

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 535 OF 2024

Securities and Exchange Board of India

.. Applicant

Versus

Accurate Exports Ltd. and Ors.

.. Respondents

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- Ms. Sabiha Ansari a/w. Ms. Tanvi Rane, Advocates i/by Sabiha Ansari & Associates for Applicant.
 - Ms. Dhanalakshmi Krishnaiyer, APP for the State.
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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 18, 2024.

P.C.:

1. Heard Ms. Ansari, learned Advocate for Applicant and Ms. Krishnaiyer, learned APP for the State.

2. Present Criminal Revision Application (for short “**CRA**”) takes exception to the impugned order dated 08.05.2024 passed by the SEBI Special Judge, City Civil & Sessions Court, Gr. Bombay (C.R.No.22) which is appended at page No.52 of the CRA in Special Case (SEBI) No.09 of 2016.

3. Applicant – Securities and Exchange Board of India (for short “**SEBI**”) filed an Application for extension of period of limitation under Section 473 of Code of Criminal Procedure, 1973 (for short “**Cr.PC.**”) seeking leave of the Court to condone the delay in filing the complaint,

if any. The date of the Application is 30.11.2004 which is appended at page No.9 of the CRA. By virtue of the said Application alongwith complaint of even date, it is SEBI's case that accused Nos.1 to 11 violated the statutory and mandatory provisions of namely Regulation 6(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (for short "**SEBI Regulations**") alongwith the provisions contained in SEBI Circular No. SMD/SED/CIR/93/23321 and Sections 11 and 12 of the Securities and Exchange Board of India Act, 1992 (for short "**SEBI Act**").

4. It is contended by the learned Advocate appearing for SEBI while taking me through the Application which was filed on 30.11.2004 that infact between 2001 i.e. when dereliction on the part of accused took place and the year 2004 the issue was under active investigation and enquiry by the Bombay Stock Exchange initially and thereafter SEBI and adequate correspondence was entered into with the accused to furnish the desired material to SEBI. She would next draw my attention to the approval received by SEBI from the Enforcement Directorate on 30.09.2004 appended to the Application at page No.132 and within three months of receiving the approval the Application and complaint both dated 30.11.2004 were filed before the learned Trial Court.

5. Application is filed by SEBI as a matter of abundant caution so as to ensure that on a technicality there would be no rejection of its complaint. Learned Advocate has drawn my attention to the approval received which is appended at page No.132 of the CRA. She would submit that in this context the impugned order dated 08.05.2024 has been passed after a hiatus of almost 20 years which rejects the Application on the specious ground that the Application is not supported by sufficient ground and no documents are filed to show time was required to complete official formalities resulting in the delay that is caused upto 2004.

6. Another reason made attributable in the impugned order is that though the Application is filed in the year 2004 and reply to the Application is filed in the year 2007, no steps were taken by SEBI to get the Application decided by the Trial Court and in such circumstances approach of SEBI while dealing with the matter was very casual.

7. In so far as the first ground is concerned, mere perusal of the Application would clearly suggest that substantial material has indeed been placed on record by SEBI which was filed alongwith the Application in the form of a complaint of even date dated 30.11.2004 with respect to violation by the accused as delineated herein above. In so far as the second ground is concerned, learned Advocate for SEBI

would inform the Court that due to jurisdictional issue the said Application remained to be decided as it was not sure the Court in which Application has filed to decide the jurisdiction over a period of time.

8. That apart, what I find strange in the impugned order dated 08.05.2024 is the fact that the said order is *sans* any reasons which have been given to reject the Application. None of the grounds stated in the Application dated 30.11.2004 which is appended at page No.9 of the CRA have been decided. Infact, the Application *prima facie* appears to have been summarily rejected by the impugned order.

9. *PER CONTRA*, Ms. Krishnaiyer, learned APP appearing for the State would draw my attention to the impugned order dated 08.05.2024 and would make submissions in support of the said order and state that ground of insufficient material is considered by the Court. She would submit that in the present case, Applicant – SEBI has taken more than 3 years to enquire and investigate the derelictions of the 11 accused from the year 2001 and 2004, for which there is no explanation offered whatsoever. She would submit that save and except the fact that the approval for initiating penal criminal prosecution was received by SEBI only on 30.09.2004, which cannot be a ground to consider SEBI's case, *prima facie* that delay had occurred for which no explanation is given. She would draw my attention to the

reasons given in paragraph No.4 of the impugned order and contend that there are no documents whatsoever placed on record to show the nature of inspection and enquiry conducted by SEBI between 2001 and 2004 which has been upheld by the learned Trial Court and which is one of the grounds enumerated to reject the Application filed by SEBI. Hence, she would submit that the impugned order dated 08.05.2024 has been correctly passed.

10. I have heard Ms. Ansari, learned Advocate for Applicant – SEBI and Ms. Krishnaiyer, learned APP for the State and with the able assistance of both the learned Advocates perused the impugned order dated 08.05.2024.

11. At the outset, it is seen that Application filed by SEBI notes the details of the violation committed by the accused Nos.1 to 11 and the power of SEBI to investigate the said details. It is stated that only after SEBI was finally convinced that the accused has violated the statutory provisions of law until in July 2004 the complaint was filed after obtaining the necessary statutory approval. SEBI is a government body.

12. It is also stated that Application was filed as a matter of abundant caution with the prayer for seeking condonation of delay of 24 months. Alongwith the Application, complaint has been filed which runs into 66 pages alongwith the list of witnesses and more specifically

the list of documents for the benefit of the Trial Court. In that view of the matter, grounds stated in the Application are clearly not sustainable as adequate material was placed on record and the said delay ought to therefore have been condoned.

13. Hence, to conclude that the Application is bereft of the details would not be an appropriate reason or proposition to reject the Application for condonation of delay, if any, in the present case.

14. *Prima facie*, I am of the view that there is no delay whatsoever in filing the complaint itself. However, there is delay undoubtedly in determining the said Application which is done after 20 years. However, that would not count and the issue will have to be taken to its logical end. I am therefore inclined to accept the submissions advanced by the learned Advocate for SEBI delineated herein above and reject the submissions of the learned APP.

15. The impugned order deserves to be interfered with and is therefore quashed and set aside. The delay stands condoned. Resultantly, Application filed by Applicant – SEBI seeking condonation of delay, if any, or the delay of 24 months as stated in the Application, in the interest of justice and on the grounds stated therein and made out in the Revision stands allowed. The concerned Trial Court shall proceed with determining the complaint dated 30.11.2004 filed by Applicant – SEBI strictly in accordance with law.

16. CRA stands allowed in the above terms and disposed.

[MILIND N. JADHAV, J.]

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