IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.400 OF 2022

1. Bhupali Securities
a partnership firm,
2. Sagar Ramakant Kajbaje,
3. Smt.Smita Rakakant Kajbaje,
Nos.2 and 3 R/o.Tower 14, Flat 604,
Lodha Belmondo, Pune-Mumbai Express
Way, Kiwle, Pune-412 101. Applicants

versus

1. Securities and Exchange Board of India,
BKC, Mumbai.
2. The State of Maharashtra. Respondents

Mr.Pritam P. Runwal, Advocate for Applicans.
Mr.Raja Thackrey, Senior Advocate, with Mr.Omprakash Jha, Siddharth Jangusthe i/by The Law Point, Advocates for SEBI.
Mr.A.R.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 18th July 2022

PC :

1. The applicants were arraigned as accused in SEBI Special Case No.229 of 2015 pending on the file of learned Designated Special Court under Securities and Exchange Board of India Act, 1992 (SEBI Act). Applicants were prosecuted for the offence punishable u/s.24(1) of SEBI Act for contravention of Rule 3 of SEBI (Stock Broker and Sub Broker) Regulations, 1992, Regulation 5(1), (b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulation, 1995. Initially complaint was filed on 6th June 2003 vide C.C No.157/S/2003 before learned Additional

Chief Metropolitan Magistrate. The order issuing process was passed on 6th June 2003. The proceedings were then transferred to the Court of learned Metropolitan Magistrate at Kurla and numbered as SEBI Special Case No.76 of 2023. Subsequently the proceedings were transferred to learned Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai for taking cognizance and pre-commital stage and it was renumbered as C.C No.2521/SW/2003. The matter was then transferred to Special Court for Greater Bombay and renumbered as SEBI Special Case No.229 of 2015.

2. The complainant had alleged that in May 1997 Mr.Lalit Kumar Dangi, Chairman of Dangi Financial and Management Consultancy Pvt.Ltd started online terminal for trading in securities at Kolhapur. It was named as Dangi Financial and Management Consultancy Pvt.Ltd. Mr.Dangi had appointed applicant no.2 as his employee to look after the terminal at Kolhapur. Applicant no.2 was in-charge and authorized signatory of Mr.Dangi. Thereafter Mr.Dangi started one more online terminal in the office at Kolhapur named as Liboard Securities. Mr.Dangi and applicant no.2 signed client agreement on 3rd February 1998 stating that applicant no.2 will work as client for Mr.Dangi. On 28th February 1998 Dangi Finance and Liboard entered into agreement with applicant no.1 being a newly formed partnership firm of applicant nos.2 and 3 to work as sub-broker for Dangi Finance and Liboard at Kolhapur. Applicant no.2 approached Mr.Dangi for recommending his name as sub-broker to BSE and NSE. Mr.Dangi forwarded name of his newly formed firm. Show cause notice was issued by SEBI. Vide order dated 26th August 2003, an ex-parte order was passed directing applicant no.1 and its partner not to deal in securities for three years with immediate effect. One more

complaint was filed by SEBI for violating provisions of Section 12 of SEBI Act.

3. The applications preferred an application for compounding on 20th July 2018. Reply was filed by SEBI on 22nd September 2021 and it was agreed to compound the case subject to applicants making payment of Rs.26,06,875/- including legal charges of Rs.1,00,000/-.

4. Vide order date 2nd December 2021 the Special Court directed SEBI to produce record of proceedings in which the compounding charges as determined by SEBI or show cause why SEBI is unable to produce the same. By way of purshis dated 6th June 2021, SEBI produced formula on which charges were determined. Learned Special Judge vide order dated 28th February 2022 directed that if the accused jointly and severally pays amount of compounding charges of Rs.26,06,875/- within two months, the Court shall dispose off the case as compounded. If the accused fail to deposit the amount within the time, the compounding application shall be deemed to have been rejected. The application preferred by applicants was disposed off.

5. The applicants are aggrieved by the aforesaid order dated 28th February 2022 and thereby preferred present application challenging said order.

6. Learned advocate for applicants submitted that impugned order is illegal, which reflects non application of mind. Learned Judge has not considered the guidelines laid down by Supreme Court in the case of **Prakash Gupta Vs. SEBI (2021-ALL SCR {Cri}-1106)**.

In the aforesaid decision the Supreme Court had enumerated the factors, such as, whether violation is intentional or whether conduct of party in the investigation and disclosure of full facts and disclosure of full facts is deliberate. Learned Special Judge has not given any findings to that effect. The applicants had annexed all the relevant papers of settlement with the clients. The Court also failed to consider factor No.3 relating to gravity of charge, factor no.4 about history of non-compliance, good track record of the violator, factor no.5 whether there were circumstances beyond the control of the party, factor no.6 violation is technical and/or minor in nature and whether violation warrants penalty as well as various other factors enumerated in the said decision. The demand of Rs.26,06,875/- is arbitrary. Learned counsel for applicants had provided calculation of indicative amount as per SEBI (Settlement Proceedings Regulation 2018). The possible compounding charges arrived at by the applicants based on 2 sets of calculation are Rs.5,25,000/- or Rs.12,25,000/-.

