

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

IA No. 12/2017
IN
CP No. 942/2012

In the matter of :

M/s. Yashdeep Trexim Pvt. Ltd. : Petitioners/Non-applicant

V/s.

M/s. Juggilal Kamlapath Jute Mills Co. Limited :

: Respondent No. 17/Applicants

Judgment/Order delivered on :

Coram:

Hon'ble Ms. Manorama Kumari, Member(Judicial)

For the Petitioner(s)/Non-Applicant : Mr. Promit Kumar Ray, Senior Advocate,
Mr. Aditya Kanodia, Advocate
Mr. Rajib Mallick, Advocate
Mr. S Sarkar, Advocate
Mr. Sohail Haque, Advocate
Mr. A Das, Advocate

For the Respondent(s)/Applicant : Mr. S Ghosh, Advocate |
Mr. S Choudhury, Advocate |
Mr. S Bhattacharya, Advocate | - R-17
Mrs. P Chowdhury, Advocate |

Mr. Sanjiv Kr. Trivedi, Advocate- R-1

Per : Ms. Manorama Kumari, Member(J)

O R D E R

The instant IA No.12/2017 is filed by M/s. Juggilal Kamlapath Jute Mills Company Limited, Respondent No.17/Applicant with prayers :

- a) That the order dated 26th November,2012 as modified by the order dated 15th January, 2013 be set aside and/or to be modified to the extent that the restraint on shareholding against this applicant be vacated ;
- b) Leave be granted to the applicant herein to fulfil the requirement of the listings agreements of the National Stock Exchange and the Bombay Stock Exchange;
- c) Ad interim orders in terms of prayers above;
- d) Such further and/or other order or orders be passed, direction or directions be given as the Tribunal deems fit and proper

The applicant/petitioner submitted that on 26-11-2012, the order of status quo in relation to the composition of the Board of Directors, fixed assets and shareholding pattern of the Respondent No.1, company and the Respondent No.17 companies was passed and thereafter on 15th January, 2013, the interim order dated 26-11-2012 was amended to the extent of

withdrawing the restraint order only with regard to fixed assets, pertaining to Respondent No.17, companies/applicant and other restraint order would be continued till the next date of hearing.

Thus there is a restraint order continuing in respect of the shareholding pattern of the Respondent No.1 and the Respondent No.17, the instant applicant, as apparent from the record.

The applicant submitted that there was a notification published on 10-10-2016 by Securities and Exchange Board of India(hereinafter referred to as "SEBI") to the effect :

- a) That SEBI vide circular dated 30th May, 2012 issued guidelines facilitating the exit of de-recognized/non-operational stock exchanges and exit to the shareholders of Exclusively Listed Companies(ELCs) by allowing them to get listed on nationwide stock exchanges after complying with the diluted listing norms of nationwide stock exchanges failing which they would be moved to dissemination board.
- b) By a further circular issued by SEBI dated 22nd May, 2014 inter alia, provided that ELCs on de-recognition/ non-operational stock exchanges can also opt for voluntary delisting by following the existing delisting norms of SEBI failing which they shall be moved to the dissemination board.
- c) Subsequently, on 17th April, 2015, SEBI vide a circular allowed 18 months' period to ELCs on the dissemination board to obtain listing upon compliance with the listing requirements of the nationwide stock exchanges.

As per notification that the Exclusively Listed Companies(ELCs) on the dissemination board of the nationwide stock exchanges hosting the ELCs were required to follow and/or exercise two options :-

- a) Raising capital for listing on nationwide stock exchanges; and
- b) Exist mechanism to investors of such ELCs as provided in annexure A to the circular issued by SEBI on 20th October, 2016.

The circular also provides for taking penal action against companies remaining on the dissemination board.

In view of the above, the Respondent No.17 submitted that they are left with three options to exercise and those are :

- a) Provide an exit route to the investors in the applicant company;
- b) Have its shares listed in the national stock exchange;
- c) Have its shares listed in the Bombay Stock Exchange.

Thus, in terms of option given in circular /notification dated 10-10-2016, the applicant had decided to list with the Bombay Stock Exchange(BSE) and the National Stock Exchange(NSE).

The applicant submitted that as per the listing agreement of the Bombay Stock Exchange and the National Stock Exchange, the minimum market capitalisation of the Company desirous of being listed has to be Rs. 25 crores. The paid up equity capital of the applicant shall not be less than Rs.10 crores and the capitalisation of the applicant(s)' equity shall not be less than Rs.25 crores, as reflected in Annexure ' D ', page 28, annexed by the Applicant(s) which is self explanatory.

Explanation 1 :

For this purpose, the post issue paid up equity capital for which listing is sought shall be taken into account.

Explanation -2 :

For this purpose, capitalisation will be the product of the issue price and the post issue number of equity shares. In respect of the requirement of paid up capital and market capitalisation, the issuers shall be required to include, in the disclaimer clause of the Exchange required to put in the offer document, that in the event of the market capitalisation(product of issue price and the post issue number of shares) requirement of the Exchange not being met, the securities would not be listed on the Exchange.

Since the Applicant Company's paid up capital is presently Rs. 5.66 crores, as such, they need to further enhance the same to fulfil the minimum listing requirement before the Bombay Stock Exchange and same cannot be fulfilled unless and until the order dated 15-01-2013 passed by the then CLB is modified or amended to enable this Applicant/Respondent No.17 to qualify for list in the NSE.

Under such situation, the Applicant/respondent No.17 has prayed for vacating and/or varying and/or modifying the order dated 26-11-2012 as amended by the order dated 15th January, 2013, whereby the then CLB passed a status quo order upon the Respondent No.1, company and Respondent No.17/applicant in respect of shareholding position.

On receiving the copy of the application, the petitioner/non-applicant has filed their reply/objection. The petitioner(s)/non-applicant submitted that the applicant/Respondent No.17 has suppressed the following material fact :

- (I) The order dated 10th January, 2017 passed by SEBI has been suppressed by the applicant, Respondent No. 17;
- (II) The applicant/Respondent No.17 has suppressed that it has received a notice dated August 26, 2014 from SEBI;
- (III) The Respondent No.17 has suppressed that it has received a notice dated March 23, 2015 from SEBI;
- (IV) The Respondent No.17 suppressed that SEBI had issued a show cause notice dated July 29, 2016 in respect of the violations of the provisions of law;
- (V) That a hearing was held on December 19, 2016 before SEBI and that Shri Aditya Sarda, son of the respondent No.9 herein, had attended such hearing;
- (VI) That the order dated January 10,2017 had been passed by SEBI debarring the applicant/respondent No.17 to increase the authorised share capital.

