IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 4127 of 2011
CRAN 18 of 2020

RAJIV JAJODIA & ORS.
VS.
ANANTA KUMAR SETHI

For the Petitioners : Mr. Ayan Bhattacharyya, Adv.
Ms. Surabhi Banerjee, Adv.
Mr. R. Banerjee, Adv.

For the O.P. : Mr. Anirban Mitra, Adv.
Mr. Sagar Saha, Adv.

Hearing concluded on : 29th April, 2023

Judgement on : 4th May, 2023

<u>Siddhartha Roy Chowdhury, J.:</u>

1. This revisional application challenges the proceeding being Case No. C/1079 of 2010 pending before the learned Metropolitan Magistrate, 10th Court, Calcutta.

2. Briefly stated, Mr. Ananta Kumar Sethi, Assistant Registrar of Companies, West Bengal filed a petition of complaint before the learned Chief Metropolitan Magistrate, Kolkata against Sanjiv Jajodia and others, Directors/Signatories of the company M/s Chandi Steel Industries Limited alleging, *inter alia,* that accused no. 1 to 6 being the Directors/Signatories of the prospectus of the company M/s Chandi Steel Industries Limited having Authorized capital of Rs. 12

crore and paid up share capital is Rs.10,54,00,000/-. In course of inspection of the books of accounts and other records of the company carried out by the Inspecting Officer duly authorized by the Central Government under Section 209 A of the Company Act, it came to the fore that an infraction of Section 63 of the Act caused by the company and its Directors/Signatories in the following manner:- The company made public issue of Rs. 55 lacs equity share of Rs. 10 each for cash at par aggregating Rs. 550 lacs on 3rd November, 2003. The public issue of shares was made with the objects of (i) Meeting expenditure of expansion for installed capacity of re-rolling mill from 10800 MT to 44000 MT at cost of Rs. 525 lacs and (ii) for meeting issue expenses and listing expenses to the extent of Rs. 25,00,000/- in the prospectus dated 22nd October, 2003 for the aforesaid issue and company promised to spend Rs. 525 lacs for expanding and reaching the installed capacity of re-rolling mill to 44,000 metric ton within 1st April, 2004. But it is observed from the books and accounts of the company that it could not fulfill its promises. Up to 27th March, 2006 the company could spend Rs. 156 lacs out of the public issue and could not reach the installed capacity of re-rolling mills to 44000 MT. Thus, the company did not keep the promise made in the prospectus dated 22nd October, 2003 and thereby provisions of Section 62/63/68 of the Companies Act, 1956 have been attracted by reason of the untrue statements made in the said prospectus. Resolution was passed at the extraordinary general meeting of the company on 27th March, 2006 wherein it was resolved that balance Rs. 381.20 lacs out of the public issue fund shall be utilized for modernization of the plant and equipments of the company. The manner in which the projections have been envisaged in the prospectus regarding post expansion commercial production to commence from 1st April, 2004 without any proper foresight, is considered in contradistinction with the the actual utilization of the funds of the projects it appears to be mis-statement in the prospectus/offer documents dated 22nd October, 2003 leading to violation of Section 63 of the Act. The show-cause notice was issued to the accused persons by the complainant by speed post. The company acknowledged such infraction of the provision as laid down under the Act.

3. Mr. Ayan Bhattacharyya, learned Counsel representing the petitioner submits that in order to attract the provision of Section 63 of the Companies Act there should be a statement, deliberately made by the company in the prospectus which is untrue. In this present case no such untrue statement was made by the company in the prospectus in fact or in substance. The company undertook the expansion project but could not carry it forward and had to abandon it mid way because of some unforeseen and unavoidable factors after the modernization scheme was approved. In the prospectus the company clearly underscored the risk factors in point no. 1, 2 and 6 and external factors mentioned in the prospectus to cover the act of the company for abandoning the proposed extension project. The statement made in the prospectus cannot be said to be untrue simply because the company failed to carry out the project. In order to mark

a statement as untrue one has to show that the statement so made was never or has never been intended by the maker of the same while making the statement. It is further submitted by Mr. Bhattacharyya that this issue was decided by the Co-ordinate Bench in CRR No. 840 of 2010 by Hon'ble Justice Kanchan Chakraborty as His Lordship then was and the proceeding was quashed qua the accused no. 1 Sanjiv Jajodia. The petitioner being on the same footing as that of Sanjiv Jajodia are seeking the same relief which may be extended to them particularly when complainant opposite party did not challenge the order passed in CRR No. 840 of 2010.

