

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.337 OF 2009

1. **Sterlite Industries (India) Limited,**
having its office at Vedanta,
75, Nehru Road, Vile Parle (East),
Mumbai - 400099.
2. **Anil Agarwal,**
having his office at Vedanta,
75, Nehru Road, Vile Parle (East),
Mumbai - 400099.
3. **Tarun Jain,**
having his office at Vedanta,
75, Nehru Road, Vile Parle (East),
Mumbai - 400099.
4. **Somnath Patil,**
having his office at Vedanta,
75, Nehru Road, Vile Parle (East),
Mumbai - 400099.
5. **Lalit Singhvi,**
having his office at Vedanta,
75, Nehru Road, Vile Parle (East),
Mumbai - 400099.

.. Petitioners

Versus

1. **Special Director of Enforcement,**
Ministry of Finance, Government of
India, having its office at 1st Floor,
Janmabhoomi Chambers, Walchand
Hirachand Marg, Mumbai - 400001.
2. **Assistant Director,**
Directorate of Enforcement,
Ministry of Finance, Government of
India, having its office at 23-24,
2nd Floor, Mittal Chambers,
Nariman Point, Mumbai - 400 021.

3. **Director of Enforcement,**
Ministry of Finance, Government of
India, having its office at 6th Floor,
Loknayak Bhawan, Khan Market,
New Delhi - 110 003.

4. **Union of India,**
Service through the Secretary,
Ministry of Finance, North Block,
New Delhi - 110 001.

.. Respondents

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Appearances:-

- Mr. Venkatesh Dhond, Senior Advocate a/w. Mr. Ashutosh Thipsay, Mr. Nishit Dhruva, Mr. Prakash Shinde, Ms. Niyati Merchant, Mr. Yash Dhruva and Mr. Harsh Sheth, Advocates i/by MDP and Partners for the Petitioners;
- Mr. Sandesh Patil, Advocate for the Respondents.

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**CORAM : K. R. SHRIRAM &
MILIND N. JADHAV, JJ.**

DATE : JULY 14, 2022

JUDGMENT (PER : MILIND N. JADHAV, J.)

1. Petitioner No.1 is a public limited company engaged in the business of import of copper concentrate from abroad and after processing manufactures various products of copper, i.e., copper cathodes, rods, wires, transmission cables etc. out of the same. Petitioner Nos.2 to 5 are directors of petitioner No.1. Petitioner No.1 effected a foreign remittance of Rs.203.82 crore, i.e., US\$43.5 million through Centurion Bank towards acquisition of 100% equity stake of Monte Cello B.V., Netherlands from its holding company Monte Cello

Corporation NV, Netherlands under "Automatic Route" of Reserve Bank of India as prescribed in the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000 ("**the said Regulations**"). On 22.11.2000, petitioner No.1 informed the Reserve Bank of India about the said transaction. Vide letter dated 28.02.2001, an "Unique Identification Number" was allotted to the said transaction by the Reserve Bank of India. The acquired company holds 100% shares in two copper mines in Australia which have thus become wholly owned subsidiaries of petitioner No.1.

2. On 11.06.2008, respondent No.1, i.e., the Special Director of Enforcement, Ministry of Finance, Government of India issued a consolidated show-cause-notice to petitioner Nos.1 to 5 alleging that petitioners, by remitting US\$43.50 million for acquisition of two copper mines in Australia in the year 2000, had contravened the provisions of section 6(3)(a) read with section 42(1) and 42(2) of the Foreign Exchange Management Act, 1999 ("**the said Act**") read with Regulations 2, 3, 5, 6 and 9 of the said Regulations.

3. On 23.07.2008, petitioners filed compounding applications before the Chief General Manager, Reserve Bank of India, the Compounding Authority for compounding of the contravention alleged in the show-cause-notice in exercise of powers under section 15(1) of the said Act read with the said Regulations. In the application, it was

