

**In Re: Ritesh Polysters Limited a**

**In Re: Ritesh Polysters Limited a**

**SooperKanoon Citation :** [sooperkanoon.com/47874](http://sooperkanoon.com/47874)

**Court :** Company Law Board CLB

**Decided On :** Jun-07-2004

**Reported in :** (2005)123CompCas348

**Judge :** K Balu

**Appellant :** In Re: Ritesh Polysters Limited a

**Judgement :**

1. The above application filed by the applicants herein, being directors of M/S Ritesh Polysters Limited ('the Company') under Section 621A of the Companies Act, 1956 ('the Act') has been forwarded to this Bench by the Registrar of Companies, Andhra Pradesh, Hyderabad for composition of the offences as provided under Section 621A(4)(a) of the Act. In the said application, the applicants seek composition of the offences relating to contravention of Sections 63 and 68 of the Act which are punishable in the manner provided under Sections 63(1) and Section 68 respectively.

2. The facts in brief are that the Company came out in the year 1995 with a public issue of 30,00,000 equity shares of Rs. 10/- each for cash at a premium of Rs. 5/- per share aggregating Rs. 450 lakhs. The prospectus dated 30.03.1995 signed by the applicants was issued for the purpose of the said public issue of shares with the objects to part finance the Company's diversification project for manufacture of cotton fabrics and setting up of texturing and twisting plant for polyester filament yarn to augment long term working capital requirements, to meet the expenses of issue and to list the shares of the Company on the recognised stock exchanges.

However, the investigations carried out by Securities & Exchange Board of India (SEBI) revealed that the public issue proceeds were utilised for the purpose of buying back its own shares from the financiers who bailed out the issue. While the equity share capital of the promoters would be Rs. 225 lakhs, the Company had received only Rs. 35 lakhs towards promoters contribution. Thus, the applicants are guilty of offences punishable under Sections 63 and 68 of the Act, for which SEBI has initiated the prosecution before the Sub-judge, Economic Offences Wing, Hyderabad.

3. According to Shri B. Ravi, the learned Authorised Representative, the public issue was opened on 12.06.1995 and came to be closed on 22.06.1995. The promoters were to bring Rs. 225 lakhs towards their contribution, in terms of the prospectus dated 30.03.1995, which was brought in by them before the commencement of the issue as borne out by a certificate dated 09.06.1995 issued by the Company's Auditors. Shri Ravi further submitted that it was the endeavour of the Company to ensure proper utilisation of proceeds of the public issue. Accordingly, the Company extended advances in favour of certain entities known to the Company to ensure safety return of funds with reasonable return, in tune with its objects as envisaged in the Memorandum of Association of the Company. All the loans extended by the Company were realised with interest as confirmed by an affidavit dated 14.05.2004 filed on behalf of the Company. The Company never intended to cheat the public. There are no complaints against the Company from any investor or shareholder before any authority and the Company has been working smoothly for the past 7 years. The violations neither affected adversely the interests of the Company or shareholders or general public nor caused loss to any of them. The applicants have made out the present application, compounding the offences in order to avoid the protracted proceedings before the court of the Special Judge for Economic Offences at Hyderabad. By virtue of the provisions of Section 621A, the CLB has jurisdiction to compound the offences which are punishable with imprisonment or fine or with both, even in cases where the jurisdiction is pending in a criminal court, in support of which the learned Authorised Representative made a reference to the decision of the CLB in Hoffland Finance Limited., In re. - 1997 Vol.90 CC 38. As the offences were committed and rectified before the commencement of the Companies

(Amendment) Act 2000, Shri Ravi submitted that the CLB may levy fine at the rate which was prevalent before the commencement of the Companies (Amendment) Act, 2000.

4. Shri V. Achuthan, learned counsel appearing for SEBI while vehemently opposing the application pointed out that the applicants are charged with grave offences punishable under Sections 63 and 68 of the Act, involving the misuse of public money and apart from irregularities in the public issue of the Company which revealed several misstatements in the prospectus, for which SEBI had already initiated the prosecution on the file of the Special Judge, Economic Offences, Hyderabad, which is pending. According to learned counsel, the CLB would have no jurisdiction to entertain the present application under Section 621A and would have no jurisdiction to compound offences punishable with imprisonment or fine or with both in view of the provisions of Sub-section (7) of Section 621A which confers jurisdiction for compounding offences involving penalty of imprisonment or fine or both exclusively upon the Magistrate trying the offence and therefore questioned the correctness of the decision of the CLB in Hoffland Finance Limited (Supra). Accordingly, the CLB cannot exercise concurrent jurisdiction, more so when the criminal court has already assumed jurisdiction by prosecuting the applicants. Moreover, the violations are not mere technical irregularities but are grave offences involving the public and therefore the discretion even if any vested with the CLB should not be exercised in favour of the applicants by compounding the offences punishable under Sections 63 & 68 of the Act.

In these circumstances, Shri Achuthan, learned counsel sought for dismissal of the company application.

5. I have considered the elaborate arguments advanced on behalf of the applicants and SEBI. On the pleadings of the parties and the arguments of their learned Counsel, the following issues would arise for my consideration in the present application: (i) whether the CLB has jurisdiction to compound the offences in question in view of Sub-section (7) of Section 621 A; (ii) If so, whether the CLB shall exercise its discretion in favour of the applicants by compounding the

offences, in the facts and circumstances for the case.

In order to appreciate this contentious issue, it would be necessary to extract the provisions of Section 621A as stood prior to the Companies (Second Amendment) Act, 2002, which reads as under: - "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 [fifty] 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 (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 [fifty] 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.