The petitioner(s)/non-applicant(s) further submitted that the Respondent No.17 did not qualify for bringing initial public offering as the Applicant(s) had been referred to the Board for Industrial and Financial Reconstruction and the Hon'ble Supreme Court of India having held that the Company, namely, the respondent No.17 continued to remain sick and thus, continued to remain referred to the Board for Industrial and Financial Reconstruction; and the pre-requisite of no disciplinary action by any Stock Exchange or Regulatory Authority in the past three years is also not met by the Respondent No.17 and to that effect an order was passed by SEBI on 6th May, 2015 which is marked as Annexure-"B" at Page 33.

Heard both side at length, seen the documents annexed therein with the application as well in reply.

The order of status quo dated 26-11-2012, and 15th January, 2013 passed by then CLB are never challenged by the Applicant/Respondent No.17 and the same had reached to its finality.

On perusal of the order dated 15th January, 2013 it is clear that then CLB modified the order dated 26-11-2012 "to the extent of only withdrawing the restraint order with regard to fixed assets pertaining to Respondent No.17 Company/applicant and other restraint order as passed on 26-11-2012 will continue till next date of hearing". That means, the Respondent No. 1, Company and the applicant, Respondent No.17 is to maintain the status quo with regard to share holding pattern of the Company.

On perusal of the record, it is found that on 10-01-2017, SEBI has passed an order in exercise of the powers conferred under Section 11, 11(b) of the Securities and Exchange Board of India Act, 1992 and Regulation 44 of Takeover Regulation, 1997 read with Rule 34,35 of the Takeover Regulation, 2011, whereby a direction has given to the Noticee :

- a) To provide an exit opportunity to the other shareholders of the target company within a period of 90 days from the date of this order as stipulated in paragraph 13 and 14 of the order under the supervision of NSE.
- b) The Noticee shall along with the consideration amount, pay interest at the rate of 10% per annum from June 19, 2009 till the date of payment of consideration to the shareholders who were holding shares in the target company on the date of violation and whose shares are accepted in the process

On perusal of the said order, it is further found that noticees are; Acme Consultants Private Limited, Namokar Vinimay Private Limited, Mooldhan Advisory Systems Private Limited. (Annexure 'A' of Reply page 24).

On July 18, 2007, M/s. Rainey Park Suppliers Pvt. Ltd.(Rainey Park), Respondent No.1 Mooldhan Advisory Systems Private Limited(Mooldhan), Watermark Systems(India) Private Limited(Watermark) and Kanishk Translink Private Ltd.(*Kanishk) had together acquired and were holding 14.78% of the shares/voting rights in Juggilal Kamlapath Jute Mills Company(instant applicant- Respondent No.17) which also reveals that, on July 24, 2007, Rainey Park, Respondent No.1, Company in the main CP entered into share purchase agreement to acquire 43,86,609 shares, constituting 78.12% of the total shareholding/voting right of the Jugal Kamlapath Jute Mills company Limited from the then Promoter of Jugal Kamlapath Jute Mills Company Limited, the Singhania Group.

The details of pre-open offer and post open offer, shareholding/voting right of the acquirers and PACs in Jugal Kamlapath Jute Mills Company Limited(applicant) are mentioned in the said order passed by SEBI on 10-01-2017, which is self-explanatory as reflected at page 32 of reply in details.

Further, on perusal of the order dated 6-5-2017 passed by SEBI (Annexure "B") page 33 of the reply, it reveals that in exercise of the power conferred under section 15-I of the SEBI Act, 1992 read with Rule 5 of SEBI(Procedure for Holding enquiry and imposing penalties by adjudicating Officer) Rule, 1995, the Adjudicating Officer imposed a penalty of Rs. 1 lac on noticee, M/s. Jugal Kamlapath Jute Mills Company Limited, i.e. upon the instant applicant/ Respondent No. 17, under Section 15C of the SEBI Act.

On perusal of the record, it is also found that there is a contempt proceeding pending against the applicant/Respondent No.17 before the Hon'ble High Court at Calcutta, being CC No.54/2014 (Annexure "C") page 38 of reply). The order was passed by the Hon'ble High Court, Calcutta on 12-09-2014, wherein the Hon'ble High Court observed that there has been wilful, deliberate and contemptuous violation of the order passed by then CLB dated 26-11-2012, modified on 15-01-2013.

The said contempt petition is still pending for adjudication before the Hon'ble High Court and the applicant has also suppressed the said fact while filing the IA No.12/2017.

The petitioner further submitted that the Respondent No.1 company held 86.21 % of the equity share in the Respondent No.17, company. The shares were the assets of the Company and the Respondent No.17/applicant is a subsidiary of the Respondent No.1, Company.

The petitioner hold 16.74% share in the Respondent No.1, company and thereby exercising 1/6th right and/or stake on Respondent No.17, company. Out of the said 86.21% shares, about 80% shares of and in the respondent No.17 company/Applicant were shown to have been illegally transferred to the Respondent No.2 to 4 in the Company Petition. Such illegal transfer of shares of Respondent No.1, company of and in the Respondent No.17, Company(Applicant) to the Respondent No. 2 to 4, is one of the subject matters of challenge in the main Company Petition.

On perusal of the document, Annexure "D", as annexed by the applicant himself, reflects that Respondent No.17/Applicant does not qualify for listing of its securities with the NSE;

- a) Clause No.(iii) of eligibility criteria speaks specifically that, **the Company has not been referred to the BIFR** and clause (iv) says that, the applicant desirous of listing its securities should satisfy the exchange on the following :
- i) No disciplinary action by other Stock Exchange and regulatory authority in past three years.
 - ii) There shall be no material regulatory or disciplinary action by a stock exchange or regulatory authority in past three years against the applicant company. In respect of Promoters/Promoting Company(ies), group companies, companies promoted by the promoters/promoting company(ies) of the applicant company, there shall be no material regulatory or disciplinary action by stock exchange or regulatory authority in the past one year.

Thus, the applicant/respondent No.17 does not fulfil the eligibility criteria for listing its shares in the NSE, more so, in view of the order dated 6-5-2015 passed by Adjudicating Officer, Securities and Exchange Board of India.

OBSERVATIONS :

As discussed above and also in view of the order passed on 6-5-2015 and 10-01-2017 by SEBI and the various notices issued by SEBI, I found that there is no reason either to amend the order or to vacate the order passed by then CLB dated 26-11-2012 and 15-01-2013 respectively, as the same were never challenged and same have reached to its finality.

Moreover, as per the Circular dated 10-10-2016, as annexed by the Applicant/ Respondent No.17, himself, it reflects that the applicant does not qualify the eligibility

criteria as per Clause (iii) of the Circular of the Securities and Exchange Board of India (Annexure 'D'- page 28 of the Application).

