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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 14th JANUARY, 2025

IN THE MATTER OF:

+ **CRL.M.C. 507/2022 & CRL.M.A. 2212/2022**

SANJAY KUMAR

.....Petitioner

Through: Mr. Jagdeep Singh Bakshi, Sr. Advocate with Ms. Anshika Maheshwari, Ms. Varada Bhutani, Mr. Mudit Jain, Mr. Amitesh Singh Bakshi, Mr. Navroop Singh Bakshi, Ms. Mahima Malhotra and Mr. Neetej, Advocates.

versus

SECURITIES AND EXCHANGE BOARD OF INDIA

.....Respondent

Through: Ms. Pinky Anand, Sr. Advocate with Mr. Ashish Aggarwal and Ms. Asees Jasmine Kaur, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court for quashing/setting aside of the Order dated 26.11.2021 passed by the Ld. Additional Sessions Judge, Tiz Hazari, dismissing an application filed by the Petitioner under Section 91 Cr.P.C. The Petitioner had filed the said application seeking directions to the Respondent-Security and Exchange Board of India (*hereinafter "SEBI"*) to place on record all the statements/findings/documents considered by the High Powered Advisory Committee (*hereinafter "HPAC"*) and the panel of Whole Time Members (WTC) while rejecting the request of the Petitioner herein for compounding the offence alleged in the complaint against the



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Petitioner herein.

2. Shorn of unnecessary details, the facts leading to the filing of the present petition are as under"-

- a. On 28.05.2004, a criminal complaint, being Criminal Complaint No.12/2016, was filed by the Responder under Section 200 of the CrPC read with Section 26 of the SEBI Act, 1992 before the learned trial Court against the Petitioner and another accused Mr. Vivek Nagpal under Section 11C(6) read with Section 27 of the SEBI Act, 1992.
- b. It is stated that the allegations against the Petitioner and Mr. Vivek Nagpal are that they were found actively involved in fraudulent and unfair transactions/activities manipulating the market in the script of "Padmini Technologies". It is stated that the allegations in the complaint is that the Petitioner and Mr. Vivek Nagpal failed to respond to the summons received by them. The role of the Petitioner is that the Petitioner played an active role in facilitating an irregular preferential allotment in order to manipulate the market and create artificial price rise of the shares of "Padmini Technologies". It is stated that the Petitioner is an accused of creating forged and fabricated documents to achieve the aforesaid objective and also that the Petitioner has forged a sale bill of one M/s Shivesh Computers, allegedly to whom one of the allottees namely Alok Khetan had sold his allotment at the instance of the Petitioner. It is stated that M/s Shivesh Computers has denied buying shares of the Company and did not know Mr. Alok Khetan. The signatures of



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Mr. R. K. Surinder Kumar Verma, one of the Directors of M/s Shivesh Computers Pvt. Ltd. was also found to have been forged on the sale bill. It is stated that a separate complaint has also been filed by the Complainant against M/s Padmini Technologies and various other entities including accused persons herein, for violation of Regulations 3, 4 and 6 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1995 and Section 23(1)(b) of Securities Contracts (Regulations) Act, 1956.

- c. It is stated that during the pendency of the complaint, the Petitioner filed an application under Section 24-A of the SEBI Act seeking compounding of offences in the criminal complaint pending before the Ld. Trial Court for alleged violation of Section 11C(6) of SEBI Act, 1992. SEBI (Settlement Proceedings) Regulations, 2018 has been framed for the purpose of compounding. It is stated that a High Powered Advisory Committee (HPAC) has been constituted under Section 11C(6) of the SEBI Act. The HPAC gave its opinion on the compounding of the offences. It transpires that the HPAC after considering the compounding application, recommended that the offence should not be compounded. The report of the Committee has been submitted before the Panel of Whole Time Members of SEBI and the Panel of Whole Time Members of SEBI has concurred with the recommendation of the HPAC not to compound the offence.
- d. A reply was filed by the Respondent in the Court opposing the



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compounding. Pursuant to the aforesaid reply filed by the Respondent, the Petitioner moved an application under Section 91 of the Cr.P.C. seeking directions from the Court to the Respondent to place on record all the statements/documents/findings considered by the HPAC in its meeting dated 27.12.2019 and the Whole Time Members of SEBI, while advising/recommending upon the compounding application of the Petitioner so that it can place its arguments for adjudication of the application under Section 24A of the SEBI Act.

