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

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Pronounced on: 19.12.2018

+ **CO.A.(SB) 45/2015**

SH.HARI KRISHAN & ANR.

..... Appellants

Through

Mr.Ishaan Madaan & Mr.Sahil Gupta,
Advocates

versus

**DELHI DISTRICT CRICKET
ASSOCIATION & ORS.**

..... Respondents

Through

Ms.Sonali Malhotra, Adv. for R-1
Mr.Vipul Sharma, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This appeal is filed under Section 10 (F) of the Companies Act, 1956 (*hereinafter referred to as 'the Act'*) seeking to impugn the order dated 22.07.2015 passed by the Company Law Board, New Delhi Bench, New Delhi permitting compounding of the offences committed under Section 314(1) read with Section 314(2-B) of the Act.

2. It is the contention of the appellants that they are life members of respondent No.1 /Delhi District Cricket Association (*in short the 'DDCA'*), which is a company incorporated under Section 25 of the Act. It is also their claim that they were instrumental in institution of the inspection of records of the company which was carried out under Section 209A of the Act.

3. It is also the case of the appellants that the license under Section 25 of the Act was issued to the DDCA on 28.06.1985. It is urged that under the

terms of the license, DDCA cannot give any remuneration or any other benefits in the form of money or otherwise to any of its members whether such members are executive officers or directors of the DDCA. Further, no members of DDCA can be appointed to any office under DDCA, which offers salary, fees etc.

4. It is further urged that the respondent/directors of respondent No.1/DDCA have taken money in the form of remuneration and perquisites and other undisclosed benefits in violation of the provisions of the Act and the license issued to DDCA. Admittedly, it is urged that the respondents filed an application before the Central Government for waiver of refund from the directors. The grievance of the appellants is that despite breach of the Section 314 of the Act, respondent No.1/DDCA did not proceed to recover the money collected by the respondents/directors from respondent No.1/DDCA illegally.

5. It is contended by the appellants that after raising these issues strongly, the respondents have filed an application under Section 621A of the Act for compounding of the offences committed under Section 314 of the Act on 16.09.2014. It is stated that the respondents themselves have conceded that the offence under Section 314 of the Act were committed by them in 2008-2012. Hence, it is urged that a suit for declaration, permanent and mandatory injunction was also filed by appellant No.1 before the Original Side of this court, which is pending adjudication.

6. It is further stated that the compounding application was listed before the Lok Adalat on 11.04.2015 and that next date of hearing was fixed as 08.08.2015. However, it is alleged that record of order dated 11.04.2015 is missing from the court record. In May, 2015 it is urged that the appellant got

to know that the aforesaid compounding application was listed before the Lok Adalat on 09.05.2015 of which no notice was served on the appellants. The matter was decided at the Lok Adalat without giving any opportunity to the appellants to represent their case. Hence, the present appeal.

7. I have heard the learned counsel for the parties.

8. The learned counsel for the appellants has reiterated as follows:

(i) That the matter was listed before the Lok Adalat without any intimation to the appellants and thereafter the application for impleadment of the appellant was dismissed. It is urged that this could not have been done as no intimation have been received by the appellants.

(ii) It is further urged that the impugned order notes that the respondent Sh.Chetan Chauhan has repaid the amount received from the DDCA on 31.01.2015. It was urged that no proof of having repaid the amount by Sh.Chetan Chauhan was placed on record. It is also stated that Sh.Chetan Chauhan is only one of the respondents and there is nothing on record to show that respondent Nos.2 to 4 and have also repaid their dues. It is urged that the impugned order wrongly only based on the payment allegedly made by Sh.Chetan Chauhan had allowed the compounding application filed by the respondents.

(iii) It is strongly urged that in the absence of proof of having returned the amount illegally received by them, the impugned order could not have allowed the compounding application filed by the respondents.

9. On a question being posed by this court as to what substantial question of law arises in the present case under Section 10 (F) of the Act, the learned counsel for the appellants relies upon para 11 of the appeal where he

submits that 13 substantial questions of law have been framed which arise in the present appeal.

10. The learned counsel for the respondents have pointed out that the appellants have no *locus standi* to file the present appeal. It is urged that he is a busy personality who is repeatedly filing conflicting litigations. It is urged that the issue of compounding is only between the ROC and the Court and the appellants have nothing to do with the same.

