IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.10.2020

PRONOUNCED ON : 18.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.11405 & 11407 of 2014
and
Crl.M.P.NoS.1 & 1 of 2014

1. Kiran Krishna Agrotech Ltd
Company incorporated Under the
Provisions of the Companies Act Having
its registered office at 6-3-788/24, 2nd Floor,
Opp.Gold Spot, Panjagutta,
Hyderabad - 500 016

2. V.Krishna Prasad ... Petitioners / A1 & A2 in Crl.O.P.No.11405/2014

3. V.Kiranmayi
4. Anand Babu ... Petitioners / A3 & A4 in Crl.O.P.No.11407/2014

Vs.

Securities and Exchange Board of India,
a Statutory body established under the provisions
of Securities and Exchange Board of India Act 1992,
having its Regional Office at D' Monte Building,
3rd Floor, 32, D' Monte Colony , TTK Road,
Alwarpet, Chennai - 600 018 and
represented by its Manager
Smt. S.V.Divya

...Respondent / Complainant in both Crl.O.P.s

PRAYER IN BOTH Crl.O.Ps.: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to Call for the records in C.C.No.19 of 2002, on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai pending as against the petitioners and to Quash the said Complaint , being abuse of process of Law.

For Petitioners : Mr. Ramalingam & Associates
(in both Crl.O.Ps.)

For Respondent : Mr.Shivakumar
(in both Crl.O.Ps.)

COMMON ORDER

The Criminal Original Petitions have been filed praying to quash the proceedings in C.C.No.19 of 2002, on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, as against the petitioners.

2. The petitioners in Crl.O.P.No.11405 of 2014 are the Company and the Director, who are A1 and A2. The petitioners in Crl.O.P.No.11407 of 2014 are the other Directors of A1 Company, who are A3 and A4.

3. The case, in nutshell, is as follows:-
The respondent – Security Exchange Board of India, on 27.12.2001, filed a private complaint before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, under Section 200 of Cr.P.C., r/w Sections 24(1) and 27 of the Securities and Exchange Board of India Act, 1992, alleging that the business being carried on by the 1st Petitioner/A1 Company amounts to a "Collective Investment Scheme" and is subject to Regulations under the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999 and under the Scheme, the Petitioners raised an aggregate amount of Rs.1.92 Crores from the general public. A1-Company neither applied for registration nor took any steps for winding up the Schemes and repayment to the investors and as such, A1-Company violated the provisions of Section 12(1B) of Securities and Exchange Board of India Act, 1992 and Reg.5(1) r/w Reg.68(1), 68(2), 73 and 74 of the said Regulations. The violation of the laws by the A1-Company were the acts of omission. Hence, the complaint.

4. The learned counsel appearing for the petitioners / Accused would submit that the 1st Petitioner company herein is a body Corporate, registered Under the Companies Act, on the file of the Registrar of Companies, Hyderabad, Andhra Pradesh. The 1st Petitioner Company was issued the Certificate of Commencement of business pursuant to Section 149 (3) of the Companies Act., by the Registrar of Companies, Hyderabad, Andhra Pradesh, on 10.01.1997.

5. The learned counsel for the petitioner further submitted that the 1st Petitioner Company was incorporated with the main

object to purchase, sell develop, take-in, exchange for investment or sale or acquire for the purpose of real estate, including land, plantation, farm house etc., The objects of the first petitioner Company is to carry on Agricultural Farming Horticulture, Semi agricultural and Poultry farm and also to carry on business in consultancy services in the field of Agro Technology. Further object is provide for manufacture and process of Agricultural products, Dairy products and poultry products.

6. It is his further contention that the A1-Company is registered in the State of Andhra Pradesh and had been carrying on business only from Hyderabad and Vizag. That being so, the respondent, in gross abuse of process of law, filed the complaint before the Hon'ble XXIII Metropolitan Magistrate, Saidapet, Chennai. Therefore, the complaint is not maintainable in law, for want of jurisdiction as well as non-disclosure of any cognizable offence seeking for prosecution in the manner known to law. The petitioners are being subjected to unnecessary harassment and grave injustice by the pendency of the above Calender Case, for nearly 12 years, without any progress. The Petitioner-Company and its Directors repaid the public investors and that there are no outstanding payments.