Hence, in view of the discussions hereinabove, the Interlocutory Application No.12/2017 is hereby rejected without any cost.


(MANORAMA KUMARI)
MEMBER(J)

652

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

CA No. 691/2013

IN

CP No. 942/2012

Under Sections 111, 111A, 235, 397, 398, 402, 403 and
406 of the Companies Act, 1956

In the matter of :

M/s. Yashdeep Trexim Private Limited

: Petitioners/Non- Applicant

V/s.

M/s. Rainey Park Suppliers Private Limited & Ors.

M/s. Juggilal Kamlapath Jute Mills Co. Limited :

: Respondents/Applicants

Judgment/Order delivered on :

Coram:

Hon'ble Ms. Manorama Kumari, Member(Judicial)

For the Petitioner(s)/Non-Applicant : Mr. Promit Kumar Ray, Senior Advocate,
Mr. Aditya Kanodia, Advocate
Mr. Rajib Mallick, Advocate
Mr. S Sarkar, Advocate
Mr. Sohail Haque, Advocate
Mr. A Das, Advocate

For the Respondent(s)/Applicant : Mr. S Ghosh, Advocate |
Mr. S Choudhury, Advocate |
Mr. S Bhattacharya, Advocate | - R-17
Mrs. P Chowdhury, Advocate |

Mr. Sanjiv Kr. Trivedi, Advocate- R-1

ORDER

Per : Ms. Manorama Kumari, Member(J)

The instant Application being CA No.691/2013 is filed by M/s. Juggilal Kamlapath Jute Mills Company Limited, Respondent No.17/Applicant, apart from other prayers, made the following prayers :

- (a) To dismiss the Company Petition No. 942/2012 as against the Applicant / Respondent No. 17 ;
- b) The name of the Applicant/Respondent No.17 in the Company Petition No. 942/2012, be expunged from the cause title in this proceeding;
- c) Stay of all further proceedings in CP No. 942/2012 till disposal of the Present application.

The Applicant/Respondent No. 17 has submitted that he has been unnecessarily impleaded as one of the Respondents in the main CP, as the issues of adjudication are limited to the Petitioner, namely, Yashdeep Trexim Pvt. Ltd. and the Respondent No.1, Company.

The Applicant/Respondent No.17 further submitted that his Company has ceased to be a sick Company as defined under the Sick Industrial Company(Special Provisions) Act, 1985 and hence, if he has to be involved in the litigation it will cause impediment in the progress of the Company.

The Applicant further submitted that the applicant has no privity of contract with the petitioner in CP No. 942/2012 and as such, the Company Petition against him be dismissed.

On the other hand, the petitioner/non-applicant filed his reply objecting to the Application so filed by the Applicant/Respondent No.17 for deletion of the name, putting forth various allegations upon the Respondent No. 17 in the said reply.

On perusal of the record, as also on perusal of the Company Petition, it is found that the petitioner along with the Respondent Nos. 2, 5, 6 and 7 through the company, took over the respondent No.17 from the erstwhile promoters i.e. Singhania Group, inter alia, by acquiring 86.21% shares of the respondent No.17/Applicant.

Consequent upon such acquisition, the Company became the holding Company of the Respondent No. 17 and the Respondent No.17 became the subsidiary of the Respondent No.1, Company. Thus, the petitioner/Non-applicant by holding 16.74% shares of the Company was controlling the Respondent No.17/Applicant by such proportion by virtue of the shareholding of the Company.

On perusal of the record, i.e. the main Company Petition, there is a deed of assignment entered into by JK Trader Limited, Respondent No. 17/Applicant and M/s. Rainey Park Suppliers Pvt. Ltd., the Respondent No.1, (Company), on 28-07-2007. The said deed of assignment is with regard to the loan and facilities taken by the Respondent No.17/Applicant from Punjab National Bank.

It reflects from the said deed of assignment that the assignor had agreed to assign the right, title and interest of the assignor in the debt as also the assignor's right, title and interest in the loan documents along with underlying securities (as defined in the deed of agreement) and the assignee(M/s. Rainey Park Suppliers Pvt. Ltd.) agreed to acquire charges from the Assignor, the right to receive the debt and incidental thereto, assigning all other right, title and interest under the loan document and the underlying securities for the consideration of Rs. 4,10,00,000/- and to that effect both

side have entered into the terms and conditions which are reflected in detail in the deed of assignment dated 28-07-2007(Annexure 'D'- Page 106 filed in the main Company Petition).

In view of the above, it is found that Respondent No.17/applicant is the subsidiary Company of the Respondent No.1, company having 86.21% paid up equity shares.

The conduct of the affairs of one Company could also be the conduct of the affairs of another. The word " the Company's affair" were of the widest import which could include the affairs of a subsidiary and equally, the affairs of a subsidiary could also be the affairs of its holding company, especially where the directors of holding company, which necessarily controlled the affairs of the subsidiary.

The question whether any action would attract the provisions of Sections 397 and 398 of the Companies Act, 1956 against the subsidiary company, would ultimately be determined on the facts of the case by taking into account the allegations made against the holding company as well as the subsidiary Company and the counter allegations and evidence that may be led in, by the parties. Hence, it is not open, even at the threshold to hold that the affairs of the holding Company does not include the affairs of the subsidiary companies and thereby allow the deletion of names of subsidiary company from the array of parties in the Company petition.

Under such circumstances, as also as discussed above, I found no merit in the instant application and the name of the applicant/Respondent No. 17 at this stage cannot be deleted from the array of the party for the interest of justice. Hence, the Company Application filed by Respondent No.17/Applicant, being No. 691/2013, is rejected.


MANORAMA KUMARI
MEMBER(j)

653

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

IA No. 53/2017
IN
CP No. 942/2012

Application under Rules 11, 155 of the National
Company Law Tribunal Rules, 2016

In the matter of :

M/s. Yashdeep Trexim Pvt. Ltd

: Petitioners/applicants

V/s.

. M/s. Rainey Park Suppliers P. Ltd. & Ors.

