THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY APPEAL No. 19 OF 2017

J U D G M E N T :

This Company Appeal is filed invoking Section 10(F) of the Companies Act, 1956 (for short, 'the Act') (now repealed), by the respondent - applicant company in Company Application No. 180/621A/CB/2015 on the file of the Company Law Board Bench at Chennai.

The respondent - applicant company, previously known as M/s Maytas Infra Limited, is a group company of M/s Satyam Computers Limited, which was found to have involved in various violations of the provisions of the 1956 Act, the Securities Contract (Regulation) Act, 1956 and Securities and Exchange Board of India Act, 1992 (for short 'SEBI Act') apart from certain financial irregularities. As the said M/s Maytas Infra Limited is the group company promoted by the promoters / persons in management and other related persons of M/s Satyam Computers Limited, inspection of books and accounts were ordered by the Ministry of Corporate Affairs, invoking Section 209-A of the 1956 Act and the task was entrusted to Serious Fraud Investigation Office, the appellant herein, authorizing them to file complaints under various provisions of the said Act. The Serious Fraud Investigation Office, after completion of investigation, launched prosecution before the Economic Offences Court, Hyderabad against the respondent company and its directors. During the pendency of the said prosecution cases, the respondents and its directors, who are

accused, approached the Company Law Board (CLB) by way of Company Application No. 180 of 2015, admitting violations and therefore, seeking to compound the contravention of the provisions of Section 292 of the Act. The alleged contravention is that the respondent company had not passed the Board Resolution for taking loan of Rs.43.02 crores from M/s Maytas Properties Limited and Rs.95,965/- from M/s Veeyes Investments Private Limited. The said violation was noticed by the SFIO during the inspection under Section 209A of the Companies Act, 1956 of the applicant Company ordered by the Ministry on the ground of acquisition of shares of M/s Maytas Infra Limited by M/s Satyam Computer Services Limited. The CLB, *vide* its common order dated 10.03.2016, compounded the offences, subject to payment of fee.

In the Appeal, apart from various other grounds, a substantial question of law said to be arising from the order of the CLB, has been raised. The same reads as under:

> " If facts of the case clearly show the existence of violation / contravention of provisions of law *mala fidely* and deliberately by the respondent and the same are serious in nature, whether the discretionary power under Section 621-A of the Companies Act, 1956 should be exercised and the respondent be released merely by paying the penalty charges without attracting "stigma of conviction"

Learned counsel for the appellant *Sri Namavarapu Rajeshwar Rao* submits that the respondent company had contravened the provisions of Section 292 of the Act, for which prosecution was launched before the Economic Offences Court and the same is pending. According to him, the violations committed by the respondent are of serious nature affecting public interest

and the CLB gravely erred in allowing compounding of offences in a casual manner.

The learned counsel, while copiously taking this Court through various documents filed in support of this Appeal and the grounds raised therein, principally, urge that the order of the CLB is liable to be set aside for, a) the CLB failed to consider the objections raised by the appellant which reflects non-application of mind, as compounding of offences would, in effect, exonerate the respondent from the criminal prosecution before the Special Judge for Economic Offences –cum-VIII Additional Metropolitan Sessions Judge as if it was done in terms of Section 320 of the Code of Criminal Procedure (for short, 'Cr.P.C'); b) the CLB, before exercising the discretionary power and allowing the Application, had ignored the settled principles of law and also failed to appreciate the fact that the respondent had admitted committing the offences. The evidence on record coupled with admission of the respondent disentitles it from compounding the offences and thus granting discharge from the criminal case; c) the CLB failed to appreciate the fact that the violations committed by the respondent are of serious nature and the consequences of ordering compounding of offences; and d) the CLB failed to appreciate the principles laid down by the Supreme Court in ***JIK Industries Limited v. Amarlal V.Jumani***[1].

On the other hand, learned Senior Counsel *Sri L. Ravichander* appearing for the respondent - applicant

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[1] (2012) 3 SCC 255

submits that the scope of Appeal under Section 10(F) of the 1956 Act is limited for consideration of the substantial question of law raised before this Court. The learned Senior Counsel would assert that the question of law said to have arisen from the order of the CLB is not at all a substantial question of law, as, essentially, what the appellant questions is the discretionary power vested in the CLB and re-appreciation of the facts to arrive at a different conclusion than the one already recorded by the CLB is impermissible. He would place on record the judgments in ***Sree Meenakshi Mills Ltd. Madurai v. Commissioner of Income Tax, Madras***[2], and ***Sir Chunilal V. Mehta and sons Ltd. v. Century Spinning and Manufacturing Co. Ltd***[3]**.** and contend that there is no question of law arising from the orders of the CLB. The learned Senior Counsel also would urge that the offences alleged against the respondent company are purely of technical nature and further, the CLB has taken into consideration the subsequent developments, particularly taking over of the management of erstwhile M/s Maytas Infra Limited by the respondent company and the proceedings of the CLB in M/s Satyam Computers' Limited case. In that view of the matter, the learned Senior Counsel would urge that the contention of the appellant that the CLB had failed to apply its mind and appreciate both fact and law is not sustainable, hence, he prays for dismissal of the Appeal as the respondent had already paid the compounding penalty, as directed by the CLB.