- e. The said application has been rejected vide Order dated 26.11.2021. The Ld. Trial Court while placing reliance upon Regulations 29(2) of the Settlement Regulations, 2018 has stated that regulations clearly talk about any proposals, information submitted, or representation made by the Petitioner. The Ld. Trial Court is of the opinion that the reply filed by the SEBI not only contains the decision of rejection but also about the circumstances that led to the rejection of request for compounding the application. The Ld. Trial Court held that prayer to compound the offence under the SEBI Act shall be considered by the Court, uninfluenced by the rejection of similar request by the authorities of SEBI. It is this Judgment which is under challenge in the Petition.
3. Notice in the present Petition was issued on 03.02.2022. Reply has been filed by the Respondent/SEBI
4. Learned Senior Counsel for the Petitioner submits that penal actions



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are attracted for the violation of Section 11C(6) read with Section 27 of the SEBI and the Petitioner is entitled to know the reasons which have been given by the HPAC to come to the conclusion that the SEBI must not agree for compounding the offence. He submits that it is open for the Petitioner to contend that the decision taken by the HPAC is arbitrary and has been arrived at without considering the necessary documents. He contends that the decision of the Committee is not binding on the Trial Court and therefore, it is always open for the Petitioner to challenge these findings in the application under Section 24A of the SEBI Act. He states that for placing an effective challenge, the Petitioner has to peruse the recommendations of the HPAC. Learned Senior Counsel for the Petitioner places reliance on the judgment passed by the Apex Court in Prakash Gupta vs. SEBI, (2021) 17 SCC 451 and T. Takano v. SEBI, (2022) 8 SCC 162. He contends that the Apex Court in T. Takano (supra) has held that it is the duty of SEBI to disclose investigative material and all the information which is relevant to the proceedings initiated against a person as a matter of right. The learned Senior Counsel for the Petitioner places reliance on a Judgment passed by the High Court of Bombay in Vasant Jagivandas Kotak and Others vs. SEBI and Ors., 2021 OnLine Bom 2931, where the SEBI has agreed to place on record documents relied upon by the HPAC before the High Court of Bombay. He states that in the present case, the SEBI has taken a contrary stand by refusing to do the same.

5. *Per contra*, learned Senior Counsel appearing for the SEBI contends that the entire decision of the Panel of Whole Time Members of SEBI has been placed in the form of reply to compounding application along with the reasons thereto and therefore, there is no necessity for providing the



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documents as sought for by the Petitioner. He contends that there is confidentiality attached to the record of proceedings which cannot be made public under Clause 29 of the Settlement Regulations. He states that in case the Court wants the documents, the same can be provided to the Court for the Court's perusal at the time of arguments. Learned Senior Counsel for the Respondent places reliance on Regulations 29(2) of the Settlement Regulations which states that the material placed before the HPAC or the Board cannot be used as evidence before any Court or Tribunal.

6. Heard the learned Senior Counsels for the parties and perused the material on record.

7. Section 24A of the SEBI Act provides that the Securities Appellate Tribunal (*hereinafter referred to as "the SAT"*) or the Court, before which the proceedings are pending for adjudication of offence under the SEBI Act, has the power to compound the offences. The Apex Court in Prakash Gupta (*supra*) has held that the proceedings for trial under the SEBI Act are initiated on the complaint made by the SEBI by virtue of Section 26 of the SEBI Act. SEBI is a regulatory and prosecuting agency under the legislation. However, Section 24A does not stipulate that the consent of SEBI is necessary for the Court before which the proceedings are pending to compound the offence. Relevant portions of the said judgment reads as under:

“93. In the present case, it is evident that Section 24-A does not stipulate that the consent of SEBI is necessary for SAT or the court before which such proceedings are pending to compound an offence. Where Parliament intended that a recommendation by SEBI is necessary, it has made specific provisions in that regard in the same statute. Section 24-B provides a



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useful contrast. Section 24-B(1) empowers the Union Government on the recommendation of SEBI, if it is satisfied that a person who has violated the Act or the Rules or Regulations has made a full and true disclosure in respect of the alleged violation, to grant an immunity from prosecution for an offence subject to such conditions as it may impose. The second proviso clarifies that the recommendation of SEBI would not be binding upon the Union Government. In other words, Section 24-B has provided for the exercise of powers by the Central Government to grant immunity from prosecution on the recommendation of SEBI. In contrast, Section 24-A is conspicuously silent in regard to the consent of SEBI before SAT or, as the case may be, the court before which the proceeding is pending can exercise the power. Hence, it is clear that SEBI's consent cannot be mandatory before SAT or the court before which the proceeding is pending, for exercising the power of compounding under Section 24-A.