: Respondents/Non- Applicants

Judgment/Order delivered on :

Coram:

Hon'ble Ms. Manorama Kumari, Member(Judicial)

For the Petitioner(s)/Applicant : Mr. Promit Kumar Ray, Senior Advocate,
Mr. Aditya Kanodia, Advocate
Mr. Rajib Mallick, Advocate
Mr. S Sarkar, Advocate
Mr. Sohail Haque, Advocate
Mr. A Das, Advocate

For the Respondent(s)/Non-Applicant : Mr. S Ghosh, Advocate |
Mr. S Choudhury, Advocate |
Mr. S Bhattacharya, Advocate - | R-17
Mrs. P Chowdhury, Advocate |

Mr. Sanjiv Kr. Trivedi, Advocate – R-1

ORDER

Per : Ms. Manorama Kumari, Member(J) :

The instant IA No. 53/2017 is filed by *M/s. Yashdeep Trexim Pvt. Ltd* Applicants /
Petitioners under Rules 11, 155 of the National Company Law Tribunal Rules, 2016
with a prayer :

- (a) IA No.12/2017 filed by the Applicant/Respondent No. 17 be dismissed
with exemplary cost;
- (b) The said Application filed by the Respondent No. 17 being IA No.
12/2017 be stayed till disposal of the instant application;
- (c) Ad interim order in terms of prayers above;
- (d) To pass such further order or orders, direction or directions.

Heard both side at length. Seen the petition as well as the reply filed by the Non-
applicant/ Respondent No. 17 and the documents annexed therewith.

On careful perusal of the petition, I found that the contents made in the instant IA
No.53/2017 along with the annexed documents, are one and the same with that of
reply-in-opposition filed by the Petitioner/Applicant in IA No.12/2017.

Obviously, while filing the reply, the petitioner/applicant will make the prayer for
dismissal of the IA No. 12/2017 and/or to stay the same till the disposal of the main
Company Petition No. 942/2012 and to prove the applicant's/petitioner's contentions,
the petitioner has filed the documents.

Hence, no separate application, as filed by the applicant/petitioner for dismissal of IA
No.12/2017 is not warranted, as it is a duplicacy as well as overlapping of the reply

filed in the IA No.12/2017 by the applicant/petitioner, namely, M/s. JK Jute Mill Pvt. Ltd.
(Respondent No.17)

It is very strange to see that the duplicacy/overlapping prayers are made by way of separate application, which is nothing more than the gross abuse of process of law and wastage of valuable time of the judicial Court.

Under such circumstances, I found no other alternative but to dismiss the same with a cost of Rs. 5,000/- (Rupees Five thousand only).


MANORAMA KUMARI
MEMBER(J)

854

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

IA No. 223/2017
IN
CP No. 942/2012

Under Sections 111, 111A, 235, 397, 398, 402, 403 and
406 of the Companies Act, 1956

In the matter of :

M/s. Yashdeep Trexim Pvt. Ltd.

: Petitioners/applicants

V/s.

M/s. Rainey Park Suppliers P. Ltd. & Ors.

: Respondents/Non- Applicants

Judgment/Order delivered on :

Coram:

Hon'ble Ms. Manorama Kumari, Member(Judicial)

For the Petitioner(s)/Applicants : Mr. Aritra Basu, Advocate | -R-17
Mr. Souma Bhattacharya, Advocate |

Mr. Krishna Raj Thaker, Advocate | P. for
Mr. Rakesh Sarkar, Advocate | Yashdeep

For the Respondent(s)/Non-applicant : Ms. Swapna Choubey, Advocate – R-1

ORDER

Per : Ms. Manorama Kumari, Member(J)

The instant IA No. 223/2017 is filed by M/s. Yashdeep Trexim Pvt. Ltd., Applicants /Petitioners with a prayer that the Order dated 15th January, 2013 passed in CP No. 942/2012 be recalled and/or set aside; and the Order dated 26th November, 2012 is restored to its original with immediate effect, apart from other prayers.

Heard both side at length. Perused the documents annexed with the application as well as the reply-in-opposition.

On perusal of the Order dated 26th November, 2012, it reflects that on the prayer of the Petitioner/Applicant, the then CLB passed interim order directing the respondent to maintain status quo of the composition of the Board of Directors, fixed assets and the shareholding pattern of Respondent No.1, Company and R-17, Company as well, till the next date of hearing.

Thereafter on 15th January, 2013, the Respondent No. 17/Non-applicant prayed for vacating the ad interim order dated 26-11-2012 passed in the main CP 942/2012, passed by the then CLB, on hearing both side, the then CLB considered the prayer of Respondent No.17 and the ad interim order dated 26-11-2012 is amended to the extent of withdrawing the restrain order only with regard to 'Fixed Assets' pertaining to Respondent No.17, Company and other restrain orders would continue till the next date of hearing, i.e. status quo remained in operation as to the shareholding pattern.

However, on perusal of the order, it reflects, the date as '25-11-2012'. Since there was no order passed by the then CLB on '25-11-2012', save and except the order dated 26-11-2012, hence, the date given as '25-11-2012' is a typographical mistake.

While the order was being passed on 15-01-2013 amending the order dated 26-11-2012, the petitioner/non-applicant has fairly consented and had given his 'no objection' to such request of the Respondent No.17/non-applicant for amendment of the order dated 26-11-2012. Now, after such a belated stage, the petitioner/applicant has again filed the instant application with a prayer to restore the order passed on 26-11-2012 by the then CLB.

Under such circumstances, when the petitioner himself has given his 'no objection' while the Order dated 15-01-2013 was being passed by the then CLB, amending its earlier Order dated 26-11-2012, the instant Application bearing No. IA 223/2017 is barred by the doctrine of estoppel on the part of the petitioner, in as much as. The petitioner/non-applicant himself precluded from asserting something contrary to what is implicated by a previous action or statement of his own or by previous pertinent judicial determination. Now, the applicant/petitioner cannot file any application for further amendment and/or restoration of the order dated 26-11-2012.

Furthermore, none of the parties had challenged the said order dated 15-01-2013 and as such, the order reaches to finality and this Court cannot review and/or amend the same.

In view of the above, I find no merit in the instant application being No. 223/2017. Hence the same is rejected.


MANORAMA KUMARI
MEMBER(J)

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

T. P. No.183/2016
(C. P. No.68/2016)

In the matter of Section 621A of the Companies Act, 1956 (Presently
Section 441 of the Companies Act, 2013);

A N D

In the matter of Sections 211(1) and 211(3A) of the Companies Act, 1956;

A N D

In the matter of : M/s. S. R. Addhya Finance Private Limited, having its
registered office at 11A, Chowringhee Lane, Kolkata 700 016;

A N D

In the matter of :

- 1) Mr. Sankar Addhya (Director)
- 2) Ms. Jyostana Addhya (Director)

..... Applicants


Present on behalf of Parties:

Mr. Arvind Kumar Singh, Practicing C.A. |..... for Applicants

ORDER

Pursuant to the Order passed by this Bench on 29.05.2017, the applicants have deposited with this Bench 2(two) demand drafts bearing Nos.018653 & 018656, both dated 07.06.2017 drawn on Axis Bank, for ₹ 15,000/- each and 2(two) demand drafts bearing Nos.018652 & 018655, both dated 07.06.2017, drawn on Axis Bank for ₹ 10,000/- each, aggregating to ₹ 50,000/-. As the offences have been compounded and the compounding fees have been paid by the applicants, a copy of this Order be sent to the Registrar of Companies by the company for appropriate action.