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[2] AIR 1957 SC 49
[3] AIR 1962 SC 1314

Perused the material on record. In view of the rival contentions, the question for consideration is *'whether the Appeal raises a substantial question of law as set out in para 7, and whether the discretion exercised by the CLB while ordering compounding of offences calls for interference by this Court'.*

The CLB, in its order dated 10.03.2016, had taken note of the fact that the management of M/s Maytas Infra Limited was taken over pursuant to the orders of the CLB, Principal Bench, New Delhi, dated 31.08.2009 in Company Application No. 431 of 2009 in Company Petition No. 3 of 2009 and the new promoter had changed the name to M/s IL & FS Engineering and Construction Company Limited. In other words, though the corporate entity is one and the same, the peculiar facts and circumstances leading to taking over of the respondent company by a professionally-managed new promoter, particularly keeping in view the subsequent developments in relation to M/s Satyam Computers Limited episode are all in the view of the CLB while making the impugned order, wherein a detailed reference was made thereto and the factum of the erstwhile directors resigning and transferring of their respective shares in the subsidiary companies. In those circumstances, the argument of the appellant that there was non-application of mind and non-consideration of the material on record before ordering compounding does not stand scrutiny. Further, it is not the case of the appellant that the lacks jurisdiction in ordering compounding of offences. The judgment of the Supreme Court in **JIK Industries' case,** referred

to by the learned counsel for the appellant is distinguishable and not applicable to the present case. Firstly, it may be noted that the said judgment is in relation to exercising the discretion by the Criminal Court in compounding the offences arising in cheque bounce cases under Section 138 read with 141 of the Negotiable Instruments Act, 1881, and not in the cases arising under the provisions of the Companies Act. Secondly, compounding of offences under the Negotiable Instruments Act was on account of the guidelines framed by the Supreme Court in ***M/s Damodar S. Prabhu v. Sayed Babalal H[4].*** However, the Hon'ble Supreme Court in ***Damodar's case,*** in exercise of the jurisdiction under Article 142 of the Constitution, in order to fill up the legislative vacuum, framed guidelines allowing compounding of offences under Section 320 of the Code of Criminal Procedure.

The Supreme Court in ***JIK Industries case*** (cited supra) found that the principles enunciated in ***Damodar's case*** were not followed and further, held that as a result of sanction of scheme under Section 391 of the 1956 Act, there was no automatic compounding of offences under Section 138 of the Negotiable Instruments Act even without the consent of the complainant. In the said judgment, the Court, after analyzing Section 320 Cr.P.C., had held that essentially, Section 320 of the Code provides basically two categories of offences compoundable; one category requires leave of the Court and the other requires no leave of the Court. In all the categories of cases, compounding can take place at the instance of the persons mentioned in the 3rd column of the

[4] (2010) 5 SCC 663

Table attached to Section 320 of the Code. The Court also held that while considering a compounding application, in the absence of special procedure relating to compounding, the procedure and principles relating to compounding under Section 320 of the Code shall automatically apply, in view of sub-section (2) of Section 4 of the Code.

Applying the above laid guidelines to the present case on hand, there is no dispute that the offence alleged against the respondent company and its directors for violation of the provisions of Section 292 of the 1956 Act is compoundable in terms of Section 621A of the said Act. The offences for which prosecution is launched against the respondent squarely fall under sub-section (2) of Section 4 of the Code which reads as under:

> " Sub-section (2) of Section 4 of the Code is set out below:
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> 4(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

In other words, as held by the Supreme Court, compounding application would fall within Section 4(2) of the Code and the same is required to be considered applying the principles analogus for compounding the offences under Section 320 of the Code. The cases seeking compounding under the 1956 Act are also required to be considered applying the said principles. When we peruse Section 621-A, the same, by itself, does not provide any guideline

and does not specify any special requirements for considering compounding of offences. Section 621-A reads as under:

" ***Section 621-A: Composition of certain offences:***

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

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

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

(2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation: - For the purposes of this section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(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 Central Government.

(b) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or any person authorised

by the Central Government against the offender in relation to whom the offence is so compounded.

(d) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the Registrar in writing, to the notice of the Court in which the prosecution is pending and on such notice of the composition of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(4) The Central Government while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may, direct, by order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under Section 611, such return, account or other document within such time as may be specified in the order.

