In Re: Hoffland Finance Ltd.

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Court : Company Law Board CLB

Decided On : May-12-1997

Judge : P Majumdar, S Balasubramanian, C Das

Appellant : In Re: Hoffland Finance Ltd.

Advocate for Pet/Ap. : Shri. M. G. Ramachandran

Judgement :

1. Hoffland Finance Limited has filed an application for compounding, duly forwarded by the Registrar of Companies, National Capital Territory of Delhi and Haryana under Section 621A of the Companies Act, 1956 (hereinafter referred to as "the Act"), for contravention of Section 68(a) and 68(b) of the Act. The Registrar of Companies has already filed a prosecution against the company and five of its delinquent directors and the same is pending before the Additional Chief Metropolitan Magistrate, Delhi. The defaults under Section 68(a) and 68(b) of the Act attract a maximum penalty of Rs. 10,000 or imprisonment up to five years or with both. When the present application of the applicants was taken up by the learned Member, Northern Region Bench, Company Law Board, the learned Member felt that before the question of compounding could be considered, the applicants were to obtain the permission of the criminal court where the proceeding was pending. Accordingly, the applicants were directed to obtain permission of the concerned criminal court and pursuant to the said direction the applicants moved an application before the Additional Chief Metropolitan Magistrate, Delhi, for permission to compound the offence. It appears that the

learned Magistrate, while hearing the said application made an order that the jurisdiction of the court comes into operation only after the parties had compounded the offence. It was also observed by the learned Magistrate that the court could not issue any direction to any of the parties to compound the offence. The application made before the learned Magistrate was therefore rejected.

2. The learned Member of the Company Law Board felt that this situation raised an important legal issue with regard to the question whether a compounding order under Section 621A of the Act could be passed without first obtaining the permission of the trial court. The Western Region Bench of the Company Law Board in the case of Reliance Industries Ltd., In re [1997] 89 Comp Cas 67 had observed that the question of seeking permission of the court would arise only after compounding is done by the Company Law Board and accordingly compounded the offences. The learned member of the Company Law Board found that in a prior case, the Northern Region Bench of the Company Law Board, while considering a similar default under Section 68(a) and (b) of the Act, directed the defaulter to obtain permission of the criminal court and, after such permission of the criminal court being obtained by the defaulter, the offence was compounded by the learned Member presiding over the Northern Region Bench of the Company Law Board.

3. In view of the above two conflicting views one of the Western Region Bench and the other of the Northern Regional Bench of the Company Law Board, the learned Member of the Company Law Board, Northern Region Bench, while dealing with the present case, took the view that this question should be considered and decided by a larger Bench to be constituted by the chairman of the Company Law Board. Accordingly, the present Bench is being constituted to consider and decide the short question, i.e., whether before compounding of any offences punishable under the Act, the Company Law Board could compound the offence without directing the accused or defaulter to obtain permission of the trial court where the prosecution was pending, and upon obtaining such permission the Company Law Board then could consider the question of compounding the offence.

4. When the matter was taken up for hearing, we advised counsel for the petitioner, Shri M. G. Ramachandran, to address us on the issue whether there is any need to obtain the permission of the court and if so as to the timing of obtaining the permission of the court as envisaged by Sub-section (7) of Section 621A. He submitted that a careful analysis of the section would reveal that Sub-sections (1) and (7) are independent of each other and that while Sub-section (1) confers jurisdiction upon the Company Law Board, Sub-section (7) confers concurrent jurisdiction upon the criminal court to deal with matters relating to compounding of offences. He dwelt in detail on, various reasons in support of his proposition, which we have taken into consideration in deciding the issue before us.

5. We have heard the submissions of learned counsel for the applicants and also we have given our anxious consideration to the question as raised in this proceeding as to whether the Company Law Board is required to consider the question of compounding the offence with or without any prior permission of the criminal court if any prosecution relating to the offence committed is already pending before the criminal court.

6. There are various sections in the Companies Act which provide for penal action by way of prosecution in case of violation of the provisions of those sections. Five types of penalties have been provided in the Companies Act. They are : (1) fine only, (2) imprisonment or fine, (3) imprisonment or fine or with both, (4) imprisonment and fine, (5) imprisonment only. Before Section 621A was inserted by the Companies (Amendment) Act, 1988 (this section came into effect on May 31, 1991), as per Section 621, all offences against the Act were required to be tried by the court, on the complaint of the Registrar or a shareholder of the company or a person authorised by the Central Government in that behalf. Section 621A was inserted on the recommendations of the Sachar Committee, which, after examining the position obtaining then with regard to launching of prosecution for violation of the provisions of the Act, suggested substitution of the existing provisions for realisation of fines through court proceedings by a system of penalty as provided in the Income-tax Act, and that the Registrar, the Company Law Board including the regional Benches, should be clothed with the powers of a court so as

to empower them to take cognisance of and to impose penalties for, any infraction of certain specified provisions of the Act.