11. It has further been urged that prior to filing of the appeal, the appellant/other members of DDCA had filed a suit for declaration, permanent and mandatory injunction. In the said suit, the same allegation was made, namely, for the financial years 2008-2009 till 2011-2012, Mr.Sunil Dev (respondent No.2 herein) received remuneration for certain services. It is pleaded in the plaint that hence defendant Nos.1 and 2 therein have filed the petition under section 621 A of the Companies Act, 1956 for compounding of the offence before CLB. Based on the said allegation, it was prayed in the plaint that a decree of declaration be passed in favour of the plaintiff declaring that the post of director held by defendant No.1 therein Sh.Sunil Dev in DDCA was deemed to have been vacated. Other connected reliefs are also sought. It is pointed out that in the said suit, the learned Single Judge passed an interim order that defendant No.2 therein will not act as director of defendant No.1 vide order dated 30.01.2015. However, the Division Bench on 03.02.2015 stayed the interim order. The money received from DDCA was directed to be deposited in court and needful is said have been done. The appeal was accordingly disposed of stating that the deposit made in court shall be as per the directions passed by

the learned Single Judge. Hence, it is pleaded the same issue is now being raised before this Court.

12. It is further pointed out that a writ petition being W.P.(C) 6478/2012 was filed by one Sh.N.C.Bakshi where again the issue of grant of remuneration to executive members/members of DDCA was raised which pertains to the same period. A writ of mandamus was sought against the respondents directing them to take action against the DDCA in terms of Section 25 of the Act for breach of the mandatory terms of the license/conditions. Allegations regarding remuneration and other benefits to the members of DDCA were raised. The writ petition was disposed of by this court noting that the breaches which have been committed for 2008-2012 have been compounded. This court also noted that an independent administrator had already been appointed to ensure that affairs of the DDCA are conducted in a proper manner and dismissed the writ petition.

13. It is further stated that the present petition has become infructuous as an administrator has already been appointed by the court to look after the affairs of the DDCA.

14. Section 621(A)(1) of the Companies Act, 1956, reads as follows

621A. Composition of certain offences.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by-

(a) the Company Law Board; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed five thousand rupees, by the Regional Director, on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sum as that Board or the Regional Director, as the case may be, may specify:

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

15. Hence, as per the above section, any offence punishable under the companies Act, which is not 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. In the present case, the alleged offence was under Section 314(a) read with section 314(2) of the Companies Act. The directors of the respondents received remuneration from the company, and hence they moved the present application before the CLB for compounding of the offence. The matter was referred to Lok Adalat and by the impugned order the offence has been compounded on payment of Rs.25,000/- by the company and Rs.10,000/- each by the directors from their personal sources.

16. The plea taken by the appellant to challenge the impugned order is entirely baseless. The grievance of the appellant that he was not informed about the reference of the matter to Lok Adalat appears to be misfounded. An application for compounding of the offence is an issue between the accused and the State. Any other share holder or director of the company

would normally have no role to play in the application seeking compounding of the offence under the Companies Act. There is no merit in the said plea of the appellant.

17. The next grievance of the appellant i.e. that compounding of the offence under the companies act is erroneous is a misplaced contention. The Supreme Court in *V.L.S. Finance Ltd. v. Union of India & Ors.*, AIR 2013 SC 3182 had noted regarding section 621A(1) of the Companies Act as follows:

“12. From a plain reading of Section 621A(1) it is evident that any offence punishable under the Act, not being an offence punishable with imprisonment only or with imprisonment and also with fine, may be compounded either before or after the institution of the prosecution by the Company Law Board and in case, the minimum amount of fine which may be imposed for such offence does not exceed Rs. 5000/-, by the Regional Director on payment of certain fine. The penal provisions of the Act provide for different kinds of punishments for variety of offences and can be categorised as follows:

- (i) offences punishable with fine only,
- (ii) offences punishable with imprisonment only,
- (ii) offences punishable with fine and imprisonment,
- (iv) offences punishable with fine or imprisonment,
- (v) offences punishable with fine or imprisonment or both.

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

Section 621A, the criminal court also possesses similar power to compound an offence after institution of the prosecution.”

18. I may note that identical issues as raised herein against DDCA have been dealt with by the coordinate benches of this court on different occasions. In an earlier round of litigation pertaining to the honorarium paid by respondent No.1/DDCA to its member for the years 2008-2009, 2009-2010 and 2010-2011, a similar application under section 621 of the companies Act was filed. The said order of compounding of the offence by the CLB was challenged before this court in Co.A.(SB) No.84/2012 under section 10(F) of the companies Act in petition titled *N.C.Bakshi vs. Delhi & District Cricket Association & Ors.*. This court held as follows:

“12. Since the offence was committed by the company for the breach of the conditions of the licence which licence has been given to the company under Section 25 of the Companies Act, Section 629A of the Companies Act rightly stood attracted. No specific penalty having been provided for contravention of sub-section (5) with regard to the conditions and regulations of the licence; accordingly the Company and its officers shall in default be punishable under Section 629A; Section 629 A not creating any offence but only providing a penalty for such contravention of the Act for which no specific penalty is provided.