(5) Any officer or other employee of the company who fails to comply with any order made by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extent to six months or with fine not exceeding (fifty thousand rupees) or with both.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 –

(a) any offence which is punishable under this Act with imprisonment or with fine, or with both, shall be compoundable with the permission of the Court, in accordance with the procedure laid down in that Act for compounding of offences;

(b) any offence which is punishable under this Act (2 of 1974) with imprisonment only or with imprisonment and also with fine shall not be compoundable.

(7) No offence specified in this section shall be compounded except under and in accordance with the provisions of this Section."

In this context, it is pertinent to note that Section 621A itself came to be introduced by the Companies (Amendment) Act, 1988. The objective of introducing the compounding provision in the Act is to reduce litigation in the Courts as the offences under the Act are generally of technical nature. The Section itself is brought into

existence following the recommendations of SACHAR Committee which had suggested providing for realization of fines through Court proceedings by a system of penalty as provided in the Income Tax Act by conferring power on the Registrar, CLB by clothing the powers of a Court. In the absence of any specific restriction, the CLB is entitled to consider facts in each case and, taking into consideration the nature of violation found, consequent damage that may be caused to the public interest at large, and the relative merits of allowing the criminal proceedings to proceed, is empowered to take decision in a given case whether to compound or not.

There appears to be no judgment of the Supreme Court or any of the High Courts exactly delineating the parameters that could be followed in considering the compounding of cases under various jurisdictions. However, in the context of the offences alleged under the SEBI Act, SEBI had notified certain guidelines. In recent times, the NCLAT chaired by *Hon'ble Sri Justice Sudhansu Jyoti Mukhopadhaya,* retired Supreme Court Judge in Company Appeal (AT) No. 49, 50, 51, 52 and 53 of 2016 (M/s Viavi Solutions India Private Limited v. Registrar of Companies, NCT Delhi and Haryana), in para 12, had broadly set out the parameters that are required to be noticed in compounding the offences which can be usefully extracted as under:

> " 12. Depending on nature of offence and its gravity and if it is pleaded by the applicant or reported by Registrar of Companies, the Tribunal is required to notice the relevant factors while compounding any offence, such as: -

i. The gravity of offence.

ii. The act is intentional or unintentional.

iii.The maximum punishment prescribed for such offence, such as fine or imprisonment or both fine and imprisonment.

iv. The report of the Registrar of Companies.

v. The period of default.

vi. Whether petition for compounding is suo motu before or after notice from Registrar of Companies or after imposition of the punishment or during the pendency of a proceeding.

vii. The defaulter has made good of the default.

viii. Financial condition of the company and other defaulters.

ix. Offence is continuous or one-time

x. Similar offence earlier committed or not.

xi. The act of defaulters is prejudicial to the interest of the member (s) or company or public interest or not.

While dealing with the compounding of offences under the SEBI Act, the Division Bench of Bombay High Court in ***Shilpa Stock Broker Pvt. Ltd. v. SEBI***[5] had observed as under:

" The guidelines insofar as they mandate that proceedings should either be in contemplation or be pending before they can be resolved, are based on a valid rationale. The whole purpose of the guidelines is to ensure that the time and effort of the regulator is devoted to cases which duly merit trial and enforcement. The guidelines thus recognise an enabling power in SEBI to resolve certain cases which in the view of SEBI can be set at rest without compromising either an issue of principle or public interest."

In ***N.H. Securities Ltd. v. SEBI***[6], the petition was filed to quash the order passed by the Special Court rejecting the application made by the petitioner under Section 24A of the Act. The Bombay

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[5] 2012 (6) Bombay Cases Reporter 808
[6] 2018 SCC Online Bombay 4040

High Court relying on ***Shilpa Stock Broker case (supra)*** dismissed the said petition and came to the conclusion that:

> " Section 24A of the SEBI Act indeed stipulates that notwithstanding anything contained in the Code of Criminal Procedure any offence punishable under the SEBI Act not being an offence punishable with 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 have 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.
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> 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.
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> Furthermore, 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 the 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.
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> The discretion lies with the Court as well as with the prosecuting agency due to the fact that the dispute which is the subject matter of the prosecution initiated against the accused is not a private individual dispute."

In view of the above guidelines, this Court does not find any infirmity in the order of the CLB, as, in broad sense, the parameters appear to have been applied.

In the fact situation narrated supra, it cannot be said that the CLB failed to apply the parameters for compounding the offences for which prosecution has been laid. If one looks at the question of law raised, in the settled legal principles, it is really not a substantial question of law as what all has been questioned is the wisdom of the CLB in exercising discretion by accepting the compounding applications. The penalty imposed for compounding is substantially high which would serve as a deterrent in future to the respondent and also similarly-situated entities / persons.

In those circumstances, since there is no merit in the Appeal and the decision of the CLB having been based on the material placed before it, and that no question of perversity of finding of fact having been raised, the Appeal does not warrant interference at the hands of this Court and the same is liable to be dismissed.

The Company Appeal is accordingly, dismissed. No costs.

CHALLA KODANDA RAM, J

28th December 2018

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