

MHCC020127332014



IN THE DESIGNATED SPECIAL COURT UNDER SEBI ACT, 1992
FOR MAHARASHTRA STATE
AT COURT ROOM NO.22, SESSIONS COURT, GREATER MUMBAI
SPECIAL CASE (SEBI) NO. 224 OF 2014
CNR No.MHCC02-012733-2014

Securities and Exchange Board of India.

... **Complainant**

Vs.

Sahara India Real Estate and Ors& Ors.

... **Accused**

Appearances :-

Ld. Adv. Ashok Saraogi a/w Adv. Dhananjay Dubey a/w Adv. Amir Arshiwala for applicant/accused No.3 to 5.

Ld. Adv. Suddep Pasbola a/w Ld. SPP Mr. Omprakash Jha, for SEBI respondent/complainant.

**CORAM : H. H. THE SEBI SPECIAL JUDGE,
SHRI A. A. KULKARNI (C.R. NO.22)**

DATED : 01st November, 2023.

ORDER BELOW EXH. 240

This application is filed by accused and prayed for following relief:-

a) Dismissal of complaint

or

b) Return complaint to Securities and Exchange Board of India for presentation to Serious Fraud Investigation Office in view of Section

212(2) of Companies Act, 2013.

in the alternative

c) Stay of proceedings and call for report from Serious Fraud Investigation Office in the matter.

2. Heard Ld. Advocate for accused and Ld. SPP for the complainant/Securities and Exchange Board of India (herein after referred as SEBI).

3. It is contention of accused that complaint is filed by SEBI against accused and alleged contravention of various provisions of the Securities and Exchange Board of India Act 1992 as well as Companies Act 1956, rules and regulation made there under. It is further contention of accused that on 14.08.2018, Registrar of Companies, Mumbai issued letter to the Central Government of India, on basis of such report, Central Government of India, by exercising its powers under Section 212(1) (a) and (c) of the Companies Act 2013, directed investigation into the affairs of the Companies of accused and others by Serious Fraud Investigation Office(herein after referred as SFIO). On the basis of such letter SFIO appointed the inspectors and investigating officers for the purpose of investigation in to affairs of the company. During course of investigation, SFIO requested SEBI to provide documents relating to the investigation/complaints in respect of companies of accused. It is further contention that on the basis of letter SEBI provided the information and documents in respect of issuance of OFCDs by Sahara India Real Estate Corporation Ltd. and Sahara Housing Investment Corporation Ltd. and the complaints received against them. It is further contention of accused that complainant SEBI

is aware of investigation carried out by the Serious Fraud Investigation Office. It is further contention that SEBI has not complied with the requisition of Serious Fraud Investigation Office which is contravention of the provisions Section 212 (2) of Companies Act. It is further contention of accused that complainant SEBI neither informed to Court about on going investigation by the office of SFIO and continued with the proceedings of the case. During course of investigation SFIO sought permission for investigation against six other companies which is granted by Central Government. SFIO further asked SEBI to provided other documents about those companies. Accordingly SEBI provided information to SFIO. Accused further alleged that complainant SEBI has not complied provisions of Section 212(2) of Companies Act 2013. Complainant SEBI is not entitled to proceed further with the present complaint in view of investigation carried out by SFIO. It is further contention that in view of investigation of SFIO complainant SEBI has become 'Functus officio', hence shall not proceed with the trial of the case. It is also contention that defence disclosed by the accused during present case may be used by SFIO to nullify it during investigation which may cause serious prejudice in on going investigation therefore by way of this application accused prayed for dismissal of complaint or return of complaint to SEBI for presentation to SFIO as per the Section 212(2) of Companies Act, 2013 and in alternate stay of proceedings.

4. Complainant SEBI opposed application by filing reply below Exh. 242. It is contention of complainant SEBI that in view of Section 212 of Companies Act, 2013 other investigation agencies shall not proceed with the investigation regarding the offence committed by the Companies, it is not binding for complainant. It does not mandate

any transfer of pending investigations or pending complaints to Serious Fraud Investigation Office. The said section only requires transferring relevant documents and records regarding the information of company. It is further contended that sharing of available information by one Government entity with other Government entity can not be termed as forfeiture/transfer of jurisdiction. It is further contended that, no ongoing investigation is in progress by complainant SEBI regarding any violations of SIRECL and SHICL(accused companies) being presently prosecuted. Complainant SEBI is prosecuting accused companies for the offence which are within their jurisdiction, therefore there is no need of transfer of present case and staying the prosecution by way of this case. It is further contended that in view of Section 55A of Companies Act, 1956 and Section 24 of the Companies Act, 2013 give exclusive administrative powers to SEBI in relation with issue and transfer of securities and non payment of dividend. It is further contended that violations of provisions to be administered by complainant SEBI, it is within the exclusive domain of complainant SEBI. It is also contended that the Hon'ble Supreme Court of India has upheld the provision of law in the case of SIRECL Vs. SEBI by judgment dated 31.08.2012. It is further contended that accused are presently being prosecuted for violation of provisions of the SEBI Act, Rules and Regulations framed thereunder and Companies Act, 1956. The legislature has clearly provided that the Special Court shall not take cognizance of complaint except on a complaint by SEBI. Therefore, sole authority vests with SEBI and no one other authority is having powers to launch prosecution for alleged offence by the accused. It is further contended that for a stay of trial under Section 210 of Cr.P.C. the per-condition is pending private complaint while an investigation into a similar offence is under

investigation by the police. This per-condition is to be read with Section 210 of Cr.PC. in the instant case, the prosecution is by a competent authority under law which is vested with sole authority under the law to prosecute the offender for violating the provisions of the law under its administration. Therefore, relief claimed by accused is not maintainable. Hence, prayed for rejection of application.

