IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.70 OF 2019

Kaladevi Jayaraman ...Applicant

Versus

The State of Maharashtra and Anr. ...Respondents

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Mr. Manish Bohra i/by Mr.A.S. Khan & Associates, Advocate for the Applicant.

Mr.A.R. Patil, APP for the Respondent No.1 – State.

Mr.Mihir Desai, Senior Advocate a/w Mr. Suraj Chaudhary i/by Ms.Ushajee Peri for Respondent No.2 - SEBI.

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CORAM : PRAKASH D. NAIK, J.
DATE : 18th AUGUST, 2022

PER COURT:

1. The applicant has invoked revisional jurisdiction of this Court under Section 397 r/w Section 401 of Code of Criminal Procedure challenging order dated 21.01.2019 passed by SEBI special Court, Mumbai rejecting application for discharge in SEBI Special Case No.182 of 2014.

2. Complaint was filed by Respondent No.2 under Section 24 of the Securities and Exchange Board of India Act, 1992 (for short "SEBI Act") before the Court of learned Metropolitan Magistrate, 37th Court, viz. Criminal Complaint No.195/S/1997.

3. The brief allegations in complaint are as follows :

(i) The accused No.1 and the other accused entered into an Memorandum of Understanding (MOU) on 20.08.1995 with the Promoters of Auroknit Exports (India) Ltd. to acquire 1,61,000 equity shares of the company which represented 31.5% of the voting capital of the company. The accused made a public announcement to acquire 20% of the voting capital from other shareholders of the said company on 23.08.1995.

(ii) The accused No.2 with accused No.4 made a Power of Attorney in favour of accused No.1 by which the accused No.1 was authorized to acquire shares on their behalf. As per MOU the accused No.1 with accused Nos. 3 & 5 were to contribute 50% towards the consideration to be paid to the shareholders and the other 50% was to be contributed by accused No.2 with accused No.4.

(iii) Accused Nos.1 to 6 are the offerrors (hereinafter referred to as “acquirer”) and as such are the persons in charge of and responsible for the offer for the acquisition of Rs.10,23,300/- equity shares of Auroknit Exports (India) Ltd. and as such are responsible in connection with the issuance of the offer document for circulation to shareholders of

Auroknit Exports (India) Ltd..

(iv) The accused Nos.1 to 5 through their Managers, Mafatlal Finance submitted the certificate of Due Diligence with the offer document to SEBI as per their letter dated 04.09.1995. The accused Nos.1 to 5 made an offer under the name of K.V. Rajenthiran and Associates for acquisition of 10,23,300 equity shares representing upto 20% of the voting capital of Auroknit Exports (India) Ltd. at a price of Rs.14.62 per equity share of face value of Rs.10/- each in terms of the offer document dated 04.09.1995. The offer document stated that the offer was to open on 30.10.1995 and close on 30.11.1995. The offer opened on 22.11.1995 and closed on December 1995. Vide letter dated 22.01.1996, the Merchant Bankers on behalf of the acquirers sought permission from the complainant to accept additional 8,100 equity shares over and above the offer size with a view to be able to accept near about marketable lot. The permission was granted by complainant vide letter dated 07.02.1996.

(v) The offer of 10,23,000/- equity shares was accepted by 10,45,800 equity share-holders, resulting over acceptance to the tune of 22,500 equity shares.

(vi) The accused were bound to complete all the procedures relating to the offer date of closure of the offer. The accused should have paid the shareholders. The consideration for their shares, that had accepted the offer, on or before 22.01.1996. The accused failed to comply with said regulation of the Act.

(vii) The Manager to the said offer on behalf of the accused, vide their letter dated 29.03.1996 informed the complainant of their efforts to the accused to arrange for the funds to fulfill their commitment.

(viii) Vide letter dated 02.04.1996 addressed to the complainant. The accused sought extension of time for paying the said consideration to the shareholders that had accepted the offer.

(ix) The complainant informed the accused that the regulation did not envisage any relaxation in compliance to buy the consideration to the share-holders and advised to make the payment to the shareholders without any delay.

(x) Accused No.1 had meetings with officials of complainant and informed them that accused No.2 had obtained an order from Madras Court whereby the Court restrained accused No.1 to acquire any shares of the target company in pursuance of power of attorney dated 20.08.1995, made in favour of accused No.1 on behalf of accused No.2.

(xi) The complainant vide its letter dated 08.05.1996 informed the accused to take immediate steps to vacate stay order to deposit consideration payable to sellers, to keep shareholders informed of the delay and complete all these things within fixed time frame.

(xii) Vide letter dated 13.05.1996, the accused No.1 informed the complainant that they were making efforts to vacate the order and that individual letters would be forwarded to the shareholder explaining the delay.