specifically mentioned that respondent No.1 had issued a show-cause-notice dated 11.06.2008 to petitioners on a complaint under sub-section (3) of section 16 of the said Act made by the Assistant Director of Enforcement Directorate (**FEMA**), Ministry of Finance, Government of India. Petitioners were accorded an opportunity of personal hearing by the Compounding Authority, i.e., the Chief General Manager, Reserve Bank of India. Various submissions were advanced by petitioners before the Compounding Authority, *inter alia*, stating that the company was not under any investigation under FEMA at the time of making remittance for direct overseas investment; that in terms Regulations 2 (d) of the Notification No.FEMA/19/2000-RB- dated 03.05.2000, 'core activity' was defined as activity carried on by an Indian entity constituting 50% of its average turnover in the previous accounting year and since the turnover of petitioner No.1 from copper based products was 67.48%, direct investment was made in a 'core activity', i.e., acquisition of copper mines and therefore prior permission from the Reserve Bank of India could not be required; that in Form ODA, i.e., application submitted by petitioner No.1 to the Reserve Bank of India after remitting the direct overseas investment, the 'core activity' mentioned was 'manufacturing of copper'. The Chief General Manager, Reserve Bank of India considered the submissions of petitioner No.1 alongwith the documents placed on record and passed five separate Compounding orders in respect of petitioner Nos.1 to 5,

all dated 20.11.2008, *inter alia*, compounding the admitted contravention namely the contravention of section 6(3)(a) of the said Act read with Regulations 2, 3, 5, 6 and 9 of the said Regulations and directed payment of Rs.25 lakhs by petitioner No.1 as condition precedent for compounding the contravention. Identical orders, all dated 20.11.2008 were also passed in respect of petitioner Nos.2 to 5, however, they were directed to deposit an amount of Rs.1,00,000/- each as compounding charges and contravention was compounded. Petitioners deposited the compounding charges as directed with the appropriate authority on the very next day by Demand Drafts.

4. By letter dated 21.11.2008 addressed to the Chief General Manager, Reserve Bank of India, i.e., the Compounding Authority, petitioners intimated that they had deposited the compounding charges in compliance of the five compounding orders.

5. Petitioners have pleaded that it was the duty of the Compounding Authority to inform the Adjudicating Authority, i.e., respondent No.1 who had issued the show-cause-notice dated 11.06.2008 so that any further proceedings may not be continued in terms of section 15(2) of the said Act read with Rule 6 and 7 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 ("**the Rules**"). Petitioners have asserted that "compounding order" means an order issued under sub-section (1) of section 15 of the said Act.

6. On 21.11.2008, respondent No.1 passed the adjudication order-in-original determining show-cause-notice dated 11.06.2008 holding that petitioners have contravened the provisions of section 6(3)(a) of the said Act read with Regulations 3, 5, 6 and 9 of the said Regulations as alleged in the show-cause-notice and found them guilty of the said contravention. By the said order, respondent No.1 held the petitioners guilty of contravention and imposed the following penalties:

No.	Name	Penalty imposed
i	M/s. Sterlite Industries (India) Ltd.	Rs.20,00,00,000/- (Rs. Twenty Crores only)
ii	Shri Anil Agarwal, Chairman & Mg. Director	Rs.3,00,00,000/- (Rs. Three Crores only)
iii	Shri Tarun Jain (Director - Finance)	Rs.2,00,00,000/- (Rs. Two Crores only)
iv	Shri Somnath Patil (Vice President - Finance)	Rs.10,00,000/- (Rs. Ten lakhs only)
v	Shri Lalit Singvi (Chief Manager - Finance)	Rs.10,00,000/- (Rs. Ten lakhs only)

6.1. Petitioners have challenged the legality and validity of order dated 21.11.2008 passed by respondent No.1 and hence the present petition.

7. Mr. Dhond, learned Senior Advocate appearing on behalf of petitioners has made the following submissions:-

(i) that under section 15(2) of the said Act where a contravention has been compounded under sub-section (1) of the said Act, no proceeding or further proceeding, as the case may be, can be initiated or continued, against the person committing such contravention under that section in respect of the contravention so compounded;

(ii) that pursuant to the compounding orders the compounded amount having been deposited by petitioners, no proceeding or further proceeding, as the case may be, could be initiated or continued, against petitioners in respect of the "contravention" alleged in the show-cause-notice; that no further proceeding could have been continued on the basis of the show-cause-notice after the compounding orders had been passed and payment of the compounded amount had been made by petitioners; that the impugned adjudication order has been passed by respondent No.1 with an ulterior motive and collateral purpose for attempting to nullify or frustrate the compounding orders; that the impugned order is therefore illegal, invalid, without authority of law and without jurisdiction in view of the fact that the proceedings pursuant to the show-cause-notice could no longer be continued once the

compounding orders had been passed and payment of the compounded amount had been made by petitioners in compliance thereof;