7. The learned Standing Counsel appearing for the respondent would submit that the 1st Petitioner is the Company and the others are Directors of the Company viz., "M/s.Kiran Krishna Agrotech Ltd.," The Company is incorporated under the Companies Act, 1956 and is operating "Collective Investment Schemes" for which it has raised a sum of Rs.1.92 Crores from the general public. The Company is subjected to Regulations under the CIS Regulations, 1999. On 18.12.2000, the respondent, by exercising the powers conferred under Section 11B of the SEBI Act, direct the Company to refund the money collected by them to the investors within a month. Despite the directions the Petitioners, has not complied with the directions issued, which goes to show that the petitioners are purposely with dishonest intentions evading the repayment of the amounts collected by them from the investors.

8. The learned Standing Counsel for the respondent further contended that the respondent has jurisdiction to file a Calender Case against the Company, which comes under its Regional Office. The Company has to register its Collective Investment Scheme (CIS) with the respondent under the CIS Regulations and non-registration of the same would make the said scheme disregard of Regulations and the same has to be wounded up by returning back the money collected from the investors and failure to do so will automatically entitle the respondent to

take action against the Company and its Directors, who are all responsible for the day-to-day affairs of the said Company. Hence, the learned Standing counsel prayed for dismissal of the petition.

9. I have heard the submissions made by the learned counsels appearing on either side and perused the materials available on record.

10. It is not in dispute that the 1st Petitioner is the Company and the Petitioners 2 to 4 are the Directors of the 1st petitioner Company. They involved in the business of collecting funds from the public under the Collective Investment Scheme. According to the respondent, A1-Company neither applied for registration nor took any steps for winding up the Schemes and repayment to the investors and as such, A1-Company violated the provisions of Section 12(1B) of Securities and Exchange Board of India Act, 1992 and Reg.5(1) r/w Reg.68(1), 68(2), 73 and 74 of the said Regulations.

11. Now, the learned counsel appearing for the petitioners submitted that the dispute has already been settled and the petitioners repaid the entire amount to all the investors, who had deposited with them to the tune of Rs.2,83,85,422/-. Earlier, this Court directed the petitioners to appear before the Auditors M/s.P.S.Subramania Iyer & Co., on 21.02.2020, suggested by the SEBI and to produce the relevant vouchers / bills and bank accounts and obtain a report from them. As suggested, the petitioners appeared before the Auditors and produced all the documents. Subsequently, the respondent filed a counter and suggested that the petitioners have to take additional measure of effecting 'Public Notice', executing Indemnity Bond and also make a deposit. Pursuant to the suggestions, the petitioners have caused public notice, executed indemnity bond and also made a deposit of Rs.5,00,000/- by opening a Savings bank Account in the name of one of the Directors Mr.V.Krishna Prasad. The Originals of Public Notice, Indemnity Bond and Fixed Deposit produced in a sealed cover on 21.09.2020. From the perusal of the records it is seen that the petitioners complied with all the conditions made by the respondent. Therefore nothing remains to continue the proceedings against the petitioners.

12. Taking note of the entire facts and circumstances of the case, the petitioners settled the amount to the investors and complied with the directions issued by the respondent, the Indemnity Bond is extracted hereunder:-

"INDEMNITY BOND

This INDEMNITY BOND executed on this the 05th day of August 2020

By

M/s. KIRAN KRISHNA AGROTECH LTD., a Company incorporated under the Companies Act, represented by its Directors, (i) Mr.VALLABHANENI KRISHNA PRASAD, S/o. Mr. V.Paddayya, (ii) Mrs. VALLABHANENI.KRIANMAYI, W/o. Mr.V.Krishna Prasad (iii) Mr. ANAND BABU S/o. Mr.P.Babu Rao, having office at 6-3-788/24, 2nd Floor, Opp. Gold Spot , Panjagutta, Hyderabad-500 016, hereinafter to be referred as the OBLIGOR on the one part.

TO AND IN FAVOUR OF

SECURITIES AND EXCHANGE BOARD OF INDIA, a statutory body established under the provisions of securities and Exchange Board of India Act, 1992 , having regional Office at D' Monte Building, 3rd Floor, 32, D'Monte Colony, TTK Road, Alwarpet Chennai- 600 018, hereinafter to be referred as OBLIGEE on the other part.