4. It is further that Section 63 of the Act, 1956 postulates that a deliberate and false statement at the behest of its maker had to be in conjunction with the existence of mens rea. The statement must be a false one when it was made. Merely because specifically an object stated in the prospectus was not achieved by the company, a proceeding under Section 63 of the Act of 1956 cannot be launched. It is further contended by Mr. Bhattacharyya that unless a statute either clearly or by necessary implication ruled out mens rea as a constituent part of crime, a person cannot be held guilty unless it is proved that he has got a guilty mind.

5. Refuting such contention, Mr. Anirban Mitra, learned Counsel representing the opposite party submits that the complaint was initiated after taking into consideration the report of inspection. The petitioners being the Directors cannot escape the liability for infraction of the provision of Companies Act. They made the

statement in the prospectus knowing fully well the inherent absurdity to fulfill such project. Therefore, there is every reason to presume that the petitioners since inception with an evil design made untrue statement in the prospectus. Without holding the trial it cannot be said that the petitioners shared the same pedestal with the petitioner of CRR 840 of 2010.

6. Mr. Ayan Bhattachryya relies upon a judgement of Hon'ble Apex Court in the case of ***Ravula Hariprasada Rao vs. The State*** reported in **AIR 1951 SC 204**. The provision of Section 63 (1) of the Companies Act reads as follows:-

> *"63. Criminal liability for mis- statements in prospectus.*
>
> *(1) Where a prospectus issued after the commencement of this Act includes any untrue statement, every person who authorised the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did, up to the time of the issue of the prospectus believe, that the statement was true."*

7. When the company admittedly had taken up the project according to the object proclaimed in the prospectus but could not continue with the same because of certain unavoidable circumstances it cannot be said that the company or its Directors did not have the intention at all to carry out expansion project and the re-rolling mill. The company admittedly spent Rs. 156 lacs towards expansion of the project but ultimately found that it would be impossible and not

feasible to carry out the project. The company then convened a general meeting on 27th March, 2006 and took the decision to abandon the project and to utilize the balance public issue of Rs. 381.20 lacs for the modernization scheme of the company. Such decision was taken unanimously, complying with the provision of Section 61 of the Act which empowers the company in an appropriate situation to change the scheme if it is approved by general body meeting. The attending circumstance does not indicate the fact that the maker of the statement, while making such statement in the prospectus was aware that the statement made in the prospectus is untrue. Had the considerable amount of public issue not been spent on the expansion of re-rolling mill project, as promised in the prospectus, the position would have been quite different. When the company undertook the project as proclaimed in the prospectus and spent considerable portion of public issue on that account and later had to abandon the project due to some unforeseen reasons, it cannot be said that the statement made in the prospectus was untrue.

8. In view of the attending facts and circumstances of the case as well as in view of the fact that by accepting the verdict of Hon'ble Justice Kanchan Chakraborty in the case of Sanjiv Jajodia vs. Ananta Kumar Sethi the opposite party accepted that there was no infraction of the statutory provision as laid down under the Act and no offence was committed within the meaning of Section 63 of the said Act.

9. Under such circumstances, I am of the view that the proceeding pending before the learned Trial Court, should be quashed to avert

the abuse of process of law, which I accordingly do. The proceeding in C/1079 of 2010 pending before the learned Metropolitan Magistrate, 10th Court, Calcutta stands quashed. The criminal revision is thus allowed on contest but without cost. Interim order of stay, if any, stands vacated. Pending application, if any, stands disposed of.

10. Let a copy of this judgement be sent down to the learned Trial Court for information and necessary compliance.

11. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)