(iii) that under Rule 4 of the said Rules in case the amount involved is more than Rs.50 lakhs, the Chief General Manager of the Reserve Bank of India is the designated statutory Compounding Authority, who has passed the compounding orders under section 15(1) of the said Act and further under Rule 7 it was the statutory duty of the Compounding Authority to inform the Adjudicating Authority who had issued the show-cause-notice of the fact of compounding; that petitioner No.1 had already informed the Compounding Authority on 21.11.2008 of the said fact and the deposit of the compounded amounts on the next day, i.e., 21.11.2008; hence it was incumbent upon the Compounding Authority to intimate the Adjudicating Authority issuing the show-cause-notice so as to avoid continuation of any further proceedings in terms of section 15(2) of the said Act and on receiving such information the Adjudicating Authority was required to discharge petitioners;

(iv) that in terms of the statutory provisions petitioners stand discharged and no proceedings in relation to the pending show-cause-notice can survive after the compounding orders have been passed by the Compounding Authority and petitioners having complied with the

same by depositing the compounded amounts;

(v) that section 15 of the said Act permitted compounding of contravention and empowered the Compounding Authority to compound any contravention as provided under section 13 of the said Act on an application made by the person committing such contravention either before or after the institution of adjudication proceedings; that in the present case, the allegation made against petitioners in the show-cause-notice was that petitioners had contravened the provisions of section 6(3)(a) and sections 42(1) and 42(2) of said Act read with Regulations 2, 3, 5, 6 and 9 and the transaction amount stated in the show-cause-notice was Rs.203.82 crores; that the amount of contravention was quantified; that in view of the above fact one of the Compounding Authority in the facts of petitioner's case was the Chief General Manager of Reserve Bank of India under Rule 4(1)(d) of the said Rules; sub-rule (3) of Rule 4 provides that every officer of the Reserve Bank of India as specified in sub-rule (1) of Rule 4 shall exercise the power to compound any contravention subject to the direction, control and supervision of the Governor of the Reserve Bank of India; that therefore it was clear from the legal position that the Compounding Authority while compounding the contravention alleged in the show-cause-notice against petitioners, has passed the compounding orders subject to the direction, control

and supervision of the Governor of the Reserve Bank of India; that once the compounding orders are passed by the Compounding Authority under the direction, control and supervision of the highest officer of the Reserve Bank of India, i.e., the Governor, the compounding orders are binding on respondents;

(vi) that once the contravention is compounded by the Compounding Authority, the pending proceedings initiated against the noticee by show-cause-notice under FEMA cease to exist and it cannot be continued after passing of the compounding order, as such no further proceedings can be initiated or continued against the noticee in respect of contravention so compounded; that section 15 (2) of said Act gives the noticee whose case has been compounded a total immunity from the charges/contravention brought against such noticee by the show-cause-notice; that this immunity from charges/contravention is subject to one condition only and that condition is incorporated in Rule 10 of the said Rules which provide that in case a person fails to pay the sum for which the offence is compounded in accordance with Rule 9 within the time specified in that Rule, he shall be deemed to have never made an application for compounding of any contravention under the said Rules and the said Act for contravention; that petitioners, having paid the compounded amount on 21.11.2008 and proof of such payment having already

been submitted before the Compounding Authority as well as respondent No.1, deserve complete immunity;

(vii) that there lies no jurisdiction and/or authority in law for respondent No.1 to pass the impugned order dated 21.11.2008 in respect of proceedings arising out of show-cause-notice dated 11.06.2008 once the Compounding Authority has lawfully compounded the contravention alleged in the show-cause-notice by passing the compounding orders under section 15 (1) of the said Act read with Rule 8 (2) of the said Rules on 20.11.2008 and petitioners having complied with the same by depositing the compounded amounts by demand drafts on 21.11.2008 and informing the Compounding Authority about the same on 21.11.2008 itself;

(viii) that proceedings initiated against petitioners by respondent No.1 by issuing the show-cause-notice come to an end on passing of the compounding orders on 20.11.2008; on that date there is no proceeding pending against petitioners in the eyes of law in view of the operation of section 15(2) of the said Act and as such respondent No.1 who has issued show-cause-notice has lost his jurisdiction and/or authority to deal with and determine the show-cause-notice and/or pass any order in respect of the show-cause-notice;

(ix) that section 15 (2) of the said Act imposes a fetter and/or limitation upon the jurisdiction of the authority issuing the show-

cause-notice for contravention of the provisions mentioned in section 13 of the said Act or continuation of any proceedings already initiated, and such jurisdiction of the authority ceases to exist upon passing of the compounding order under section 15(1) of the said Act read with Rule 8(2) of the said Rules in respect of the alleged contravention in the show-cause-notice;

(x) hence, Mr. Dhond has prayed for setting aside and quashing of the impugned order dated 21.11.2008.