7. When this section was introduced, the Notes on Clauses stated "this clause empowers the Company Law Board and the Regional Director to compound offences punishable with fine, by imposing penalties in lieu of prosecution. The proposed amendment will also ensure compliance with law. The power to compound shall not be exercisable by the Company Law Board and the Regional Director in relation to offences which are punishable with imprisonment only or with imprisonment and fine". A reading of the Sachar Committee recommendations and the Notes on Clauses would reveal that there is nothing to indicate that the jurisdiction of the Company Law Board in exercising the powers to compound is subject to approval of the court either before or after passing the order of compounding nor is there any indication that concurrent powers were being conferred on the court.

8. In the background of what has been discussed above we shall proceed to examine the issues before us. We set out Section 621A of the Companies Act hereinbelow : "621A. Composition of certain offences--(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution be compounded by- (b) where the maximum amount of fine which may be imposed for such offence does not exceed five thousand rupees, by the regional director, on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sum as that Board or the regional director, as the case may be, may specify : Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded : Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under the sub-section, the sum, if any, paid by way of additional fee under Sub-section (2) of Section 611 shall be taken into account.

(2) Nothing in Sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

(a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence ; (b) "regional director" means a person appointed by the Central Government as a regional director for the purposes of this Act.

(3) Every regional director shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Company Law Board.

(4) (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Company Law Board or the regional director, as the case may be.

(b) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(d) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the composition of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(5) The Company Law Board or the regional director, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to

file or register with, or deliver or send to the Registrar any return, account or other document, may direct, by order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, require to be paid under Section 611, such return, account or other document within such time as may be specified in the order.

(6) Any officer or other employee of the company who fails to comply with any order made by the Company Law Board or the regional director under Sub-section (5) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding five thousand rupees, or with both.

(7) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-- (a) any offence which is punishable under this Act with imprisonment or with fine, or with both, shall be compoundable with the permission of the court, in accordance with the procedure laid down in that Act for compounding of offences ; (b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

(8) No offence specified in this section shall be compounded except under and in accordance with the provisions of this section." 9. It appears from the above section that the Company Law Board or the Regional Director, as the case may be, may compound any offence punishable under this Act, not being an offence punishable with imprisonment only or with imprisonment and also with fine as has been contemplated under Sub-section (1) of Section 621A of the Act. However, in view of Section 621A(1)(b) the Regional Director can compound only offences punishable with a maximum fine of Rs. 5,000. Sub-section (4)(a) to (4)(d) of Section 621A of the Act, inter alia, provide that every application for the compounding of an offence shall be made to the Registrar, who shall forward the same together with his comments thereon to the Company Law Board or the Regional Director, as the case may be. Where any offence compounded under this section, namely, Section 621A of the Act, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence was so compounded. Where any offence is compounded before any institution of any

prosecution, no prosecution shall be instituted in relation to such offence either by the Registrar or by the Central Government against the offender in relation to whom an offence is so compounded.

Sub-section (4)(d) of Section 621A of the Act provides that where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the Registrar in writing to the notice of the court in which the prosecution is pending and on such notice of the composition of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

10. It, therefore, appears from the above provisions of Sub-section (4)(a) to (4)(d) as also Sub-section (1) of Section 621A of the Act that an offence committed by a company or any officer not being an offence punishable with imprisonment only, or imprisonment and also with a fine may be, either before or after institution of any prosecution, compounded by the Company Law Board. When any prosecution has been pending before any criminal court, the Company Law Board is not required to direct the party to obtain permission of the criminal court where the proceeding is pending and the Company Law Board is not debarred in any manner to compound any offence in accordance with the procedure as contemplated by Section 621A of the Act and there is no question of obtaining any permission of the criminal court, where any proceeding relating to the offence is pending before any criminal court. It further appears from the provisions of the Section 621A of the Act, that there is no occasion for obtaining any permission from the criminal court where the prosecution, if any, is pending before compounding any offence as punishable under the Act or after compounding such offence in accordance with the provisions contained in the Act.

