosecution agency cannot oppose such an application. It would also not mean that the prosecuting agency viz SEBI can be compelled to concede for allowing compounding application. The Division Bench of this

Court in the case of Shilpa Stock Broker (supra) has taken into consideration the scope of the Act and the responsibility of SEBI in protecting the interest of the investors and in the light of the said circumstances, it was observed that SEBI cannot be compelled to settle the dispute. Whether a dispute should be resolved or whether the wider public interest in ensuring regulatory compliance requires that proceedings should be initiated and if initiated should be followed to that logical conclusion is the matter falls within the discretion of SEBI or a person who apprehends that action will be initiated by SEBI has no vested right to insist that the dispute be resolved in terms of consensual settlement. The Respondent No.1 has constituted as an expert regulator to ensure the stable and orderly functioning of the securities market. Acting as a regulator of the securities market decisions taken by SEBI impact upon the economy and financial stability. SEBI is vested with statutory powers in the public interest and the exercise of power must therefore be guided by the public interest that SEBI is vested with the power to protect. Although, the Division Bench of this Court in the said decision was not dealing with the provisions under Section 24A of the SEBI Act, the observations made therein which are reproduced herein above can be applied to the provision

under Section 24A of the Act. Merely on the ground that the embargo laid down under Section 320 of Code of Criminal Procedure may not be applicable to the provision of Section 24A, it cannot be said that without the consent of SEBI the proceedings can be compounded. Or else the statutory authority will be rendered to be a mute spectator in the event of such an application is preferred by the accused for compounding. The discretion lies with the Court as well as with the prosecuting agency. The nature of the dispute which is the subject matter of the prosecution initiated by Respondent No.1 against the applicant/accused is not a private individual dispute. The prosecution is initiated for violations of the order passed by the Adjudicating Officer. Adjudicating Officer was required to pass such an order in the light of the factual matrix and for the reasons stated in the adjudication order. It cannot be accepted that the proceedings were in the nature of recovery and therefore the application for compounding ought to be allowed. The Special Judge has rightly rejected the application. The factual aspects and for all the reasons stated herein I am not inclined to allow the application for compounding in exercise of inherent powers under section 482 of Code of Criminal Procedure when the Respondent No.1 has not consented

for compounding the said offence.

20. Considering the aforesaid circumstances and more particularly in view of the observations of the Division Bench of this Court in the case of Shilpa Stock Broker and also in the light of scope powers of Respondent No.1 being the regulatory authority or the statutory authority it cannot be said that the proceedings can be compounded in the absence of the consent of Respondent No.1. I do not find any infirmity in the order passed by the Special Court rejecting the application preferred by the petitioner. Considering factual the matrix and the observations made herein above even in exercise of powers under Section 482 of Code of Criminal Procedure, I am not inclined to grant any relief as prayed in the present petition. Hence, petition is devoid of merits and the same is dismissed.

ORDER

Criminal Writ Petition No. 1894 of 2018 stands dismissed.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair
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