8. ***PER CONTRA***, Mr. Patil, learned Advocate appearing for the respondents has opposed the petition and drawn our attention to the affidavit-in-reply dated __.03.2009 filed by A.G. Wasnik, Assistant Director, Enforcement Directorate, Mumbai on behalf of respondent Nos.1 and 2 and contended as follows:-

(i) that in the facts of the present case respondent No.1 has authority to pass the order dated 21.11.2008 as petitioners never informed respondents that they had filed compounding applications before the designated Compounding Authority, that petitioners had appeared before the respondent No.1 on several dates during the adjudicating proceedings and not even once intimated respondent No.1 about the filing/pendency/determination of the compounding application/proceedings before the Compounding Authority;

(ii) that the answering respondents were not impleaded as

parties by petitioners before the Compounding Authority in the compounding proceedings;

(iii) that petitioners cannot seek discharge in terms of the said Regulations and Rules for contravention of the provisions of the said Act and the said Regulations/Rules since information relating to compounding proceedings was communicated to respondents much belatedly after the order of adjudication dated 21.11.2008 was passed by respondent No.1;

(iv) that there is an express admission of petitioners before the Compounding Authority of having committed the contravention as alleged in the show-cause-notice of the provisions of the said Act and the said Regulations during the compounding proceedings;

(v) that the compounding orders were passed by the Compounding Authority without hearing the respondents and as such were not sustainable;

(vi) that the impugned order dated 21.11.2008 was sustainable in law and enforceable against petitioners;

(vii) that there was a clear violation of the provisions of Rule 8(2) of the said Rules by petitioners before the Compounding Authority and it was incumbent upon petitioners to have impleaded the answering respondents as proper and necessary party to the

compounding proceedings;

(viii) hence, Mr. Patil prays for dismissal of the present petition.

9. We have heard both the learned advocates and perused the pleadings and exhibits. Submissions made by the advocates have received due consideration.

10. It will be appropriate to advert to the relevant statutory provisions and their applicability to the facts of the present case.

11. Chapter IV of the said Act relates to "Contravention and Penalties".

11.1. Section 13 refers to penalties for contravention of any of the provisions of the said Act or contravention of said Rules / said regulations / notification / direction or order issued in exercise of the powers under the said Act. Section 14 pertains to enforcement of the order passed by the Adjudicating Authority, in the event if any person fails to make full payment of the penalty imposed on him under section 13 within the prescribed period and further states that such person will be liable to civil imprisonment under this section. Section 14A pertains to the power to recover arrears of penalty.

11.2. Section 15 is relevant in the present case and pertains to the power to compound contravention and reads thus:

"15. Power to compound contravention.- (1) Any

contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorised in this behalf by the Central Government in such manner as may be prescribed.

(2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded."

11.3. Sub-section (1) of section 15 states that any contravention under section 13 may, on an application made by the person committing such contravention can be compounded within one hundred and eighty days from the date of receipt of the application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank of India, as may be authorised in this behalf by the Central Government in such manner as may be prescribed. Sub-section (2) states that where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded.

11.4. Applying the aforementioned provisions to the facts of the present case it is seen that the compounding order is passed on 20.11.2008 and the adjudication order levying penalty is passed on 21.11.2008, i.e., one day after the passing of the compounding order.

Sub-section (2) of section 15 as alluded to hereinabove clearly envisages a position that once a contravention has been compounded under sub-section (1) (which in the present case has been compounded on 20.11.2008), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing the contravention.

11.5. In the present case, on perusing of the adjudication order dated 21.11.2008 passed by the respondent No.1, it is seen that the proceedings had arisen out of show-cause-notice dated 11.06.2008, personal hearing was given on 29.9.2008 and petitioners had filed their further written submissions on 31.10.2008. This means that the proceeding/further proceedings, as the case may be, as stated in sub-section (2) of section 15 were already initiated before passing of the compounding order on 20.11.2008; hence in terms of sub-section (2) of section 15, it is clear that no proceeding or further proceeding, as the case may be, could be continued once the compounding order is passed; there is a clear mandate by the use of the word "shall" for any proceeding to not continue once the contravention stands compounded.