2. The Order dated 29.05.2017 shall form a part of this Order.


(MANORAMA KUMARI)
MEMBER (Judicial)

Place : Kolkata
Date : 05/07/2017

BEFORE THE
NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

T.P. No. 183 of 2016
In
CP. No. 68/2016

CORAM

Ms. Manorama Kumari
Hon'ble Member(J)

In the matter of Section 621A of the Companies Act, 1956 (Presently
Section 441 of the Companies Act, 2013).

And

In the matter of Section 211(1) and 211(3A) of the Companies Act, 1956

And

In the Matter of

1.M/s. S.R. Addhya Finance Private Ltd., A Company Incorporated under the
Companies Act, 1956 and having its Registered Office at 11A, Chowringhee
Lane, Kolkata – 700016.

And

1.Mr. Sankar Addhya, Director
2.Ms. Jyostana Addhya, Director.

..... Applicants

Parties on Record :

1. Mr. Arvind Kumar Singh, Pr. C.A. } For the Applicants

ORDER

Heard Ms. Arvind Kumar Singh, Pr.C.A. appearing for the applicants and
perused the case records.

2. The brief facts of the case, as emerged from the applications, are that in course of scrutiny of Balance Sheets and other related documents for the year ended as on 31st March, 2012 and 31st March, 2013, the Registrar of Companies, West Bengal (ROCWB) has noticed the following breach of provisions of sections 211(1) & 211(3A) of the Companies Act, 1956 (1956 Act):

a) Section 211(1) of the Companies Act, 1956S

On the face of the Balance Sheet as at 31.03.2013 a Note/Schedule No. 8 is mentioned regarding Short Term Borrowings is provided along with the Balance Sheet, this resulted in violation of the provisions of section 211(1) of the Act read with schedule VI of the Act - This is contrary to the provisions of Section 211(1) of the Companies Act, 1956.

b) Section of 211(3A) of the Companies Act, 1956.

- i. No disclosure was made regarding earning per share (EPS) for the year ended as on 31.03.2012 in the Balance Sheet, as required by Accounting Standard-20.
- ii. No disclosure was made regarding earning per share (EPS) for the year ended as on 31.03.2013 in the Balance Sheet, as required by the Accounting Standard-20 – This is contrary to provisions of Section 211(3A) of the Companies Act, 1956.

Having found the aforesaid violations of the Companies Act, 1956, the Asstt. Registrar of Companies, West Bengal, (AROCWB) issued separate notices on 23.07.2015 to Ms.Jyostana Addhya and Mr. Sankar Addhya, Directors/being the Officers in default of the above named Company. The present applications have been filed by the said officers in default under section 621A of the Companies Act, 1956, for compounding of offences under sections 211(1) and 211(3A) of the Companies Act, 1956, which are punishable under section 211(7) of the said Act. The said applications stand transferred to National Company Law Tribunal, Kolkata Bench, for disposal upon dissolution of the Company Law Board.

3. In regard to the aforesaid violation, the Pr.C.A. appearing for the Applicants has stated that :

- a. There were clerical errors in the Balance Sheet for the financial year ended 31.03.2013, in the matter of no disclosure of note/schedule No.8 regarding Short Term Borrowings even though it is mentioned on the face of the Balance Sheet.
- b. In the matter of non-disclosure of note/schedule No.8 even though it is mentioned on the face of the Balance Sheet company's intention was not to hide any information which are required by the provisions of the Section 211(1) of the Companies Act, 1956 or to impair a true and fair view of the state of affairs of the company as at the end of financial year and shall comply with the requirement of Part I of Schedule VI, so far as applicable thereto. This is purely a human error and not an intentional one.
- c. in the matter of no disclosure of Earning Per Share (EPS) as required by Accounting Standard-20, there were clerical errors in the Profit and Loss Account for the same financial year ended 31.03.2013 as well as the comparative figures for the Financial Year ended 31.03.2012.
- d. In the matter of non-disclosure of earning per share (EPS) as required by Accounting Standard-20 in the profit & Loss Account for the financial year ended 31.03.2013 as well as the comparative figures mentioned for the Financial Year ended 31.03.2012, Company's intention was not to hide any information as the omission was not having any financial impact on financial statements due to missing or non-disclosing of this information on the face of Profit & Loss Account for the said financial year. This is purely a human error and not an intentional one.

- 7
- e. The Company has prepared and filed the Balance Sheet and Profit and Loss Accounts for the year 2012-13 together with the directors' and auditor's report thereon dated 09.10.2013 and the annual return on 07.10.2013.
 - f. The applicants do not want that the matter to be subjected to weary litigation involving time and expenditure and desire that the matter to be amicable compromised and compounded. The applicants are ready and willing to pay such reasonable amount by way of compounding charges as may be determined by the Hon'ble Authority.
 - g. As per directions of this Bench, several attempts were made to refile the signed copy of Balance Sheet as at 31.03.2013 in the requisite forms with MCA Portal, but the system did not accept such transaction as the status of old form has not changed in the MCA Portal and it is still showing the status approved towards the SRN: Q12834446 filed on 09.10.2013. The ROCWB has issued a rejection letter dated 28.04.2016, of the Form 23 AC dated 09.10.2013 (SRN : Q128344446) under STP-marked as defective)

4. The Registrar of Companies, West Bengal (ROCWB), in his report dated 01-04-2013 has forwarded for compounding of offence with the observations that :

- a. The offence committed once & for all during the year ended 31.03.2013 and 31.03.2014. It appears from the subsequent Balance Sheet for the year ended 31.03.2015 disclosure with respect to notes on borrowings has been provided. Hence, the offence has been made good.
- b. The offence committed once & for all during the year ended 31.03.2012, 31.03.2013 and 31.03.2014. It appears from the subsequent Balance Sheet for the year ended 31.03.2015 disclosure with respect to notes on (EPS) has been provided. Hence, the offence has been made good.

He has further stated that no prosecution has been launched against the Directors of the Company under section 211(1) and 211(3A) of the Companies Act, 1956, and that the Officers of the Company are liable for the violation of the section 211(1) and 211(3A) of the Companies Act, 1956.

5. The provisions of section 621A of the Companies Act, 1956 is analogous to Section 441 of the Companies Act, 2013 which confers power to the Tribunal, for compounding of the offences. Section 441 of the Companies Act, 2013 came into force w.e.f. 01.06.2016. The breach of the provisions of section 211(1) & 211(3A) of the Act 1956 has been detected by ROCWB in course of scrutiny of the Balance Sheets as at 31.03.2012 & 31.03.2013 and other documents which is punishable under section 211(7) of the said Act.