11. It appears that Section 621A of the Act starts with the non-obstante clause "notwithstanding anything contained in the Code of Criminal Procedure, 1973". Sub-section (7) of Section 621A also provides a non-obstante clause "notwithstanding anything contained in the Code of Criminal Procedure, 1973". In our view, a specific power or authority has been vested in the Company Law Board or the Regional Director, as the case may be, under Section 621A of the Act

to compound any offence punishable under this Act committed by a company or any officer thereof, not being an offence punishable with imprisonment only, or with imprisonment and also with fine. It also appears to us that an elaborate procedure has been laid down for compounding such offences under Sub-sections (1) to (6) of Section 621A of the Act. It is nowhere indicated in any of the provisions as contained in Section 621A, Sub-sections (1) to (6) that the Company Law Board or Regional Director while compounding the offences punishable under the Act is required or obliged to insist on obtaining prior permission or any permission of the criminal court where any such prosecution is pending.

There is no such expression "with the permission of the court" in Sub-section (1) of Section 621A or any of the Sub-sections (2) to (6) of Section 621A of the Act.

12. Now, let us come to Sub-section (7) of Section 621A of the Act. We find that this sub-section also starts with a non-obstante clause.

Here, under Sub-section (7)(a) of Section 621A it is provided that any offence which is punishable under the Act, the Companies Act, 1956, with imprisonment or with fine or with both shall be compoundable "with the permission of the court", in accordance with the procedure laid down in that Act, namely, Criminal Procedure Code. It appears from Sub-section (7)(a), that there is specific wording "with the permission of the court, in accordance with the procedure laid down in that Act".

This is absent in any other preceding sub-sections of Section 621A of the Act. Therefore, Sub-section (7) of Section 621A of this Act stands apart from the other sub-sections of Section 621A of the Act.

13. Now let us examine how different is the procedure laid down by the Companies Act, and the Code : 1. A person who commits an offence applies to the Company Law Board through the Registrar.

3. The quantum of amount for compounding an offence decided by the Company Law Board.

1. It is the complainant or the person injured who applies to the court for compounding.

3. The parties themselves agree on the compounding amount and the court has no say in the quantum of amount agreed between the parties.

14. With such vast differences in the procedure laid down in these two Acts, let us examine the issue, whether seeking permission of the court, either before or after the compounding by the Company Law Board is feasible at all. Suppose an offender approaches the Company Law Board for compounding an offence which is punishable with imprisonment or fine or with both, before prosecution is launched, and if as per Sub-section (7), the permission of the court is necessary, the immediate question that would arise is, how a court would take cognisance of an application for permission without any prosecution pending before it and as a matter of fact Sub-section (4)(c) prohibits institution of prosecution after the compounding is done by the Company Law Board/Regional Director. In addition a question would also arise as to who will make the application--the offender, the Registrar or the Company Law Board.

15. The question can be examined in a different angle also. Section 621A(1) states that an offence may be compounded by the Company Law Board. That is the Company Law Board has discretion either to compound or not, taking into consideration the gravity of the offence. Its decision to compound is nothing but grant of permission to compound and while doing so it simultaneously decides the quantum of composition fee also subject to the limits as fixed in Sub-section (1). In case the Company Law Board decides against composition, it is nothing but refusal to grant permission. Thus, the view that further permission as per Sub-section (7) from the court is necessary, does not seem to be correct. Such interpretation would also result in irreconcilable jurisdictional problems. The Company Law Board is a quasi-judicial body exercising powers conferred on it by various statutes. Appeals against its orders lie only to the High Court. If, in a case where the Company Law Board has exercised its discretion to compound an offence punishable with fine or imprisonment or with both, and on an application for permission, the court refuses to accord permission, then it would mean that the court is sitting in judgment over the decision of the Company Law Board. In the same way, if prior permission is applied for and the court grants the same, even then, the Company Law Board, at its discretion may not compound the offence, as

the permission granted by the court is not binding on the Company Law Board. If the intention of the Legislature were to subject the Company Law Board jurisdiction to permission from the court, the same could have been most appropriately achieved by making the provisions of Sub-section (7) a proviso to Sub-section (1) itself. Not only is there no such proviso in that sub-section, but, right through to Sub-section (6) there is nothing to indicate to this effect, and all these sub-sections deal with matters relating to the Company Law Board/Regional Director only.

16. As rightly pointed out by Shri M. G. Ramachandran, counsel for the petitioner, Sub-section (4)(d) stipulates that in a case where a prosecution is pending in relation to a case which has been compounded under Sub-section (1), on a notice in writing given to the court in which the prosecution is pending, the accused shall stand discharged.

In other words the question of applying to the court for permission after the compounding order is issued by the Company Law Board does not arise as he stands discharged when the fact of compounding is brought to the notice of the court.

17. Thus, if we take into consideration all these aspects, keeping in mind that the Company Law Board is a quasi-judicial body, the inescapable conclusion one has to arrive at is that, exercise of powers by the Company Law Board under Sub-section (1), is not subject to the provisions of Sub-section (7) and the decision of the Company Law Board in compounding an offence punishable with fine or imprisonment or with both is final and is subject only to an appeal to the High Court and the question of obtaining the permission of the court either before or after the composition does not arise.