94. However, it is also important to remember that proceedings for the trial of offences under the SEBI Act are initiated on a complaint made by SEBI by virtue of Section 26 of the SEBI Act. SEBI is a regulatory and prosecuting agency under the legislation. Hence, while the statutory provisions do not entrust SEBI with an authority in the nature of a veto under the provisions of Section 24-A, it is equally necessary to understand the importance of its role and position.”

8. In the abovementioned Judgment, the Apex Court, after making the aforesaid observation, has further observed that due weightage has to be given to the opinion of the Committee and the Court must be wary of giving its own wisdom on the gravity of the offence or the impact on the markets while discarding the expert opinion of the SEBI. Paragraph No.102 of the said Judgment reads as under:



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“102. While the statute has entrusted the powers of compounding offences to SAT or to the court, as the case may be, before which the proceedings are pending, the view of SEBI as an expert regulator must necessarily be borne in mind by SAT and the court, and would be entitled to a degree of deference. While SEBI does not have a veto, having regard to the language of Section 24-A, its views must be elicited. The view of SEBI, as envisaged in the FAQs accompanying SEBI's Circular dated 20-4-2007, must undoubtedly be sought by SAT or the court, to decide on whether an offence should be compounded. For SEBI can provide an expert view on the nature and gravity of the offence and its implication upon the protection of investors and the stability of the securities' market. These considerations and others which SEBI may place before SAT or the court, would be of relevance in determining as to whether an application for compounding should be allowed. We, therefore, hold that before taking a decision on whether to compound an offence punishable under Section 24(1), SAT or the court must obtain the views of SEBI for furnishing guidance to its ultimate decision. These views, unless manifestly arbitrary or mala fide, must be accorded a high degree of deference. The court must be wary of substituting its own wisdom on the gravity of the offence or the impact on the markets, while discarding the expert opinion of SEBI.”

9. By virtue of its application, the Petitioner has prayed for a direction to the SEBI to place on record all the statements/findings/documents considered by the HPAC in its meeting. This Court is of the opinion that while considering the application for compounding the offence it would be necessary for the Court to understand the factors that have to be taken into account for compounding the offence. The application of the Petitioner for a



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direction to produce the documents cannot be said to be only an exercise to delay the trial or proceedings as these documents would be important to decide the application for compounding. The Apex Court in Prakash Gupta (supra) has laid down the factors for compounding and the same reads as under:

“104. Section 24-A only provides SAT or the court before which proceedings are pending with the power to compound the offences, without providing any guideline as to when should this take place. Hence, we deem it necessary to elucidate upon some guidelines which SAT or such courts must take into account while adjudicating an application under Section 24-A:

104.1. They should consider the factors enumerated in SEBI's Circular dated 20-4-2007 and the accompanying FAQs, while deciding whether to allow an application for a consent order or an application for compounding. These factors, which are non-exhaustive, are:

“Following factors, which are only indicative, may be taken into consideration for the purpose of passing Consent Orders and also in the context of compounding of offences under the respective statute:

- 1. Whether violation is intentional.*
- 2. Party's conduct in the investigation and disclosure of full facts.*
- 3. Gravity of charge i.e. charge like fraud, market manipulation or insider trading.*
- 4. History of non-compliance. Good track record of the violator i.e. it had not been found guilty of similar or serious violations in the past.*



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5. *Whether there were circumstances beyond the control of the party.*
6. *Violation is technical and/or minor in nature and whether violation warrants penalty.*
7. *Consideration of the amount of investors' harm or party's gain.*
8. *Processes which have been introduced since the violation to minimise future violations/lapses.*
9. *Compliance schedule proposed by the party.*
10. *Economic benefits accruing to a party from delayed or avoided compliance.*
11. *Conditions where necessary to deter future non-compliance by the same or another party.*
12. *Satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them.*
13. *Compliance of the civil enforcement action by the accused.*
14. *Party has undergone any other regulatory enforcement action for the same violation.*
15. *Any other factors necessary in the facts and circumstances of the case."*

104.2. *According to the Circular dated 20-4-2007 and the accompanying FAQs, an accused while filing their application for compounding has to also submit a copy to SEBI, so it can be placed before HPAC. The*



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recommendation of HPAC is then filed before SAT or the court, as the case may be. As such, SAT or the court must give due deference to such opinion. As mentioned above, the opinion of HPAC and SEBI indicates their position on the effect of non-prosecution on maintainability of market structures. Hence, SAT or the court must have cogent reasons to differ from the opinion provided and should only do so when it believes the reasons provided by SEBI/HPAC are mala fide or manifestly arbitrary.