6. It appears from the applications that the applicants have prayed for compounding of offences committed under section 211(1) and 211(3A) of the Companies Act, 1956 in respect of financial year ended 31.03.2013, whereas as per show cause notices dated 23.07.2017 issued to the applicants by the Asstt. Registrar of Companies, West Bengal, the violations of the provisions of section 211(1) have been detected in respect of the Balance Sheet as at 31.03.2013 and the violations of the provisions of section 211(3A) have been detected in respect of Balance Sheets as at 31.03.2012 & 31.03.2013. In the report dated 01.04.2016, ROCWB has observed that offence has committed for non-compliance of the provisions section 211(1) in respect of the Balance Sheets for the year ended 2013 and 2014 and the offence has committed for non-compliance of section 211(3A) in respect of the Balance Sheets for the year ended 2012, 2013 & 2014 and the necessary disclosures have been provided in the subsequent Balance Sheet as at 31.03.2015.

7. Perused the applications. Having considered the submissions of Pr.C.A. appearing for the applicants who prayed for leniency while imposing the cost as it was not intentional and is first offence as such prayed for imposing minimum compounding amount. Heard, seen the reports of ROCWB, I am inclined to permit the applicants to compound the offences as aforesaid. Accordingly, I do hereby compound the aforesaid offence under section 211(1) of the Companies Act, 1956 in respect of the Balance

Sheets as at 31.03.2013 & 31.03.2014 and the offence under section 211(3A) of the Act 1956 in respect of the Balance Sheets as at 31.03.2012, 31.03.2013 and 31.03.2014 subject to depositing the compounding fees by each of the applicants as indicated herein below:

I. For the violation of Section 211(1) of the Companies Act, 1956

Sl.No.	Applicant	Compounding fee imposed on each year
1.	Two Directors	Rs 5000/- X 2 X 2 yrs. = Rs.20,000/-
Total		Rs.20,000/-

II. For the violation of Section 211(3A) of the Companies Act, 1956

Sl.No.	Applicants	Compounding fees imposed on each year and each instance
1.	Two Directors	Rs.5000/- X 2 X 3 Yrs. = Rs.30,000/-
Total		Rs. 30,000/-

The officers in default shall pay the compounding fees from their personal source. The compounding Fees are to be deposited within 15 days hereof.


 (Manorama Kumari)
 Member (J)

Signed this 29th day of May, 2017.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

T. P. No.182/2016
(C. P. No.02/2016)

In the matter of Section 621A of the Companies Act, 1956 (Presently
Section 441 of the Companies Act, 2013);

A N D

In the matter of Section 217(4) of the Companies Act, 1956;

A N D

In the matter of : M/s. S. R. Addhya Finance Private Limited, having its
registered office at 11A, Chowringhee Lane, Kolkata 700 016;

A N D

In the matter of :

- 1) Mr. Sankar Addhya (Director)
- 2) Ms. Jyostana Addhya (Director)

..... Applicants

Present on behalf of Parties:

Mr. Arvind Kumar Singh, Practicing C.A. |..... for Applicants

O R D E R

Pursuant to the Order passed by this Bench on 29.05.2017, the applicants have deposited with this Bench 2(two) demand drafts bearing Nos.018651 & 018654, both dated 07.06.2017 drawn on Axis Bank, for ₹ 5,000/- each, aggregating to ₹ 10,000/-. As the offence has been compounded and the compounding fees have been paid by the applicants, a copy of this Order be sent to the Registrar of Companies by the company for appropriate action.

2. The Order dated 29.05.2017 shall form a part of this Order.


(MANORAMA KUMARI)
MEMBER (Judicial)

Place : Kolkata
Date : 05/07/2017

BEFORE THE
NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

T.P. No. 182 of 2016
In
CP No. 02/2016

CORAM

Ms.Manorama Kumari
Hon'ble Member(J)

In the matter of Section 621A of the Companies Act, 1956 (Presently
Section 441 of the Companies Act, 2013).

And

In the matter of Section 217(4) of the Companies Act, 1956

And

In the Matter of

1.M/s. S.R. Addhya Finance Private Ltd., A Company Incorporated under the
Companies Act, 1956 and having its Registered Office at 11A, Chowringhee
Lane, Kolkata – 700016.

And

1.Mr. Sankar Addhya, Director
2.Ms. Jyostana Addhya, Director.

..... Applicants

Parties on Record :

1. Mr. Arvind Kumar Singh, Pr. C.A } For the Applicants

ORDER

Heard Ms. Arvind Kumar Singh, Pr.C.A. appearing for the applicants and
perused the case records.

2. The brief facts of the case, as emerged from the applications, are that in course of scrutiny of Balance Sheets and other related documents for the year ended as on 31st March, 2013, the Registrar of Companies West Bengal (ROCWB) has noticed the following breach of provisions of sections 217(4) of the Companies Act, 1956 (1956 Act):

a) Section 217(4) of the Companies Act, 1956

Upon scrutiny of Balance Sheet and other related documents as at 31.03.2013, it was found that no signature or name of signatory(s) was shown on the Directors' Report dated 29.08.2013 - This is contrary to the provisions of Section 217(4) of the Companies Act, 1956.

Having found the aforesaid violation of the Companies Act, 1956, the Asstt. Registrar of Companies, West Bengal, (AROCWB) issued noticee on 27.05.2015 to Ms.Jyostana Addhya and Mr. Sankar Addhya, Directors/being the Officers in default of the above named Company. The present applications have been filed by the said officers in default under section 217(4), for compounding of offence under section 217(4) of the Companies Act, 1956, which is punishable under section 217(5) of the said Act. The said applications stand transferred to National Company Law Tribunal, Kolkata Bench, for disposal upon dissolution of the Company Law Board.

3. In regard to the aforesaid violation, the Pr.C.A. appearing for the Applicants, has stated that at the time e-filing of Balance Sheet and other related documents for the financial year ended 31.03.2013, non-signed set of documents were uploaded wrongly with the MCA Web Portal. The Directors' Report dated 29.08.2013 for the said financial year was also uploaded where there was neither signatures nor name of signatory (ies) was mentioned. This is purely a human error and an accidental omission at the time of e-filing of the said documents.

4. The Registrar of Companies, West Bengal (ROCWB), in his report dated 20-08-2013 has recommended for compounding of offence with the observations that :

- a. It was observed from the Balance Sheet and other related documents as at 31.03.2014 that the Directors' Report contained the name of the Chairman stating 'sd' i.e. signed and the Balance Sheet was duly signed by the signatory(s) in accordance with the provisions of section 217(4) of the Companies Act, 1956, and hence the offence has been made good.