18. It, therefore, appears that the person seeking compounding of an offence in accordance with the procedure laid down in the Code of Criminal Procedure, 1973, can do so before the criminal court with the permission of the court under this enabling Sub-section (7) of Section 621A of this Act, which normally cannot be done under the provisions of the Criminal Procedure Code. Such compounding of offence should be relatable to the offence punishable with imprisonment or with

fine or with both. The tenor of Sub-section (7) of Section 621A of the Act is, to our mind, that under this Sub-section (7) the offences punishable with imprisonment or with fine or with both shall be compoundable with the permission of the court and for such compounding the procedure laid down in the Criminal Procedure Code has to be followed in this regard.

It thus appears that the parties may be allowed to compromise a compoundable case before the criminal court where the prosecution is pending and such compounding of offence should be according to the procedure laid down in the Code of Criminal Procedure. Therefore, it seems that when it is an offence under this Act punishable with imprisonment or fine or with both it shall be compoundable with the permission of the court in accordance with the procedure laid down in that Act, the Code of Criminal Procedure, for compounding of offences.

Thus, such compounding of offences is entirely in the arena of the criminal court in which the prosecution is pending and such compounding of offences would be done in accordance with the procedure laid down in the Code of Criminal Procedure. It is also an option left with the concerned party to have the offence compounded by the Company Law Board in accordance with the procedure laid down in Section 621A of the Companies Act and in this case, in our view, no prior permission from the criminal court where the prosecution is pending is necessary.

Sub-section (8) of Section 621A specifically provides that no offence shall be compounded except and in accordance with the provisions of this section. Sub-section (7) of Section 621A of the Act is thus an enabling sub-section under which compounding of offence may be proceeded with before the criminal court with the sanction of the court. It may be noticed that under Section 320 of the Criminal Procedure Code offences under the Indian Penal Code, can only be compounded in accordance with the procedure laid down in the Code of Criminal Procedure. In our view, Sub-section (7) of Section 621A is an enabling provision under which the parties may have the offences compounded in the criminal court in accordance with the procedure laid down in the Criminal Procedure Code with the sanction of the court.

Under the provisions of the Criminal Procedure Code, any compoundable offence punishable under the Indian Penal Code may be compounded by the parties with, however, the permission of the criminal court where prosecution relating to the offence is pending. Previously, the criminal court where the prosecution relatable to the offence committed under the Companies Act is pending could not sanction any compounding of offences committed under the Companies Act or any other law. Now under Sub-section (7) of Section 621A of the Companies Act, such compoundable offences committed under this Act punishable with imprisonment or with fine or with both can be compounded in the criminal court where the prosecution relating to the offence is pending, but such compounding can be done in accordance with the procedure laid down in the Criminal Procedure Code and with the sanction of the court. Sub-section (7)(b) of Section 621A of the Act makes it clear, however, that no offence which is punishable under the Companies Act with imprisonment only or with imprisonment and also with fine shall be compoundable. Therefore, as we have indicated above, Sub-section (7) of Section 621A is an enabling provision giving an option to the parties to get the offence which is compoundable, compounded in the criminal court where the proceeding is pending, but such compounding can only be made with the sanction or permission of the court. The Company Law Board for a similar offence can compound the same in accordance with the provisions of the Companies Act as clearly indicated in Sub-section (8) of Section 621A of the Companies Act if the Company Law Board is so approached and in such a case no prior permission of the court before which the proceeding is pending is necessary.

19. The position which emerges from the above discussion is that, Sub-section (1) confers powers on the Regional Director to compound offences punishable with fine only subject to certain limitation. It confers powers on the Company Law Board to compound offences which are punishable with fine only, those punishable with fine or imprisonment and those which are punishable with fine or imprisonment or with both, and Sub-section (7) confers upon the court, concurrent jurisdiction to compound offences which are punishable with fine or imprisonment or both and that while the Company Law Board/Regional Director would follow the procedure laid down in the Companies Act, the court will follow the procedure laid down in the Criminal Procedure Code.

20. Accordingly, we hold that the exercise of powers by the Company Law Board under 621A(1) is independent of exercise of powers by the court under Sub-section (7), and all offences other than those which are punishable with imprisonment only or with imprisonment and also fine, can, be compounded by the Company Law Bard without any reference to Sub-section (7), even in cases where the prosecution is pending in a criminal court.

21. We refer the case back to the learned Member dealing with this application for compounding to decide the case of compounding on the merits, since the jurisdiction to consider this instant petition for compounding lies with the Northern Region Bench.