IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble **JUSTICE SUVRA GHOSH**

C.R.R. 494 of 2019
WITH
CRAN 1 of 2019(Old No. CRAN 1676 of 2019)
WITH
CRAN 2 of 2019(Old No. CRAN 1705 of 2019)
WITH
CRAN 5 of 2019(Old No. CRAN 4139 of 2019)
(Via Video Conference)

Usha Martin Telematics Ltd. & Anr.
Versus
The Registrar of Companies, West Bengal

For the Petitioners	:	Mr. Pradip Kumar Ghosh, Sr. Adv. Mr. Sayantan Bose, Adv. Mr. Sidhartha Basu, Adv. Mr. Shahezad Kazi, Adv. Ms. Madhurima Das, Adv. Ms. Anyapurba Banerjee, Adv.,
For the Opposite Party	:	Mr. M.S. Tiwari, Adv. Mr. Debu Chowdhary, Adv.,
Heard on	:	20.01.2021
Judgment on	:	27.01.2021

SUVRA GHOSH, J. :-

1. In the present revisional application under article 227 of the Constitution

of India read with sections 401/482 of the Code of Criminal Procedure, the petitioners have prayed for quashing of proceedings of complaint case no. 15 of 2018 filed by the opposite party before the Learned 2nd Special Court, Calcutta for offence punishable under sections 118(2) and (7) read with sections 447/448 of the Companies Act, 2013.

2. The contention of the petitioners, in a nutshell, is that petitioner no. 1 is a company registered under the provisions of the Companies Act, 2013 and petitioner no. 2 is the erstwhile manager of the company. Petitioner no. 1 applied to the Reserve Bank of India vide application dated 28th March, 2014 for being registered as Core Investment Company (CIC) pursuant to the Core Investment Companies (Reserve Bank) Directions, 2011 following which the Reserve Bank of India vide letter dated 6th May, 2014 sought certain clarifications and documents from the petitioner company. A meeting of the Board of Directors of the company was held on 11th June, 2014 and in course of preparing the minutes of the said meeting in compliance with section 118(1) of the Companies Act, 2013, it was erroneously recorded in item no. 12 of the minutes that the company submitted application with the Reserve Bank of India for its de-registration as NBFC and registration as a CIC. Such recording was an inadvertent/typographical error as the company was not a registered Non Banking Financial Company (NBFC) at the relevant time and the question of de-registration as NBFC did not arise. The said error was detected by the company subsequently and in a meeting of its Board of Directors held on 9th September, 2015 the error was rectified.

3. It is further contended that sometime in February, 2016 the opposite party inspected the books of accounts and other relevant records of the company under section 206(5) of the Act of 2013 and detected the erroneous recording in the minutes of the meeting dated 11th June, 2014. The company was asked to show cause as to why prosecution would not be initiated against it under the provisions of sections 118(2) and (7) read with sections 447/448 of the Act for violation of the said provisions of law by the company, such notice being issued on 24th August, 2018. In reply to the said notice, the company explained the inadvertent mistake as well as its rectification vide letter dated 20th September, 2018. The said explanation was not found to be satisfactory by the opposite party who lodged the complaint against the petitioners.

4. It is submitted on behalf of the petitioners that the error detected in item no. 12 of the minutes was a typographical mistake which was subsequently rectified by the company suo motu. Such rectification was carried out on 9th September, 2015 and the show cause notice was issued by the opposite party only on 24th August, 2018. Though the company sufficiently and adequately explained the said error and its rectification to the opposite party, the opposite party lodged the complaint for no good reason. The petitioners have prayed for quashing the entire proceedings pending before the Learned 2nd Special Court, Calcutta, being complaint case no. 15 of 2018.

5. It is submitted on behalf of the opposite party that in making erroneous recording in the minutes of the Board meeting, the petitioners have violated the provisions laid down in sections 118(2) and (7) of the Act of 2013 and are liable to be prosecuted under sections 447/448 of the Act. The proceeding is at a very nascent stage and remedy for the petitioners lies in approaching the trial court and presenting their case before the said court. The correction in the minutes book was carried out by the petitioners only after the notice to show cause was issued upon them. The present application is premature, moreso, as the complaint makes out a prima facie case against the petitioners.

6. I have considered the submissions made on behalf of both the parties as well as the documents placed before me.

7. At the outset, sections 118(2), (7) and (11) are set out.

> *"(2) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.*
>
> *(7) The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.*
>
> *(11) If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a*

penalty of five thousand rupees."