He has further stated that no prosecution has been launched against the Directors of the Company under section 217(4) Companies Act, 1956 and that the officers of the Company are liable for the violation of section 217(4) of the Companies Act, 1956.

5. The provisions of section 621A of the Companies Act, 1956 is analogous to Section 441 of the Companies Act, 2013 which confers power to the Tribunal, for compounding of the offences. Section 441 of the Companies Act, 2013 came into force w.e.f. 01.06.2016. The breach of the provisions of section 217(4) of the Act 1956 has been detected by ROCWB in course of scrutiny of the Balance Sheets as at 31.03.2013 and other documents which is punishable under section 217(5) of the said Act.

6. It appears from the applications that the applicants have prayed for compounding of offences committed under section 217(4) of the Companies Act, 1956 in respect of financial year ended 31.03.2013, as indicated in the show cause notice dated 27.05.2017 issued to the applicants by the Asstt. Registrar of Companies, West Bengal for the violation of the provisions of section 217(4) of the Companies Act, 1956 and as per report dated 20.08.2015 of ROCWB, the offence has been made good in respect of the Balance Sheet as at 31.03.2014.

7. Perused the applications. Having considered the submissions of Pr.C.A. appearing for the applicants who prayed for leniency while imposing the cost as it was not intentional and is first offence as such prayed for imposing minimum compounding amount. Heard, seen the reports of ROCWB, I am inclined to permit the applicants to compound the offences as aforesaid. Accordingly, I do hereby compound the aforesaid offence under section 217(4) of the Companies Act, 1956 in respect of the Balance Sheets as at 31.03.2013 subject to depositing the compounding fees by each of the applicants as indicated herein below:

Sl.No.	Applicant	Compounding fee imposed
1.	Two Directors	Rs.5000/- X 2 X 1 yr. = Rs.10,000/-
Total		Rs.10,000/-

The officers in default shall pay the compounding fees from their personal source. The compounding Fees are to be deposited within 15 days hereof.


(Manorama Kumari)
Member (J)

Signed this 29th day of May, 2017.

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

CA No. 1651/2015
In
CP No.175 of 2014

*An application under Regulation 44 of the
Company Law Board Regulations, 1991*

In the matter of :

*Munindra Kumar & Ors.
..... Petitioners/ Non- Applicants*

V/s

*Bagaha Contractors Private Limited & ors.
..... Respondents/ Applicants*

Judgment/Order delivered on :

Coram :

Ms. Manorama Kumari, Hon'ble Member (J)

Names of Advocates :

For the Petitioner(s)/
Non-applicant

: 1) Mr. Anjan Kumar Roy, FCS -

For the Respondent(s)
/Applicant

: 1) Mr. Aniruddha Roy, Advocate
2) Mr. Nirmalya Dasgupta, Advocate
3) Mr. Dibanath Dey, Advocate
4) Mr. J Patnaik, PCS

Per : Ms. Manorama Kumari, Member(J) :

Order/Judgment

The instant Company Application is filed by the Respondent No.1 to 7 and 9 as Applicants under Regulation 44 of the Companies Law Board Regulation 1991 with a prayer that :

- (a) The Company petition being CP No.175 of 2014 (Munindra Kumar & Ors. -Vs.- Bagaha Contractors Private Limited & Ors.) be dismissed by this Hon'ble Board ;
- (b) The petition be taken out of its file and interim orders passed be vacated by this Hon'ble Board;
- (c) Permanent stay of the company petition being C.P. No.175 of 2014 (Munindra Kumar & Ors. -Vs-Bagaha Contractors Private Limited & Ors.) and orders passed therein by this Hon'ble Board;
- (d) Ad interim orders in terms of prayers(a),(b) and (c) above;
- (e) Costs and/or incidentals to this application be paid by the petitioners;
- (f) Such further or other order and/or orders and direction and/or directions be passed as to this Hon'ble Board may deem fit and proper;

On perusal of the record, it is found that the instant application No.1651/2015 is the mere duplication of Company Application No. 462/2015.

The prayers as well as the contents are more or less the same with that of the Company Application No.462/2015 and the ground which are taken for dismissal of the Company Petition No.175/2014 are one and the same which were taken in Company Application No.462/2015.

The pleas which are taken in the said application is that the criminal case is pending before the Patna "Civil Judicial Magistrate Court" under the self same

The pleas which are taken in the said application is that the criminal case is pending before the Patna "Civil Judicial Magistrate Court" under the self same cause of action and the main CP No.175/2014 is required to be dismissed as the same is filed in point of time earlier than the instant CP No. 175/2014.

As both the cases are on the different footing and there is no bar in running the two cases, as decided by catena of cases of the Supreme Court which are already dealt with while deciding the CA No.462/2015 as filed by the Applicant/Respondent. The said CA has already been rejected.

I found no merit in the instant application also, bearing No.1651/2015. Hence, the same stands rejected.

Sd/-

MANORAMA KUMARI
MEMBER(J)

660

BEFORE THE
NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

CA No. 462/2015
In
CP No.175 of 2014

*An application under Regulation 44 of the
Company Law Board Regulations, 1991*

In the matter of :

*Munindra Kumar & Ors.
..... Petitioners/ Non- Application*

V/s

*Bagaha Contractors Private Limited & Ors.
..... Respondents/ Applicants*

Judgment/Order delivered on :

Coram :

Ms. Manorama Kumari, Hon'ble Member (J)

For the Petitioner(s)/
Non-applicant

: 1) Mr. Anjan Kumar Roy, FCS -

For the Respondent(s)
/Applicant

: 1) Mr. Aniruddha Roy, Advocate
2) Mr. Nirmalya Dasgupta, Advocate
3) Mr. Dibanath Dey, Advocate
4) Mr. J Patnaik, PCS

Per : Ms. Manorama Kumari, Member(J) :

Order/Judgment

The instant Company Application is filed by the Respondent No.1 to 7 and 9 as Applicants under Regulation 44 of the Companies Law Board Regulation 1991 with a prayer that :

- (a) The Company petition being CP No.174 of 2014 (Munindra Kumar & Ors. -Vs.- Bagaha Contractors Private Limited & Ors.) be dismissed by this Hon'ble Board ;
- (b) The petition be taken out of its file and interim orders passed be vacated by this Hon'ble Board;
- (c) Permanent stay of the company petition being C.P. No.174 of 2014 (Munindra Kumar & Ors. -Vs-Bagaha Contractors Private Limited & Ors.) and orders passed therein by this Hon'ble Board;
- (d) Ad interim orders in terms of prayers(a),(b) and (c) above;
- (e) Costs and/or incidentals to this application be paid by the petitioners;
- (f) Such further or other order and/or orders and direction and/or directions be passed as to this Hon'ble Board may deem fit and proper;

The applicant/respondent submitted that the Company Petition bearing No. 174/2014 filed by the petitioner/non-applicant is not maintainable as the petitioner had already instituted the criminal complaint before the "Court of Civil, Judicial Magistrate" (sic), Patna on the self same cause of action. Further, the respondent(s)/applicants submitted that from time to time the Ld. "Civil Judicial Magistrate"(sic.), Patna had also passed order in the said complaint case and said fact is also admitted one, since the same is pending from April 20,2014 which was filed much prior to filing of the instant Company Petition.

