IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.06.2018
Pronounced on : 24.06.2018

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.15069 of 2011

1.P.R.Murthy
2.P.N.Devarajan
3.J.Jayaraman
4.Clifton De' Silva
5.Pankaj Madhukar Tamhane
6.P.Nagaraj ... Petitioners

Vs

The Registrar of Companies,
Stock Exchange Building, 2nd Floor,
683, Trichy Road, Singanallur,
Coimbatore-641 005. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondent to forward the Application dated 16.07.2010 filed by the petitioners for compound of offences under Sections 621 A of the Companies Act, 1956 to the Company Law Board, Chennai Bench at 3rd Floor, UTI Building, Rajaji Salai, Chennai-600 001 after making comments, if any, or the Application forthwith.

For Petitioner : Mr.H.Karthik Seshadri
For Respondents : Mr.A.Kumaraguru, SCGPC

O R D E R

Heard Mr.H.Karthik Seshadri, learned counsel for the petitioners and A.Kumaraguru, learned Senior Central Government Panel Counsel for the respondent.

2. The petitioner has approached this Court, seeking the following relief:-

> "To issue a Writ of Mandamus, directing the respondent to forward the Application dated 16.07.2010 filed by the petitioners for compound of offences under Sections 621 A of the Companies Act, 1956 to the Company Law Board, Chennai Bench at 3rd Floor, UTI Building, Rajaji Salai, Chennai-600 001 after making comments, if any, or the Application forthwith. "

3. The petitioners were former Directors of a Company called Denmur Fax Roll Limited with Registration No.181-3744 at Pollachi Road, Nalaatipalayam, Tamaraikulam 642 109, State of Tamilnadu. The Company was ordered to be wound up in C.P.No.8 of 2011 by the Company Court on 20.11.2002. When the winding up petition was taken up by the Company Court, two persons viz.,Mr.P.K.Goel and Smt.Vandhana Goel, had submitted Share Certificates along with duly executed Transfer Deeds for transfer of shares to the Company. Since the shares were not transferred in accordance with law, a complaint was made to the respondent by the said persons. On the basis of the complaint, a criminal case was registered before the Judicial Magistrate Court-I, Pollachi, by the respondent against the company and the petitioners herein for violating of Section 113(1) of Companies Act, 1956.

4. In the mean while, after the winding up was ordered on 20.11.2002, the entire affairs of the Company were vested with the Official Liquidator, High Court of Madras. In respect of the criminal complaint lodged against the petitioners, they sought to compound the offences under Section 621 A of the Companies Act, 1956. According to the petitioners, the records maintained by the Registrar of Companies had been fully computerized and any application for compounding of the offence has to be done through e-filing only. However, they could not make an application by way of e-filing in view of the server failure to recognize the existence of their company.

5. In the above circumstances, the petitioners wanted to have certain clarification from the respondent as to whether an application for compounding the offences could be made manually. At this, the respondent by letter dated 21.10.2009, informed the petitioner's counsel that the Company had been declared as a Vanishing Company and the prosecution has been launched against the signatories of the prospectus under Sections 63, 68, 628 of Companies Act, 1956.

6. In the circumstances of the case, all the petitioners were directed to take permission of the Company Court under Section 446 of Companies Act, 1956. In response to that, the petitioner wrote a letter dated 17.12.2009 that under Section 621 A of Companies Act, any person in default could make an application to the Company Law Board and that it was the statutory duty of the respondent to forward the application to the Company Law Board when on receipt of the application for Compounding of offences and that the provisions of Section 446 would be applicable only in respect of the Company and not in respect of the petitioners who were the Directors and who have been prosecuted in their individual capacity.

7. In these circumstances, the petitioners submitted an application for Compounding of offences, vide letter, dated 16.07.2010 under Section 621 A of the Companies Act,

requesting the respondent to forward the application to Company Law Board. However, the respondent refused to forward their application for compounding of offences, vide letter dated 20.08.2010, advising the petitioners to approach the Company Court for appropriate orders for further action in the matter. According to the said communication, the Directors ought to have got the permission of the Company Court for getting the transfer of shares effected, the offence need not be compounded. In the light of the communication, refusing to forward the application dated 16.07.2010, by the respondent, the petitioners are before this Court seeking for issuance of Writ of Mandamus.

8. Sri.H.Karthik Seshadri, learned counsel for the petitioners would contend that it is not well within the powers of the respondent to adjudicate the application made under Section 621 A of the Companies Act and refuse to forward the same to the Company Law Board/Tribunal as the case may be. Under the provisions of the Companies Act, it is the duty of the respondent to forward the application and it is ultimately the Company Law Board/Tribunal has to take a final call on the matter. In this case, the respondent while requesting to forward the application, had adjudicated the issue, after obtaining the opinion from the Central Government and in such view of the matter, the respondent exceeded its jurisdiction and the power vested under the scheme of the Act.