8. In item no. 12 of the minutes recorded with regard to meeting of the Board of Directors of the company held on 11th June, 2014, it is stated that "the Chairman informed that the Company had submitted application with Reserve Bank of India (RBI) for its de-registration as NBFC and registration as a CIC pursuant to the Core Investment Companies (Reserve Bank) Directions, 2011....." The application for registration as CIC-ND-SI before the RBI dated 28th March, 2014 speaks of a request for registration of the company as CIC-ND-SI and is bereft of any request for de-registration as NBFC. This indicates that the words "for its de-registration as NBFC" was erroneously recorded in the minutes and no such request was made before the RBI, moreso, as the company was not registered as NBFC at the relevant time and therefore the question of de-registration did not arise. Such erroneous recording was detected by the company subsequently and by virtue of resolution taken in the Board meeting of the company on 9th September, 2015 the mistake was termed as inadvertent/typographical error and it was further clarified that the company was not an NBFC.

9. In reply to the company's application for grant of registration as CIC, the RBI vide letter dated 30th June, 2014 requested for resubmission of the application with further particulars and documents and such request of the RBI was complied with by the company vide letter dated 27th March, 2015. Be that as it may.

10. The opposite party inspected the books of accounts and other relevant records of the company under section 206(5) of the Act of 2013 long thereafter and issued a show cause notice upon the company on 24th August, 2018 calling for an explanation with regard to the erroneous recording in item no. 12 of the minutes of the meeting of the company dated 11th June, 2014. Though the company, in its reply dated 20th September, 2018 explained the entire situation to the opposite party, complaint was lodged against the company by the opposite party who did not find the reply sufficient or satisfactory.

11. It is trite law that jurisdiction under section 482 of the Code of Criminal Procedure should be exercised with extreme care, caution and circumspection and should not be an instrument to axe down or stifle a legitimate prosecution. The test is whether the uncontroverted allegations made in the complaint make out a prima facie case and whether allowing the proceedings to continue would amount to abuse of the process of the court.

12. It is crystal clear from the minutes dated 11th June, 2014 and 9th September, 2015 that the words “for its de-registration as NBFC” was inadvertently recorded and was rectified upon detection. The application for registration dated 28th March, 2014 supports the contention of the petitioners that no such request for de-registration was made in the said application. The company not being registered as NBFC at the relevant time, the question of de-registration did not arise and there could have been no malafide on the part of the company on that score.

13. Sections 447 and 448 are penal provisions of the Act of 2013 which provide for punishment for persons found to be guilty of fraud and false statement. For such purpose, 'fraud' has been defined as hereunder:-

> *""fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;"*

14. As envisaged in section 448 of the Act,

> *"..... any person makes a statement,-*
>
> *(a) which is false is any material particulars, knowing it to be false; or*
>
> *(b) which omits any material fact, knowing it to be material, he shall be liable under section 447."*

15. The key ingredient of the offence is the intent to deceive, gain undue advantage or injure the interest of the company or any person connected thereto. In the case in hand, the complaint lodged by the opposite party does not prima facie reflect such intent on the part of the petitioners.

Per contra, though the opposite party has referred to the notice of show cause in the complaint, the reply to the said notice given by the petitioners is conspicuously absent therein. It is also inconceivable that the inspection was held sometime in 2018 and the notice to show cause signed on 24th August, 2018 whereas the instruction of the Ministry to launch prosecution for such violation was issued on 7th December, 2017, i.e., preceding the inspection. The complaint does not prima facie make out an offence under sections 118(2) and (7) read with sections 447/448 Act of 2013. Typographical/inadvertent error in recording of minutes rectified subsequently can under no stretch of imagination be termed as an offence, far less an offence under the provisions of the Act of 2013 as alleged. That the petitioners acted with a malafide intention to deceive, gain undue advantage or injure the interest of the company or any person connected thereto is not reflected in the four corners of the complaint. Allowing the proceeding to continue shall be a futile exercise and abuse of the process of law in view of the fact that the inadvertent error has been sufficiently and adequately explained and does not call for any prosecution.

16. Upon consideration of the entire facts and circumstances of the case, the contents of the complaint itself as well as the law on the point, I have no impediment to hold that the proceeding in respect of complaint case no. 15 of 2018 is liable to be quashed.

17. C.R.R. 494 of 2019 is allowed.

18. Proceedings in respect of complaint case no. 15 of 2018 pending before the Learned 2nd Special Court, Calcutta be quashed.

19. A copy of this order be forwarded to the Learned Trial Court for information and necessary action.

20. CRAN 1 of 2019 (Old No. CRAN 1676 of 2019) with CRAN 2 of 2019 (Old No. CRAN 1705 of 2019) with CRAN 5 of 2019 (Old No. CRAN 4139 of 2019) are disposed of.

21. There will be no order as to costs.

22. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J.)