A perusal of Section 621A as rightly pointed out by Shri Ravi, the learned Authorised Representative indicates that it starts with the non-obstante clause "notwithstanding any thing 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". By virtue of these non-obstante clauses, it is far from doubt that 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. A three member Bench of the CLB, while interpreting the provisions of Section 621A, in *Hoffland Finance Limited In re* (supra), considered the whole gamut of the provisions relating to compounding of offences and came to the following conclusion:- Sub-section (1) of Section 621A "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.

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 Board without any reference to Sub-section (7), even in case where the prosecution is pending in a criminal court".

The High Court of Delhi, while considering the powers of the CLB to compound the offences which are punishable with imprisonment or fine or with both, although the prosecution is pending in the criminal court in VLS Finance Limited v. Union of India - (2004) 58 CLA 105, upheld the decision of the CLB in Hoffland Finance Ltd. (supra), in the following words: - "In the light of the aforesaid discussions, it is held that the person seeking compounding of an offence in accordance with the procedure laid down in the Cr.PC can do so before the criminal court with the permission of the court under Sub-section (7) of Section 621A of the Act, which normally cannot be done under the provisions of the Cr.PC. Such compounding of offence would always be relatable to the offence punishable with imprisonment or with fine or with both as is made clear under Clauses (a) and (b) of Sub-section (7).

Under the aforesaid sub-section the offence punishable with imprisonment or with fine or both shall be compoundable with the permission of the court and for such compounding the procedure laid down under the Cr.PC is to be followed in that regard provided the prosecution is pending in that court. I also hold the CLB can compound an offence of the nature prescribed under Sub-section (1) either before the institution of the criminal proceeding or even after institution of the criminal proceeding and the said power is not subject to the provisions of Sub-section (7). Both are parallel powers to be exercised by the prescribed authorities who have been empowered under the statute and one power is not dependent on the other. The issue No. (ii) is accordingly answered against the appellant holding that the power exercised by the CLB in the present case in compounding the offence although the prosecution was pending in the criminal court, is legal and valid".

In the light of the above settled legal position, I am unable to appreciate and accept the contentions of learned counsel for SEBI that the CLB would have no jurisdiction to compound offences punishable with imprisonment or fine or with both, in view of Sub-section (7) of Section 621A, which confers jurisdiction exclusively upon the criminal court and that the criminal court has already

assumed jurisdiction with initiation of the prosecution for such offences and therefore do not merit any consideration. Accordingly, this issue is answered in the affirmative.

While according to SEBI, the applicants are guilty of grave offences involving the interests of general public, the applicants contend that no one sustained any loss on account of the violations and further that the irregularities stood rectified. At this juncture, it shall be borne in mind that the specific plea that the promoters of the Company had brought in Rs. 225 lakhs before the issue was opened, as supported by a certificate dated 09.06.1995 of the Company's auditors and that proceeds of the public issue lent to various entities were realised in entirety, as affirmed in an affidavit dated 14.05.2004 on behalf of the Company remain uncontroverted by SEBI. Furthermore, the complaint lodged before the Special Judge for Economic Offences at Hyderabad is rather silent about the prejudices or losses suffered by general public or the Company or the shareholders, if any, on account of the violations committed by the applicants. The violations were committed as early as in March 1995, as reported in the complaint, but SEBI chose to initiate prosecution after a delay of eight years in March, 2003.

Thus, the purported graveness of the offences, in my view, is lost sight of. Nor is the case of SEBI before the CLB that there are complaints against the Company at the instance of any investor or shareholder before the Regulatory or Statutory Authority. While I agree that the object underlying the various provisions of the Act is to protect the interests of general public and particularly to safeguard those of the shareholders and creditors of the Company and further that SEBI is a Statutory Authority constituted by the Securities and Exchange Board of India Act, 1992, with a mandate to protect the interests of investors in securities and to promote the development of, and to regulate the securities, yet it is evident from the foregoing sequence of events that the interest of the investors was in no way shown to be jeopardised by virtue of the violations committed by the applicants. It would not be irrelevant to observe that the ROC in his reports dated 09.01.2004 & 27.04.2004 has not opposed the application for compounding the violations. The power of compounding vested in the CLB is discretionary, which in the facts and circumstances of the present case, in my considered view, cannot be refused, in



the interest of justice, in the absence of any material in support of grave consequences of the violations, if any. I am, therefore, inclined to exercise the discretion in favour of the applicants by compounding these offences. The claim of the applicants that the violations were committed and rectified before the commencement of the Companies (Amendment) Act 2000 and therefore the penalty which was prevalent before the commencement of the Amendment Act, 2000 may be imposed, must be considered in the light of Article 20(1) of the Constitution of India, according to which a person cannot be the subject to penalty greater than which was applicable when the alleged offences took place, in support of which beneficial reference is invited to in *Kedar Nath Bajoria v. State of West Bengal* - AIR 1953 SC 404, wherein the alleged offence was committed in 1947, but the punishment was enhanced subsequently. In the circumstances the Supreme Court held that the punishment that was applicable before 1947 would apply. Admittedly, the present violations were committed in March 1995 and therefore shall attract penalty as prevalent prior to the Companies (Amendment) Act, 2000. Having regard to the facts and circumstances of the case, the applicants shall pay each maximum penalty of Rs. 5,000/- for the offence punishable under Section 63 and similarly Rs. 10,000/- each for the offence punishable under Section 68, which shall be paid from their personal accounts by 30.06.2004. A copy of this order may be forwarded to the Registrar of Companies, Andhra Pradesh, Hyderabad and SEBI.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**