9. The learned counsel for the petitioners would submit that the direction of the respondent to approach the Company Court for further action, in this regard is also unsustainable in law as the Company has been ordered to be wound up on 20.11.2002 itself and only the liquidation proceedings is pending before the Company Court. In such event, the question of filing any compounding application before the Company Court would not arise at all. He would draw the attention of this Court to the amended provisions contained under Section 621 A of the Companies Act, 1956 which reads as under:

> "(3)(a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorized by the Central Government, as the case may be."

As per the above provision, he has to necessarily forward the application with comments either to the Tribunal or to the Regional Director and it is not for the respondent to return the application as he did vide its letter dated 20.08.2010. Therefore, he would submit that Mandamus may be issued to the respondent to forward the application to the Company Law Board or Tribunal as the case may be.

10. Upon notice, Mr.A.Kumaraguru, the Senior Central Government Panel Counsel had entered appearance for respondent and made his submissions.

11. The learned Panel Counsel appearing for the Government would resist the claim of the petitioners that the writ jurisdiction cannot be invoked on the subject matter and it is always open to the petitioners to approach the Company Court for getting necessary orders in this regard. The learned Standing Counsel appearing for the Government would submit that the petitioners can make an application under Section 446 and it is not for the petitioners to by-pass of the scheme of the Company Court, approach this Court invoking its extraordinary jurisdiction under Article 226 of the Constitution of India.

12. Heard the learned counsel for the petitioners as well as the learned Senior Central Government Panel Counsel for the respondent and perused the materials and pleadings placed on record.

13. The issue emerges for consideration before this Court is as to whether the Writ of Mandamus can be sought for, to direct the respondent to forward the application for compounding of the offence by the petitioners under the provisions of the Companies Act or not.

14. As rightly contended by the learned counsel for the petitioners that under the scheme of the provisions of the Companies Act, it appears that the duty is cast upon the respondent to forward the application to the Company Law Board or to the Regional Director as the case may be and it is not provided with the provisions of the Companies Act and that the respondent can adjudicate the merits of the compounding application by himself. It appears from the scheme of the Act that the Registrar is merely a forwarding authority to receive the application and forward the same by recording his comments to the Company Law Board or the Regional Director for consideration. In this case, it appears that the respondent has taken upon himself the power of adjudication and returned the compounding application after obtaining the comments from the Central Government and thereafter refused to forward the application. Such action on the part of the respondent, is clearly without the authority of law and the same cannot be countenanced both in law and on facts.

15. As rightly contended by the learned counsel for the petitioners that the petitioners are being the former Directors of the Company, cannot invoke the jurisdiction of the Company Court under Section 446 of the Companies Act, since the said provision would be applicable only to the Company and the petitioners have been prosecuted individually in their individual capacity and the respondent can only invoke the jurisdiction under Section 621 A of the Companies Act. In this case, the petitioners therefore, have rightly invoked Section 621 A of the Companies Act and instead of filing e-application, they have filed the application manually in view of the unforeseen circumstances that the server did

not recognize the existence of the company, since the same was ordered to be wound up as early as on 20.11.2002.

16. As rightly pointed out by the learned counsel for the petitioners that as per the relevant provisions as envisaged, the power of the respondent is limited to act, i.e. suppose to receive the application and forward the same to the Competent Board or the authority and it did not fall within the realm of adjudicatory power of the respondent to take a decision to forward the same or not.

17. In this case, the reply of the respondent dated 20.08.2010, advising the petitioners to get appropriate orders from the Company Court is the beyond the powers envisaged under the provisions of the Companies Act. Once the Company was wound up in 2002 itself, proceedings pending before the Company Court was post winding up proceedings and the only remedy is left open to the petitioners is to invoke under Section 621 (A) of the Companies Act for seeking compounding of the offence under various provisions of the Companies Act. The petitioners have precisely done the same and made application, however manually in the circumstances in order to avail their remedy under the Companies Act and since the said application was returned, they are before this Court.

18. In the above said circumstances, this Court does not see any justification for refusing to forward the application by the respondent and such action on the part of the respondent would render the petitioners remediless. Therefore, in fitness of the things, this Court has to allow the writ petition by issuing necessary direction to the respondent to forward the application to the Company Law Board or the Tribunal as the case may be.

19. In these circumstances, there shall be a direction to the respondent to forward the application, dated 16.07.2010, filed by the petitioners for compounding of an offence under Section 621 A of the Companies Act to the Company Law Board or Tribunal or any authority in this regard after recording its comments otherwise if any. The respondent is directed to forward the application, within a period of four weeks from the date of receipt of a copy of this order.

20. With the above direction, the writ petition is allowed on the above terms. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

The Registrar of Companies,
Stock Exchange Building, 2nd Floor,
683, Trichy Road, Singanallur,
Coimbatore-641 005.

+ 1 cc to Mr.A. Kumaraguru, Advocate Sr.39286

+ 2 ccs to Mr.H. Karthik Seshadri, Advocate Sr.39808

W.P.No.15069 of 2011

(CS-VII)
EU(09/07/2018)