7. Learned advocate for Respondent no.1 submitted that calculation arrived at by the applicants is erroneous. Respondents had agreed for compounding provided the applicants deposit amount towards compounding charges in the sum of Rs.26,06,875/-. The said calculation is based on rules and regulations provided under SEBI Act. Learned advocate has relied upon affidavit-in-reply filed on behalf of Respondent no.1 and contended that applicants are liable to deposit aforesaid amount in the event they intend to compound the charges. Reliance is placed on the order dated 13th July 2018 passed by this court in the matter of Bhupali Securities and others Vs. SEBI and another (Criminal Revision Application

No.16 of 2017), Calculation of indicative amount as per SEBI (Settlement Proceedings) Regulations, 2018 and minutes of 164th meeting of High Powered Advisory Committed held on 2nd March 2020 of SEBI.

8. The Supreme Court in the case of Prakash Gupta Vs. SEBI (supra) has issued guidelines for compounding complaints filed by SEBI. Various factors enumerated in the aforesaid decision were apparently not taken into consideration by learned Sessions Judge.

9. It is pertinent to note that vide order dated 2nd December 2021 learned Special Judge had directed SEBI to produce record of proceedings in which compounding charges were determined by SEBI. It is not clear as to how said directions were complied by respondents. The contention of applicants is that they had acted as sub-broker to stock broker and there was no intention to cheat any investor as alleged by SEBI in its complaint and in view of liability of stock brokers, applicants had paid all the investors as mentioned by SEBI in the complaint. As per complaint filed by SEBI, liability was Rs.2,09,478/- which was duly paid and confirmed by investors by way of full and final settlement. One of the investor had filed a complaint against applicant no.2 viz Criminal Case No.211 of 1998. Th complainant Dr.Parandekar explained liability of Rs.10,000/- and not Rs.6,00,000/- as alleged by SEBI in its complaint. The complainant had deposed that Rs.10,000/- was paid by him towards deposit for trading with applicant no.1 and complainant had never traded in stock market through applicant no.1. Applicants were acquitted by learned Chief Judicial Magistrate, Kolhapur vide judgment and order dated 18th October 2019 in R.C.C No.31 of 1999.

In spite of previous directions issued by Special Court vide order dated 2nd December 2021, learned Special Judge vide order dated 28th February 2022 directed the applicants to deposit Rs.26,06,875/-. The respondents had contended that calculation of indicative amount as per SEBI (Settlement Regulation Proceedings), 2018, is more than the amount agreed to be deposited by applicants. In the impugned order learned Judge has observed that SEBI has not given in its order any details as to how it calculated the amount of compounding charges and therefore directed SEBI to produce record of the proceedings for which the compounding charges are determined by SEBI. SEBI filed calculation sheet along with purshis Exhibit-45 and contended that calculations are made as per SEBI (Settlement Proceedings Regulation) 2018. Learned Judge has also observed that while deciding the compounding application, the Court has to consider the factors enumerated in the decision of Hon'ble Supreme Court in the case of Prakash Gupta Vs. SEBI (supra). However, it appears that only on the basis of purshis filed by respondents, learned Special Judge has accepted compounding charges of Rs.26,06,875/-. The applicants have provided two sets of calculations which according to them are calculations indicative of amount as per SEBI (Settlement Proceeding Regulation) 2018. The calculations arrived at by applicants are Rs.5,25,000/- and/or Rs.12,25,000/-. The second calculation of Rs.12,25,000/- is as follows :

"Calculation of Indicative Amount (IA) as per SEBI (Settlement Proceedings) Regulations, 2018.

The Applicant-Bhupali Securities (Accused) in SEBI Special Case No.229 of 2015 – The Violations are under Sec.12 of the Securities and Exchange Board of India (SEBI) Act, 1992, Rule 3 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992, Regulations 5(1)

(b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, 1995.

IA = A*B+Legal cost, Where IA=[A=Proceedings Conversion Factor (PCF)+Regulatory Action Factor (RAF)* [B(Applicable Benchmark amount) = BV (Aggregate of Base Values) * BA (Base Amount Attribute) + Legal Cost

A	B
PCF = Compounding application filed before the framing of charge and so, PFC = 0.85 RAF = The Sum of all the values assigned to the orders and regulatory directions (s) issued in the past, if any and in the present cause of action to the applicant, for which the consent application has been filed. RAF=X+Y X=Value For Orders/Regulatory Directions Issued. X=0.075 Y=Value for orders or directions passed or issued for which the consent application is filed. In this case, no such orders and hence Y=0 and so, RAF=0.075=0=0.075 A=PCF+RAF=0.85+0.075=0.955 IA=0.955*Rs.12,25,000=11,70,487 IA=Rs.11,70,487+Rs.1,00,000 (Legal Cost)=Rs.12,70,487/-”	BV=1+Sum of Applicable Bse Values Bv=1+0.2(II 1) +0.25 (Table IV) BV = 1+0.2+0.3 BV=1.5 (0.25 for reputations risk) BV=1.75 BA=Base Amount Attributable BA=Rs.7,00,000/- (Table X 0) B=BV* BA B=1.75 * 7,00,000 =/ B=Rs.12,25,000/-

10. The calculation as above deserves to be accepted.

11. For the aforesaid reasons and in the facts of present case, the

impugned order is required to be set aside by allowing compounding of proceedings on payment of Rs.12,25,000/-

ORDER

(i) Criminal Application No.400 of 2022 is allowed and disposed off;

(ii) Order dated 28th February 2022 passed below Exhibit-24 by Special Judge, Greater Bombay in SEBI Special Case No.229 of 2015 is quashed and set aside;

(iii) The application preferred by applicants for compounding is allowed. The applicants shall pay an amount of Rs.12,25,000/- towards compounding charges before the SEBI within three months from the date of uploading of the operative order;

(iv) This order may not be construed as precedent on law and this order has been passed on the factual aspects of this matter.

(PRAKASH D. NAIK, J.)

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