12. The said Rules have come into effect on 03.05.2000 in exercise of powers conferred by section 46 read with sub-section (1) of section 15 of the said Act. These Rules relate to contravention under

Chapter IV of the said Act.

12.1. Rules 3 and 4 are relevant and read thus:-

"3. (1) "Compounding Authority" means the persons authorised by the Central Government under sub-section (1) of section 15 of the Act, namely:-

(a) an officer of the Enforcement Directorate not below the rank of Deputy Director or Deputy Legal Adviser (DLA).

(b) an officer of the Reserve Bank of India not below the rank of the Assistant General Manager.

4. Power of Reserve Bank to compound contravention.—

[(1) If any person contravenes any provisions of the Foreign Exchange Management Act, 1999 (42 of 1999), except clause (a) of section 3 of the Act]-

(a) in case where the sum involved in such contravention is [ten lakhs] rupees or below, by the Assistant General Manager of the Reserve Bank of India;

(b) in case where the sum involved in such contravention is more than rupees [ten lakhs] but less than rupees [forty lakhs], by the Deputy General manager of Reserve Bank of India;

(c) in case where the sum involved in the contravention is rupees [forty lakhs] or more but less than rupees [hundred lakhs] by the General Manager of Reserve Bank of India;

(d) in case the sum involved in such contravention is rupees [one hundred lakhs] or more, by the Chief General manager of the Reserve Bank of India;

Provided further that no contravention shall be compounded unless the amount involved in such contravention is quantifiable.

(2) Nothing contained in sub-section (1) shall apply to a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under these rules.

Explanation.- For the purposes of this rule, any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

(3) Every officer specified under sub-rule (1) of rule 4 of the Reserve Bank of India shall exercise the powers to compound any contravention subject to the direction, control and

supervision of the Governor of the Reserve Bank of India.

(4) Every application for compounding any contravention under this rule shall be made in Form to the Reserve Bank of India, Exchange Control Department, Central Office, Mumbai along with a fee of Rs. 5000/- by Demand Draft in favour of compounding authority.

12.2. Rule 3 defines "compounding authority" as the persons authorised by the Central Government under sub-section (1) of section 15 of the said Act. It further states that the compounding authority could be either an officer of the Enforcement Directorate not below the rank of Deputy Director or Deputy Legal Adviser (DLA) or an officer of the Reserve Bank of India not below the rank of the Assistant General Manager.

12.3. From the reading of the above Rule, it is seen that the Chief General Manager, Reserve Bank of India is the designated "Compounding Authority" before whom petitioners had filed the compounding applications.

12.4. Rule 4 pertains to the power of the Reserve Bank of India to compound contravention and states that if any person contravenes any provisions of the said Act, except clause (a) of section 3 of the said Act, then under sub-clause (d) of the said Rule the Chief General Manager of the Reserve Bank of India is the Compounding Authority in case the sum involved in such contravention is Rs.100 lakhs or more. The 'proviso' to Rule 4 states that no contravention shall be compounded

unless the amount involved in such contravention is quantifiable. It is seen that the case of petitioner No.1 is therefore covered by clause (d) of Rule 4 read with the Proviso to Rule 4 as both, the authority is clearly determined and the sum involved is clearly quantified (i.e., the remittance amount of US\$43.5 million). Hence the compounding orders have been passed by the appropriate jurisdictional authority. This in any event has not been denied by respondents.

13. Rule 6 to 8 of the said Rules are also relevant and read thus:

"6. Where any contravention is compounded before the adjudication of any contravention under section 16, no inquiry shall be held for adjudication of such contravention in relation to such contravention against the person in relation to whom the contravention is so compounded.

7. Where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 6, such compounding shall be brought by the authority specified in rule 4 or rule 5 in writing, to the notice of the Adjudicating Authority and on such notice of the compounding of the contravention being given, the person in relation to whom the contravention is so compounded shall be discharged.