Manorama

The Ld. Lawyer on behalf of the applicants submitted that the said complaint petition is filed against the identical parties and the matter in the complaint case as well as in the instant Company Petition No. 174/2014 are also directly and substantially the issues in the previously instituted proceeding between the same parties (as stated in para 12 of the Company Application).

I have also seen the reply made by the Petitioner(s)/non-applicants who had denied that the dispute of the complaint case is between the identical parties or on the self same cause of action or that there is any resjudicata applicable as alleged by the applicants/respondents.

Heard both side at length and also seen the documents annexed with the application.

On perusal of the record and the complaint petition annexed with the CA application, it is found that all the parties are not one and the same. The non-applicant/petitioner has relied upon certain case laws with regard to parallel proceeding.

While deciding the case of Seth Ramdayal Jat Vs. Laxmi Prasad which has been decided on 15-04-2009, the Supreme Court in paragraph No.32 categorically held that "coming to the last contention that a further should be made to avoid conflict for findings between the Civil and Criminal Courts, it is necessary to point out that the standard of proof required of two proceedings, are entirely different. The civil cases are decided on the basis of preponderance of the evidence while in a criminal case, the entire burden lies on the prosecution and proof beyond reasonable doubt as to be given".

The said question has again been considered in P Swarupa Rani Vs. Hari Narayan Babu, wherein the law was stated thus :

"13: It is, however, well settled that in a given case, civil proceeding and criminal proceeding can proceed simultaneously, whether the civil proceeding or criminal proceeding shall be stayed, depend upon the facts and circumstances of each case whereby it is well settled that, save and except for Section 43 of the Indian Evidence Act which refers to Sections 40,41 and 42 thereof, judgment of criminal Court shall not be admissible in a civil suit.

Similarly, the observations made by the Court in BM shah case that the finding " recorded by criminal Court stands superseded by the finding recorded by the Civil Court, is not correct enunciation of law".

Chauhan

Further, the general observations made in Karan Chand case are in the context of the facts of the case stated above. The court was not required to consider the earlier decision of the constitution Bench in M/s. Sheriff's case as well as Section 40 to 43 of the Evidence Act.

The Non-Applicant/petitioner has relied upon Supreme Court case of Kishan Singh(D) thru Lrs Vs. Gurupal Singh and Ors given on 12-08-2010.

While deciding the said case, the Supreme Court is of the view that " the law on the issue stand crystalised to the effect that the finding of the fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil case, preponderance of the probabilities, while in criminal cases, it is beyond the reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the Court either of the civil or in the criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein....."

Similarly, many other cases are cited by the Applicant also. There is no dispute with regard to the case law but each case has its own facts. The applicant/respondent relied case laws i.e. **20122(4 CAL LT 654 HC)**. The said decision is in respect of civil case and another parallel case which is pending before the CLB, wherein it is averred that both the suit of the civil proceeding are similar. But in the instant matter, the issue involved with regard to criminal proceeding as well as proceeding pending before the NCLT wherein the nature of the two cases are quite different.

Other citation which has been filed by the applicant/respondent is 2009(13 SCC 25) which says the Court shall not bring about a situation which says that the Court shall not bring the situation whereby criminal proceeding would remain stayed as it is well settled principle of law that where the civil as also the criminal proceeding is pending, the latter should get primacy. Similarly, other citations were also filed by the Applicant/respondent which also speaks that when civil and criminal proceeding are pending, the criminal matter should be given precedence. However, all the cases are based on its own facts and circumstances.

On meticulous perusal of the citations, I found that there is no specific bar in running two parallel cases; civil as well as criminal. There is no doubt that the facts in the civil proceeding and the criminal proceedings are more or less the same.

Chander

The final consequences or result of the proceedings, however, might be divergent and different. In the civil proceedings, the civil consequences follow while in criminal proceedings, penal consequences take place.

The case in criminal proceedings get punished but their liability to pay the creditors is not discharged. The creditors have perhaps a satisfaction of getting his debtor punished by way of imprisonment but thereby he does not stand benefited in any way as he does not get his debt back.

It is apparent, on perusal of the record as well as the citations, that the Company Petition has been filed by the non-applicant/petitioner essentially seeking the relief per Sections 58, 59 and 152 of the Companies Act, 2013 and Sections 146, 235, 397, 398, 399, 402, 403, 406 and 407 of the Companies Act, 1956 while accusing the applicant/respondent of oppression and mismanagement. It cannot be said that the issue involved in the two matters i.e. Company Petition and the criminal case, are directly and substantially the same.

The enquiry in the two proceedings operate in different arena and different field and rather, the issues involved in the Company Petition are within the exclusive jurisdiction of the authority envisaged by the Companies Act, 1956 and 2013.

It is not out of place to mention herein that, in the application, in paragraph No. 6 and 7 the applicant/respondent has specifically and categorically mentioned that the criminal complaint is pending before the Court of " Civil Judicial Magistrate", Patna.

It is strange to see that any criminal case can be launched in the "Civil Judicial Magistrate" or is there any Court with the nomenclature of "Civil Judicial Magistrate", Patna.

In view of the above discussions, I have found no reason to dismiss the Company Petition No.175/2014 and/or stay the proceeding by passing a permanent injunction, if at all there is any case pending in the criminal court, it would have no effect in the instant Company Petition, as the Company Petition is based totally on different footing and the standard of proof in both the case is different.

It is not out of place to mention herein that the prayer of applicant is to dismiss the Company Petition No. 174/2014, but I have found no Company Petition No.174/2014 against Munindra Kumar and Ors. Vs. Bagaha Contractors and others, pending before this Court which is required to be dismissed or stayed



permanently as prayed by the Applicant/Respondent in their Company Application No. 462/2015.

Hence, the Company Application so filed by the Respondent/Applicant bearing No. 462/2015, has no merit and is hereby rejected.


MANORAMA KUMARI
MEMBER(J)