WHEREAS, the terms OBLIGOR and OBLIGEE wherever they occur, shall mean and include their respective executors, administrators , representatives, successors and assigns.

WHEREAS, the OBLIGOR introduced collective investment schemes during the period 1997-1998 and was providing bonds for the said investments for developing the infrastructure, establishment and rating of the Company; and

WHEREAS, the OBLIGOR, has been working out successfully by repaying the bond amount to all the investors under the Collective Investment Scheme; and

WHEREAS, on 02.03.1998 the OBLIGOR, was in receipt of a letter from the OBLIGEE, calling upon the OBLIGOR , to mobilize money subject to ratings from the rating agencies and by following the investor protection Guide line; and

WHEREAS, in compliance of the said letter , the OBLIGOR had given an undertaking that they have stopped mobilizing the money and had in compliance of the said letter had also repaid the mobilizing amounts on receipt of the original bonds from the investors; and

WHEREAS, the OBLIGEE had filed a criminal complaint against the OBLIGOR, before the XXII Metropolitan Magistrate Court at Saidapet in C.C.No.19 of 2002 and the same is yet to be transferred to Principal Judge Court, Chennai; and

WHEREAS, the OBLIGOR and its directors had preferred quash petition against the said complaint filed by the OBLIGEE before the Hon'ble High Court, Chennai in Crl.O.P.No.11405/2014 & Crl . O.P.No.11407/2014 and the same are pending ; and

WHEREAS, the OBLIGOR has been requesting investors who have not encashed/received their investments to make their claims and encash the unpaid/unclaimed/matured investments by way of public notice as per the direction of the Hon'ble High Court; and

WHEREAS, the OBLIGOR has undertaken to liquidate the investors who have not encashed/received their investments to make their claims and encash the unpaid / unclaimed / matured investments within 90 days from the date of public notice and on failure the OBLIGEE to take appropriate steps against the OBLIGOR; and

WHEREAS,, the OBLIGOR has agreed to indemnify the OBLIGEE, against the claim of any investors who have not encashed / received their investments to make their claims and encash the unpaid / unclaimed / matured investments to the OBLIGEE based on the undertaking before the Hon'ble High Court.

NOW THE CONDITIONS OF THE ABOVE WRITTEN BOND IS THAT, the said OBLIGOR, their administrators, representatives, executors, successors in title and assigns shall at all times hereinafter remain liable and shall fully and effectively indemnify and shall always keep indemnified the said OBLIGEE against all claims, demands or liabilities arising or being fastened or burdened on the OBLIGEE on account of claim to be made by the investors who have not encashed / received their investments to make their claims and encash the unpaid / unclaimed / matured investments.

The OBLIGOR further herein accepts, admits and undertake to pay if any claim is made by investors who have not encashed / received their investments to make their claims and encash the unpaid / unclaimed / matured investments and also to compensate the said investors suitably for all the financial loss that may be suffered by them in this regard.

SIGNED AND DELIVERED BY THE OBLIGOR IN THE PRESENCE OF THE WITNESSES ON THE MONTH, DAY AND THE YEAR WRITTEN ABOVE."

Further, the originals submitted in the sealed cover to be retained by the Registrar (Judicial) after expiry of 3 years period, as per the requirement of SEBI, if there is no claim by any of the depositors, the petitioner to file petition before this court and thereafter, to encash the Fixed Deposit. Due to pendency of the above quash petitions, C.C.No.19 of 2002 is still pending on the file of XXIII Metropolitan Magistrate , Saidapet, Chennai, in view of the above, continuance of criminal proceedings against the petitioners, who have amicably settled the dispute would tantamount to abuse of process of law. Hence, the proceedings in C.C.No.19 of 2002, on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

MPK

To

1. The XXIII Metropolitan Magistrate,
   Saidapet, Chennai

2. The Manager,
   The Securities and Exchange Board of India,
   a Statutory body established under the provisions
   of Securities and Exchange Board of India Act 1992,
   having its Regional Office at D' Monte Building,
   3rd Floor, 32, D' Monte Colony , TTK Road,
   Alwarpet, Chennai - 600 018 and

3. The Public Prosecutor,
   High Court, Madras.

4. The Registrar Judicial,
   High Court, Madras.

Crl.O.P.No.11405 of 2014
and
Crl.O.P.No.11407 of 2014

GP(CO)
CSR 17.04.2021