8. Procedure for compounding.- (1) *The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings.*

(2) The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerned as expeditiously as possible and not later than 180 days from the date of application:"

13.1. Rule 6 refers to a situation where any contravention is compounded before the adjudication of any contravention under section 16. It states that in such a case, no inquiry shall be held for adjudication of such contravention in relation to such contravention

against the person in relation to whom the contravention is so compounded. In the present case, Rule 6 will not apply because show-cause-notice was already issued to petitioners on 11.06.2008 and adjudication proceedings were initiated against petitioners before the date of filing of the compounding applications.

13.2. Rule 7 states that where compounding of any contravention is made after making of a complaint under sub-section (3) of section 16, such compounding **shall be brought by the authority specified in rule 4 or rule 5** in writing, to the notice of the Adjudicating Authority and on such notice of compounding of the contravention being given, the person in relation to whom the contravention is so compounded shall be **discharged**. Rule 7 covers the present case. In effect it means that the authority specified in rule 4, i.e., the Reserve Bank of India is required to bring to the notice of the Adjudicating Authority, i.e., the respondent No.1 herein, the fact of compounding of any contravention, and on such notice of the compounding of the contravention is given, the person in relation to whom the contravention is so compounded shall be discharged. Reading of Rule 7 clearly envisages that the authority specified in Rule 4, i.e., Reserve Bank of India is required to bring to the notice of the Adjudicating Authority the fact of compounding of the contravention in the case of petitioners.

13.3. In the present case, compounding orders have been passed on 20.11.2008, whereas the adjudication order levying penalty has been passed by the Adjudicating Authority on 21.11.2008, i.e., on the very next day. Mr. Patil states Rule 7 has not been complied with by the compounding authority in the present case. According to Mr. Patil the Compounding Authority did not give any notice of the compounding of the contravention application to respondent No.1. From the facts which are pleaded it is seen that petitioners by their letter dated 21.11.2008 (Exhibit 'F' page No. 208 of the petition) informed the Chief General Manager, Reserve Bank of India that petitioners have complied with the five compounding orders, all dated 20.11.2008 and have paid the compounding charges by demand drafts, all bearing date 21.11.2008 in respect of the five petitioners. The Reserve Bank of India in turn has issued certificates to petitioners acknowledging the payment made by petitioners in respect of each of the compounding order (five in all) and issued five such separate certificates, all dated 06.02.2009, certifying that petitioners have paid the compounding charges in compliance of the compounding orders passed by the Compounding Authority under section 15 of the said Act read with the said Rules. In these circumstances, we cannot hold petitioners responsible for contravention once the compounding orders have been passed. We have noted that there is a gap of "one day" between the passing of the two sets of orders, i.e., compounding

orders and adjudicating order. Be that as it may, petitioners cannot be faulted and held liable for contravention once the compounding orders are passed by the Compounding Authority. That is the mandate of the statute.

14. Mr. Patil has also fairly conceded that respondents though aggrieved with the five compounding orders, have not challenged the said orders. If respondents were indeed aggrieved with the compounding orders, it was open for respondents to challenge the said orders. Having not done so, respondents cannot justify passing the adjudication order once the compounding orders have been passed and complied with by petitioners. Passing of the adjudication order after the offence has been compounded, is thus contrary to the statutory provisions discussed hereinabove, is not maintainable and thus without jurisdiction.

15. Mr. Patil has further submitted that the impugned adjudication order passed by respondent No.1 is an appealable order and petitioners should be relegated to the alternate remedy of filing the statutory appeal under section 19 of the said Act before the Appellate Tribunal. This submission deserves to be rejected at the threshold. As held by us, the impugned adjudication order has been passed without jurisdiction in view of the fact that the offence contravened by petitioners have been compounded by the statutory

Compounding Authority before the passing of the impugned order.

Hence, we reject this submission advanced by Mr. Patil.

16. In view of the above discussion and findings, the impugned order dated 21.11.2008 deserves to be interfered with and is accordingly quashed and set aside. Writ Petition stands allowed in terms of prayer clause "c" which reads as under:

"c) that a writ in the nature of Mandamus may be issued commanding the Respondents to act according to law and/or cancel and/or withdraw and/or rescind the impugned order dated 21st November, 2008 passed by the Respondent No.1 and the Show Cause Notice dated 11th June, 2008 issued by the Respondent No.1 and all proceedings there under and/or in pursuance thereof."

17. Rule made absolute. No costs.

18. Petition disposed.

[MILIND N. JADHAV, J.]

[K. R. SHRIRAM, J.]

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by AJAY
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