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31.08.2023  
Ct-237  
(RD)

In the High Court at Calcutta  
(Criminal Revisional Jurisdiction)  
Appellate side

**CRR 2089 of 2023**  
**(Assigned)**  
**Securities and Exchange Board of India (SEBI)**  
**Vs.**  
**Waris Agrotech (India) Limited**

Mr. Sandipan Ganguly, Sr. Adv.  
Mr. Karan Dudhewala, Adv.  
Mr. Indradeep Basu, Adv.

.... For the Petitioner

Mr. Sumanta Ganguly, Adv.

... For the op no. 2,3 & 5.

**1.** The order dated 02.03.2023 passed by Ld. Judge, 5<sup>th</sup> Special Court, Kolkata in connection with Case no. SEBI/24 of 2017 under Sections 56,60 & 70 read with Sections 2(36), 55A, 67 and 73 of the Companies Act 1956 read with Section 621 of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013 and the SEBI(Disclosures and Investor Protection) Guidelines, 2000 (“the DIP Guidelines” – Since rescinded) read with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“the ICDR Regulations”) and for offences punishable under Sections 24 and 27 of the Securities and Exchange Board of India Act, is challenged.

**2.** By the impugned order Ld. Judge refused the application under Section 311 Code of Criminal Procedure (for short CrPC) on the ground that the

documents sought for admission in evidence were not annexed to the petition of complaint and also on the ground that copy of those documents were not served upon the defendants.

**3.** The Securities and Exchange Board of India (for short SEBI) lodged a complaint against the opposite parties upon noticing that petitioner no. 1/ Company was not complying with the legal Provisions of the Act. As a sequel, SEBI issued an Order No. WTM/PS/44/ERO/AUGUST/2015 dated August 24, 2015 directing the said Company to comply with SEBI directions and make repayments to the investors from whom the Company raised an amount of Rs. 36 lacs through issuance of preference shares to 475 entities without complying with the regulatory Provisions applicable to a public issue. But, Company did not comply the directions/order of SEBI.

**4.** Ld. Senior Advocate, Mr. Sandipan Ganguly, Appearing on behalf of the petitioner, has submitted that the office order as well as communication receipt are required to be brought on record for decision of the case and for that reason the petition under Section 311 of CrPC was filed before the Trial Court.

**5.** In opposition to that, Ld. Advocate, Mr. Sumanta Ganguly, appearing on behalf of the opposite parties has submitted that petition under Section 311 was filed with a view to bring the track reports i.e. communication receipt of the order only not the order itself. Further it is submitted that the efforts on the part of the SEBI was

taken when the case reached at the final stage of argument.

**6.** It cannot be disputed that to constitute offences leveled against the accused/opposite parties, communication of the notice i.e. WTM order is essential. In this case, written complaint clearly reveals that WTM order was communicated to the opposite parties but that was not revealed from the examination in chief of the witness (PW1). But, during cross-examination service of WTM order was denied by putting suggestions and witness also denied that suggestion.

**7.** Be that as it may, service of notice i.e. WTM order is necessary to constitute offences under the SEBI Act. The Ld. Judge was dealing with an offence under the SEBI Act on a written complaint which clearly reveals service of WTM order upon the opposite parties/accused.

**8.** In this conjecture, it would be relevant to reproduce the Section 311 of CrPC as follows:-

***“ Section 311. Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”***

It would be further relevant to reproduce the Section 165 of the Evidence Act, 1872 as follows:-

***“ 165. Judge’s power to put questions or order production.—The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question: Provided that the Judgment must be based upon facts declared by this Act to be relevant, and duly proved: Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with***

***primary evidence of any document, except in the cases hereinbefore excepted.”***

**9.** Therefore, conjoint reading of the aforesaid Provisions it appears that the Trial Court is armed with enormous power to record an order directing the parties, sue moto or on an application, to produce documents for just decision of the case. In this case, SEBI filed a case agisnt the opposite parties for commission of offence under the SEBI Act after serving order of WTM upon the opposite parties as it appears from the written complaint. It is also evident from the record that at the time of examination of PW1 that WTM order and communication receipt were not produced which was revealed from the cross-examination of the said witness. In that circumstances, Ld. Trial Judge, ought to have directed the complainant to produce those documents for just decision of the case.

**10.** In the aforesaid view of the matter, I am of the opinion the order impugned is unsustainable.

**11.** Accordingly, the order no. 45 dated 02.03.2023 passed in Case No. SEBI/24/2017 stands set aside with a liberty to re-file the application under Section 311 of CrPC by the complainant for consideration of the Ld. Judge.

**12.** With the aforesaid observations, CRR 2089 of 2023 stands disposed of.

**13.** All parties to this application shall act on the server copy of this order downloaded from the official website of this Court.

**14.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Bibhas Ranjan De)**