104.3. *SAT or court should ensure that the proceedings under Section 24-A do not mirror a proceeding for quashing the criminal complaint under Section 482CrPC, thereby providing the accused a second bite at the cherry. The principle behind compounding, as noted before in this judgment, is that the aggrieved party has been restituted by the accused and it consents to end the dispute. Since the aggrieved party is not present before SAT or the court and most of the offences are of a public character, it should be circumspect in its role. In the generality of instances, it should rely on SEBI's opinion as to whether such restitution has taken place.*

104.4. *Finally, SAT or the court should consider whether the offence committed by the party submitting the application under Section 24-A is private in nature, or it is of a public character, the non-prosecution of which will affect others at large. As such, the latter should not be compounded, even if restitution has taken place.”*

10. The fact that there is no direction by the Supreme Court to the SEBI in Prakash Gupta (supra) to produce the documents does not mean that the Court does not have the power under Section 91 to summon these documents. In fact, the SEBI, in its reply, has stated that it does not have any



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objection in producing the documents before the Court if the Court wants to see the documents. In the considered opinion of this Court, the documents will be necessary for the Court to consider the application of the Petitioner to quash the complaint in view of the guidelines laid down by the Apex Court.

11. The issue as to whether these documents should be supplied to the Petitioner or not, does it contain such sensitive material, which, according to the SEBI, cannot be shared with the Petitioner herein, is a fact that the competent Court has to consider while dealing the application by the accused challenging the opinion of the HPAC. In any event, the documents are only relevant for the purpose of compounding the offence.

12. Learned Counsel for the SEBI has placed reliance on Regulation 29 of the Settlement Regulation which reads as under:

“29. (1) All information submitted and discussions held in pursuance of the settlement proceedings under these regulations shall be deemed to have been received or made in a fiduciary capacity and the same may not be released to the public, if the same prejudices the Board and/or the applicant.

(2) Where an application is rejected or withdrawn, the applicant and the Board shall not rely upon or introduce as evidence before any court or Tribunal, any proposals made or information submitted or representation made by the applicant under these regulations:

Provided that this sub-regulation shall not apply where the settlement order is revoked or withdrawn under these regulations.

Explanation. – When any fact is discovered in



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consequence of information received from a person in pursuance of an application, so much of such information, whether it amounts to an admission or not, as relates distinctly to the fact thereby discovered, may be proved”

13. Regulation 29(1) of the Settlement Regulation provides that these documents cannot be given to public if the same prejudices the Board and/or the applicant. Regulation 29(2) of the Settlement Regulation provides that these documents cannot be used as evidence before any court or Tribunal. In the opinion of this Court, these Regulations cannot prohibit any Court to look into the material which was placed before the HPAC or the SEBI Board before it comes to the conclusion, to agree for compounding or not to agree for compounding of the offence. Under Regulation 29 of the Settlement Regulation, the decision taken by the Board is not binding on the Court even if HPAC recommends for compounding of the offence. The Court can take a different view and reject the compounding if they do not meet the guidelines as laid down by the Apex Court as laid down in Prakash Gupta (supra).

14. In view of the above, the materials sought by the Petitioner become exceedingly important for the Court to take a decision as to allow or not allow the compounding application of the Petitioner.

15. In view of the above, this Court is inclined to set aside the Order dated 26.11.2021, passed by the Ld. Additional Sessions Judge, Tiz Hazari, dismissing an application filed by the Petitioner under Section 91 Cr.P.C. The SEBI is directed to produce all the documents before the Court. These documents can be given in a sealed cover and it is for the Court to take a decision as to whether these documents should be supplied to the Petitioner or not.



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16. With these directions, the Petition is disposed of along with the pending applications, if any.

JANUARY 14, 2024

RJ/Rahul

SUBRAMONIUM PRASAD, J