

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Jay Sengupta

C.R.R. 1495 of 2025

Swapan Sadhukhan & another.

-vs-

State of West Bengal & another.

For the Petitioners : Mr. Ranjan Kali
Ms. Mitul Chakraborty
Ms. Payel Nath

For the SEBI : Mr. Rajib Ray
Mr. Debashis Halder

Heard on : 14.05.2025

Judgment on : 14.05.2025

Jay Sengupta, J.:

This is an application, inter alia, praying for setting aside of the order dated 05.02.2025 passed by the learned Session Judge, 5th Special Court, Calcutta in connection with WTM/PS/ERO/64/JAN/2018 and praying for discharge of the petitioners from the instant case.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners were not the Directors of the Company in question at the relevant time i.e., for the years 2011-2012 and 2012-2013. There is no specific allegation made against the present petitioners. There is no basis on which the petitioners had been proceeded against. All the points taken up by the petitioners in the discharge application have not been considered by the learned trial Court. A recovery proceeding is pending. As such, the learned trial Court should not have hurried the matter and ought not to have gone for framing charges.

Learned counsel appearing on behalf of the SEBI opposes the prayer and submits as follows. As per the directions passed by this Court in a writ petition, steps were taken against the company in question and its Directors. The present petitioners happened to be the Directors/Promoters of the company and were very much at the helm of affairs when money was illegally mobilized. In violation of the norms, Non –Convertible Debentures were issued to 24915 persons . A huge sum was collected illegally. While the petitioners have claimed that they had resigned in October 2012, the period for which the offences had taken place started from 2010-2011 and continued till 2012-2013.

It appears that the proceeding against the company and its Director were initiated after a direction was passed by this Court in a

writ petition.

In the petition of complaint, there is clear averment made at paragraph 7 that the accused nos. 2 to 8 were the Directors/Promoters/Manager /Secretary/ Person in charge of the business of accused no. 1 and were responsible for the day to day affairs of the company as observed from the Register of Directors managing directors, manager and secretary, etc. obtained from the Ministry of Corporate Affairs.

There is no need for any better and more detailed portrayal of how the petitioners were connected to the present company than was done in the petition of complaint.

A prima facie case is made out from the petition of complaint as it was clearly mentioned there about the manner and mode in which funds were illegally mobilized by the accused.

The complainant's case was that on examination of provisional balance sheet for the financial year ending March 2013 and other information submitted by the accused no.1 company, it was found that it had issued Non –Convertible Debentures to approximately 24915 persons and raised an amount of approximately Rs. 11.30 crores during the financial year 2010-2011, 2011-2012 and 2012-2013 without complying with regulations, provisions applicable to a public issue. There was violation of provision of the Companies Act and the provisions of the SEBI (Issue and Listing of Debt Securities)

Regulation 2008.

It was further alleged that the accused nos. 2 to 8 being the Directors and persons in charge of the accused no.1 were fully responsible for the day to day affairs of the company and were accordingly, to be hauled up for such offences.

The learned trial Court passed a reasoned order while framing charge. It considered the contentions of the petitioners as taken up in the application for discharge.

As a prima facie case is made out against the petitioners, I do not find any reason to interfere with the impugned proceeding.

Accordingly, the revisional application is dismissed.

However, the petitioners shall be at liberty to raise all the points available to them including the ones taken up herein during trial and the trial Court shall not be swayed by any observations made by this Court herein.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta, J.)