(xiii) Vide letter dated 25.05.1996, the accused No.1 assured the complainant that necessary steps were being taken to fulfill their commitment to shareholders.

(xiv) Accused No.1 informed the complainant that accused No.2 and 4 had resigned from the board of Directors of target company. The accused were making false premises and had no intention to fulfill their commitment and were just applying delaying tactics.

(xv) Complainant issued show cause notice dated

09.08.1996 to accused seeking explanation as to why appropriate proceedings should not be initiated against them under Section 24 of the Act for violation of Regulation 20(2) and 22 of the Code.

(xvi) Accused No.1, 3 & 5 replied the show cause notice by letter dated 14.08.1996 giving reason for their failure to pay the consideration to the shareholders. The reason for their failure was non compliance of the MOU by accused No.2 & 4 and restraining order of Civil Court, Madras.

(xvii) Accused No.1, 3 & 5 vide their letter dated 16.08.1996, informed the complainant to consider their prayer for approval of withdrawal of open offer.

(xviii) The accused had no intention to go through their offer after they realised, they could not raise the monies from market. They had no intention to honour the transaction.

(xix) Accused failed to comply Section 20(2), 22 of SEBI Regulation 1994.

4. Learned Advocate for the applicant submitted that the alleged offence was committed on 13.11.1995. The complaint is

filed in March 1997. The complaint ought to have been filed within one year. The complaint is barred by law of limitation. The complaint is silent as to under what capacity the applicant has been impleaded as accused in the complaint. If she has been arraigned on she being director of Auroknit Exports (India) Ltd., then in that case the proceedings would not stand as the Auroknit Exports (India) Ltd. is not the accused before Court. If the applicant has been arraigned as one of the associates of accused No.1 then in that case the complainant has failed to show as to how applicant is in any way related to accused No.1. Complaint is silent about the role of applicant. The impugned order is bad in law.

5. Learned Advocate Mr. Bohra has relied on following decisions:

i) **Banwarilal L. Saini and Another Vs. The State of Maharashtra and Another**[1].

ii) **Securities & Exchange Board of India Vs. Shri. Om Prakash Arora & Anr.** passed by the High Court of Bombay by order dated 01.10.2012.

iii) **Sushil Sethi Vs. State of Arunachal Pradesh**[2]**.**

iv) **Shivkumar Jatia Vs. State of NCT of Delhi**[3]**.**

v) **Sunil Bharti Mittal Vs. C.B.I**[4].

1 2012 (3) Bom. C.R. (Cri) 658.
2 AIR 2020 SC 765.
3 AIR 2019 SC 4463.
4 AIR 2015 SC 923.

6. Learned counsel for Respondent No.2 submitted that complaint is not barred by law of limitation. Complaint discloses continuing offences. The applicant along Mr. V. Jayraman (accused No.2) executed Power of Attorney in favour of K. Vee Rajenthiran (Original Accused No.1) empowering him to jointly with the other accused enter into an MOU with Promoters of Auroknit Exports (India) Ltd. to acquire equity shares of the said company amounting to around 31.5% of the voting capital. Accordingly, the applicant herein along with other accused entered into an MOU on 20.08.1995 with the promoters of Auroknit Exports (India) Ltd. to acquire 1,61,000 equity shares of Auroknit Exports (India) Ltd. which represented 31.5 of the voting capital of the company. As part of the process, offer was made to the public, which was opened on 22.11.1995 and closed on December 1995. As per Regulation 22 of the takeover regulation provides as below the acquirer shall within a period of four weeks from the date of the closure of the offer complete all procedures relating to the offer including payment of consideration to the shareholders who have accepted the offer. Accordingly, all formalities for the offer including payment of consideration to the shareholder who have accepted the offer, should have been completed by 22.01.1996. This however was not done. The offer of 10,23,000 equity shares

