(2019) 04 DEL CK 0074

In the Delhi High Court

Case No : Criminal Revision Petition No. 1076 Of 2018, Criminal Miscellaneous Application No. 48768 Of 2018, 1407 Of 2019

Prakash Gupta APPELLANT

Vs

Securities And Exchange Board Of India & Ors RESPONDENT

Date of Decision : 01-04-2019

Acts Referred:

Securities And Exchange Board Of India Act, 1992 — Section 24A
Negotiable Instruments Act, 1881 — Section 138

Citation : (2019) 04 DEL CK 0074

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Jagdeep Singh Bakshi, Abhishek Mohan Sinha, Sanjay Mann, Simran

Final Decision : Disposed Off

Judgement

1. Trial court vide impugned order of 15th November, 2018 rejects petitioner's application under Section 24A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') while relying upon Supreme Court's decision in JIK Industries Limited and Others Vs. Amarlal V.Jumani And Another (2012) 3 SCC 255.

2. Learned counsel for petitioner relies upon recent Supreme Court's decision in Meters and Instruments Private Limited and Another Vs. Kanchan Mehta (2018) 1 SCC 560 to submit that consent of respondent to permit compounding is not required. So, it is submitted that the impugned order be set aside and trial court be directed to decide petitioner's application under Section 24A of the SEBI Act, 1992 on merits.

3. On the contrary, learned counsel for respondents relies upon Single Bench decision of High Court of Bombay in N.H.Securities Ltd. Vs. Securities and Exchange Board of India 2018 SCC OnLine Bom 4040 to support the impugned order and submits that the object of the SEBI Act would be lost if compounding is permitted by this Court, as the allegations levelled against petitioner are of

artificially jerking the price of the share of petitioner's company.

4. In rebuttal, learned counsel for petitioner draws the attention of this Court to an order of 19th June, 2001 (Annexure P-3 colly) to point out that all the investors were offered an exit route at Rs. 12/- per share which was higher than the public issue price of Rs. 10/- and thus, in the ultimate analysis, there was no loss caused to any investor. So, it is submitted that petitioner's application under Section 24A of the SEBI Act, 1992 deserves to be allowed.

5. Upon hearing and on perusal of impugned order, material on record and the decisions cited, I find that Supreme Court in Meters and Instruments Private Limited and Another (Supra), had declared that for compounding in proceedings under Section 138 of Negotiable Instruments Act, 1881 consent of both parties is not required and even in the absence of such consent, the court, in the interest of justice, can in its discretion close the proceedings and discharge the accused. No doubt, that petitioner had filed an application for compounding way back in the year 2013 and it remained pending, but now, the proceedings before the trial court have reached the stage of final arguments.

6. Compounding at the initial stage has to be encouraged, but not at the final stage. The object of the SEBI Act has to be kept in mind. A stable and orderly functioning of the securities market has to be ensured. It will not be in the interest of justice to discharge the accused at the final stage of the proceedings by allowing the application for compounding without the consent of SEBI Act as it will defeat the objective of the SEBI Act. Though the Adjudicating Officer has found that the alleged violation committed by petitioner has not resulted in any loss to the investors, but this by itself would not justify discharge of accused at the fag end of trial. After considering the ratio of Supreme Court's decision in Meters and Instruments Private Limited (Supra), and the view expressed by High Court of Bombay in N.H. Securities Ltd.(Supra) as well as the facts and circumstances of this case, I find no justification to allow petitioner's application under Section 24A of the SEBI Act, 1992.

7. Consequentially, petitioner's application under Section 24A of the SEBI Act is declined, while not commenting on merits of this case.

8. This petition and the applications are accordingly disposed of.