13. Discretion was properly exercised by the CLB in imposing a penalty of Rs.1,00,000/- on the company and Rs.50,000/- on each of the members of the Council who had paid remuneration/honorarium to its members without prior approval of the Central Government. It was a fair exercise of its discretion based on reasoned findings.

14. Even otherwise apart from the fact that no question of law has been formulated, the grounds of appeal lay challenge

only to the express provisions of the licence; submission being that if there is a breach or violation of any of the conditions of the licence there would be an automatic revocation; this submission is a misdirected submission. The licence can be revoked by the Central Government, but only after an opportunity of hearing has been granted; it has to be a speaking order and in consonance with the principles of natural justice.”

19. As noted above, the same issue also arose before another coordinate bench of this Court in W.P.(C) 6478/2012 titled *N.C.Bakshi vs. Union of India & Ors.* where a writ of mandamus was sought seeking a direction that steps be taken under section 25 of the Companies Act for breach of mandatory terms of the licence/conditions. That case also related to respondent No.1 herein/DDCA having paid remuneration/honorarium to some of its executive members in violation of the terms of the licence. Respondent therein had again applied under section 621A of the Companies Act for compounding of the offence before the CLB. The CLB vide its judgment dated 28.09.2012 allowed the application for compounding of the offence. The W.P.(C) 6478/2012 had been filed prior to passing of the said order dated 28.09.2012. The court in para 7 and 8 of the said petition held as follows:

“7. It is apparent from the above that the breaches committed in the years 2008-09, 2009-10 and 2010-11 had been compounded. Since it is an admitted position that relevant permission was required from the Central Government for disbursing any remuneration, it is expected that DDCA shall take the requisite permissions and ensure that it does not fall foul of the statutory requirements. Needless to mention that if DDCA violates any of the statutory provisions, the same would inevitably be visited with consequences as provided in law.

8. The petitioner's apprehension that the statutory provisions would be continued to be violated is not persuasive since this Court has already appointed an independent administrator, inter alia, to ensure that the affairs of the respondent are conducted in a proper manner.”

20. Clearly, the issue of legality and validity of compounding of the offence regarding payment of remuneration/honorarium to some of its members/directors as has been done in the present case stands settled by judgments of this court noted above. The CLB has exercised powers within the ambit of section 621A of the Companies Act and exercised discretion soundly. The only grievance of the appellant is that there was no direction passed to some of the respondents to refund the remuneration received by them. The respondent had pleaded that they have deposited the said amount in court which plea has not been refuted by the appellant. In my opinion, there is no infirmity in the order of the CLB. The order is passed within the framework of Section 621A of the Companies Act. The present appeal is misplaced and misconceived. It fails to raise any valid or legal ground to justify interference under section 10(F) of the companies Act, 1956.

21. I may also note that it is an admitted fact that the present order has been passed in/by Lok Adalat. In the above context reference may be had to the section 21 of the Legal Services Authority, 1977, which reads as follows:

“21. Award of Lok Adalat.-

(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall

be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).]—1

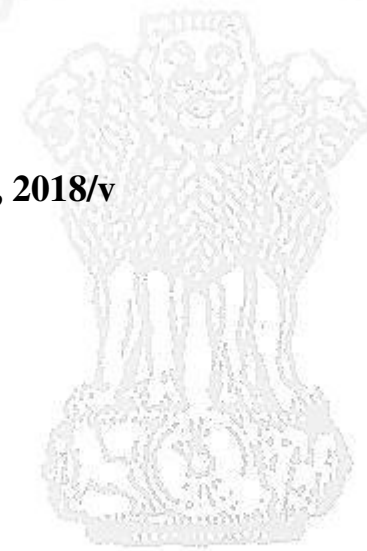
(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.”

22. Section 21(2) of the above Act clearly states that an award passed by Lok Adalat is final and no appeal shall lie in any court against the award.

23. Clearly, the present challenge is entirely baseless. The appeal is dismissed.

DECEMBER 19, 2018/v

JAYANT NATH, J.



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