was accepted by 10,45,800 equity shareholders resulting in over acceptance of the equity shares. The offerors, being the original accused, through their Merchant Banker sought permission from SEBI for acceptance of additional 8,100 equity shares. Permission was granted by SEBI on 7.02.1996. Vide their letter dated 02.04.1996 sought extension of time for paying consideration to the shareholders that had accepted the offer. Accused No.1 informed SEBI that accused No.2 had obtained a stay order from the Madras Civil Court in I.A. No.7681 of 1996 in O.S. No.5732 of 1996 whereby Accused No.1 was restrained from acquiring any shares in said company in pursuance of power of attorney made in favour of Accused No.1 by Accused No.2. SEBI, vide letter dated 08.05.1996 advised accused to take necessary steps to vacate the stay order and to deposit the consideration payable to the shareholders either with the Bank or Madras Stock Exchange. As the above directions of SEBI were not complied with, SEBI issued a show cause notice on 30.06.1996 to all the accused including the applicant herein regarding the default made by them. However, the accused neither complied with the directions nor gave satisfactory reasons for the default. SEBI issued a further show cause notice dated 09.08.1996 addressed to all the accused seeking an explanation as to why appropriate proceedings should not be initiated against them. The crystallization of the offence took place on 09.08.1996, when it was clear that there is a default that will not be cured and therefore a violation of the Takeover Regulations was established. Thus, when the complaint against the accused was filed on 31.03.1997, it was filed well within the limitation period of one year from the date of crystallization of the offence, being 09.08.1996. The learned SEBI Special Judge has correctly appreciated the above correspondence which clearly shows that the accused had periodically sought extension of time and considering the timelines involved, has come to the conclusion that it cannot be said that the complaint is not within limitation. Complaint is filed under Section 24 of the Act. The accused have been arraigned in their personal capacity as offerors who have defaulted in paying the consideration to the shareholders who have accepted the offer, thereby violating the provisions of takeover Regulations 1994. There is no requirement to arraign the company, Auroknit Exports (India) Ltd. as an accused. The applicant alongwith her husband Mr. V. Jayaraman (accused No.2) executed Power of Attorney dated 20.08.1995 in favour of Mr. K.Vee Rajenthiran (Accused No.1) empowering him to enter into the MOU on behalf of applicant.

7. Learned counsel for Respondent has relied upon following decisions :-

i) **Samarpan Agro & Livestock Ltd & Ors Vs. Securities and Exchange Board of India** passed by the High Court of Delhi by Judgment dated 25.10.2010.

ii) **Securities and Exchange Board of India Vs. Akshay Infrastructure Private Limited**.[5]

iii) **Omprakash Gulabchandji Partani Vs. Ashok S/o Ruprao Ulhe and Another**[6].

8. The complainant is a statutory body duly incorporated under Section 3 of Securities Exchange Board of India Act, 1992 to protect the interest of the general investors, in securities and to promote the development of and regulate the securities for matters connected therewith or incidental thereto.

9. The complainant has alleged that the Accused No.2 with Accused No.4 made a Power of Attorney in favour of Accused No.1 authorizing him to acquire shares on their behalf. As per MOU dated 20.08.1995 the Accused No.1 with Accused Nos.3 and 5 were to contribute 50% towards the consideration to be paid to the shareholders. It is further alleged that accused Nos.1 to 6 are the offerors and as such were persons Incharge of and responsible for the offer of the acquisition of 10,23,300 equity shares of Auroknit Exports (India) Ltd. The accused No.1 to 5 made the offer under the name of K.Vee Rajenthiran and Associates for

5 (2014) 11 SCC 112
6 1991 SCC OnLine Bom 415

acquisition of 10,23,300 equity shares at a price of Rs.14.62/- per equity share of face value of Rs.10/- each in terms of offer document. The offer was to open on 30.10.1995 and close on 30.11.1995. Offer of 10,23,000 equity shares was accepted by 10,45,800 equity share holders resulting in over acceptance to the tune of 22,500 equity shares. Accused were allowed to acquire additional shares by complainant vide letter dated 07.02.1996. The accused were bound to complete procedure relating to offer within 4 weeks as per regulation 22 of Takeover Code. The accused should have paid the share-holders the consideration for their shares on or before 22.01.1996. Vide letter dated 02.04.1996 extension of time was sought from complainant for paying consideration to the share-holders. Accused No.1 informed complainant that Accused No.2 had obtained an order from Madras Civil Court restraining Accused No.1 to acquire any shares of company. The complainant vide letter dated 08.05.1996 informed the accused to take steps for vacating stay, to deposit consideration, to keep shareholders informed of delay at complete procedure within fixed time frame. Accused assumed the complainant vide Letter dated 13.05.1996 that efforts are made to vacate stay and vide letter dated 25.05.1996 informed that steps were being taken to fulfill their commitment complainant issued show cause notice dated 09.08.1996 to accused for action. Reply dated 14.08.1996 given by accused. Vide letter dated 16.08.1996, accused made prayer for withdrawal of offer. Request was not considered.

10. Complaint is not barred by limitation which is evident from the facts narrated in complaint. The complaint was filed on 31st March 1997. Accused Nos.2 to 5 empowered Accused No.1 by power of Attorney to acquire and enter into Memorandum of Understanding with the promoters of Auroknit Exports (India) Ltd. These were obligations entered into by the accused to acquire controlling stake in Auroknit Exports (India) Ltd. who are directorship in M/s. Auroknit Exports (India) Ltd. Even to the public share-holders, the associates were described individually as directors in several companies and not as members or office bearers of any association in the name of **M/s.** K.V. Rajenthiran & Associates. The offer was accepted by large number of share-holders and 10,45,800 equity shares were offered, in excess of the requirements. The accepting share-holders sent the original share certificates to the accused with the form of acceptance. The managers to the public offer appointed by the accused, Mafatlal Finance Company Ltd. forwarded a letter dated 29.03.1996 to complainant stating that RBI permission for acquisition of shares was received on 24.01.1996. Complainant's consent for acquiring

excess shares was received on 07.02.1996, Madras Stock Exchange permission for acquisition was received on 29.02.1996, the Managers to the Public Offer appointed by the accused had reminded them to dispatch the consideration to the share-holders as the violation is serious, the time for payment of consideration to the public share-holders was extended till 02.04.1996, the extension was in line with the assurance given by the accused that the payment would be made by 02.04.1996, if payment was not made by 02.04.1996, the guidance of complainant would be sought. The accused wrote to SEBI on 16.08.1196 that due to paucity of funds, stalemate and deadlock between the accused, they sought withdrawal of public offer. Thus, by this letter the accused made it clear to the complainant that from this point onwards they would not be paying the consideration to the public share-holders who accepted open offer. The non-payment of consideration was extended from time to time till 02.04.1996. Show cause notice was issued on 09.08.1996 directing payment of consideration. It cannot be said that the offence took place on 13.11.1995. It is clear from the correspondence that the violation took place on 02.04.1996. The extended date by the accused themselves had assured of payment of consideration to the public share-holders, their Managers to the Public Offer, Madras Stock

Exchange and SEBI. Thus, the complaint which is filed on 31.03.1997 was within the period of limitation.

11. The complaint is filed against the accused in their personal capacity which is clear from the provisions of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1994 ['SAST Regulations'] and the public announcement of the open offer made by the accused in the name of "**Mr.** K.V. Rajenthiran & Associates", 'his associates acting in concert to the offer' in their personal capacity and not as office bearers or members of "M/s. K.V. Rajenthiran & Associates". The other document does not bear the name of **M/s.** K.V. Rajenthiran & Associates. The offence is committed by the applicant pertains to failure by the applicant to comply with the payment of consideration to the equity share-holders who accepted the open offer by submitting their equity shares in compliance with Regulation 22 of the SAST Regulations. The public announcement of the open offer was made by the accused for the purpose of acquiring shares of Auroknit Exports (India) Ltd. i.e. the "Target Company". It is not the case of the complainant that the Target Company in which the accused were directors, was primarily liable as the company cannot target itself and acquire its own shares. The reference to the directorship of the accused which is evident from the cause title of the complaint is

apparently for the purpose of service as the offer document recorded that they had several directorship at the relevant time, including Auroknit Exports (India) Ltd. and not for the purpose of charging them vicariously. The decision relied by the learned counsel for the Petitioner are of no assistance to the Petitioner as the same were delivered in different context. The question of impleading the company would not vitiate the proceedings as contended by the Petitioners.

12. The accused gave offer in the name of **Mr.** K.V. Rajenthiran & Associates in their personal capacity and not in the name of **M/s.** K.V. Rajenthiran & Associates as its office bearers or as members of any such association. In the letter dated 14.08.1996 written to SEBI by the applicant and her husband (accused No.2) there is no reference by association by the name of **M/s.** K.V. Rajenthiran & Associates.

13. It is clear from the cause-title and the facts indicated that the accused Nos.1 to 5 referred to as **Mr.** K.V. Rajenthiran & Associates and 'Associates acting in concert' was an indirect reference to them being 'persons acting in concert' and 'associates' and 'relatives' in terms of the SAST Regulations as they had become directors of the target company after acquiring shares from the erstwhile promoters and are also each other's 'relatives' us. 6 of the

companies Act, 1956, r/w Schedule IA of the Companies Act, 1956, i.e. brothers (s/o of Mr. K. Venkatasmy) and their wives. Thus, the reference to "Mr. K.V. Rajenthiran & Associates" in the various documents is in terms of the SAST Regulation as convenient manner of referring to them individually, and not as members/office-bearers of some supposed association by the name of M/s. K.V. Rajenthiran & Associates, which at no point has been referred to, nor existence proven in any contemporaneous correspondence.

14. Considering the aforesaid circumstances, no case is made out for interfering in the orders passed by the learned Special Judge. Hence, application deserves to be rejected.

ORDER

Criminal Revision Application No.70 of 2019 is rejected and stands disposed of.

(PRAKASH D. NAIK, J.)