5. Accused filed re-joinder and contended that reply filed by SEBI is misleading and submitted that application filed by applicant/accused may be granted.

6. In support of contention about applicability of Section 210 of Cr.PC. The Ld advocate for accused relied on judgment of Hon'ble Delhi High Court in the case of Zee News Ltd. V. State reported in 2016 SCC online Del 2392.

7. In view of submission from both sides and going through the record of the case it is clear that, on the complaint of complainant SEBI, this court took cognizance of the offence punishable under Section 24(1) for violation of various regulations by complainant SEBI as well as for violation of mandatory provisions regarding securities of the company. After appearance of accused, this court after hearing both sides framed charge against accused vide Exh.108. Recoding of evidence of witness on behalf of complainant is in process and presently case is pending for cross-examination of witness of complainant.

8. Accused by way of this application prayed for stay of proceedings, or return of complaint to SEBI in view of provisions of

Section 212 of Companies Act, which reads as under:

212. Investigation into affairs of Company by Serious Fraud Investigation Office.— (1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

(a) on receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or

(d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

(3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.

(4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.

(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), [offence covered under section 447] of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release;

and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are

reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub- section except upon a complaint in writing made by—

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

(8) If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(9) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.

(11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.

(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.

(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

(14) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974).

(16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with under that Act as if this Act had not been passed.

(17) (a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;

(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income-tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.

9. Further accused prayed for stay of proceedings in view of section 210 of Cr.P.C. which reads as under:-

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject- matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

10. Section 26 of the Securities and Exchange Board of India Act, gives powers to this court to take cognizance of offence only on the basis of complaint of SEBI. This is special court established for trial of offence arising out of Securities and Exchange Board of India Act 1992. In view of Section 439 of Companies Act, this court can take cognizance in respect of issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India. In view of above legal position only complainant SEBI is authorized to file complaint in relation of offences with securities of the company.

11. Chapter XIV of the companies act is in relation with Inspection, Inquiry and investigation of the affairs of the company. As per Section 206 and 207 of Companies Act, Register and inspectors are authorized to inspect record of the companies. In view of Section 208 of The Companies Act register has to submit report to Central Government with his recommendations for further investigation. On the basis of such report Central Government of India is empowered to direct for investigation through Serious Fraud Investigation office, established as per Section 211 of the Companies Act 2013.

12. During investigation by Serious Fraud Investigation Office

it is mandated that, no other agency of Central Government or State shall carry any investigation. In my humble opinion Securities and Exchange Board of India is not central or state investigation agency, it is regulatory body established by the law. It is body incorporated with object to protect interest of investors and security market. In view of powers conferred to complainant SEBI vide Section 11C of SEBI act, complainant SEBI can investigate, in present case investigation is completed under it and on the basis of conclusion and recommendation of board present case is filed for the offence in respect of affairs relating to securities. This court has taken cognizance of the complainant, framed charge and partly recorded evidence of witness of complainant. In such circumstances in my humble opinion by virtue of provisions of Section 212 of Companies Act, this matter cannot be referred to Serious Fraud Investigation Officer for any investigation as after taking cognizance and framing of charge, this court has to decide case on merit by way of judgment only.

13. There is no parallel investigation through any other authority on same subject pending when present complaint is filed. Hence it cannot be held that, there is pending complaint and police case on same subject matter hence proceedings cannot be stopped in view of Section 210 of Cr.P.C. Therefore judgment of Zee News Ltd. Vs. State referred supra cannot be made applicable in present case. This court has no powers to stay proceedings of pending case before this court by any legal provisions in Cr.P.C. This court has no supervisory jurisdiction over the office of SFIO to call any report about investigation in to the affairs of accused companies as claimed by the accused. Therefore prayer of accused to transfer, stay or call report from the

office of SFIO. Hence prayers of accused cannot be entertained by this court. Hence application filed by the accused is liable to be rejected. Hence I pass following orders:

ORDER

Application (Exh. 240) in SEBI Spl Case No. 224/2014 is hereby rejected and disposed off accordingly.

Date : 01.11.2023

[A. A. KULKARNI]
SEBI SPECIAL JUDGE,
GREATER MUMBAI.

Directly dictated on computer on : 01.11.2023
HHJ signed on : 04.11.2023

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”		
Upload Date	Upload Time	Order is prepared by Presiding Officer
04.11.2023	5.30 p.m.	

Name of the Judge (With Court Room No.)	HHJ A. A. KULKARNI (Court Room No. 22)
Date of Pronouncement of JUDGMENT/ORDER	01.11.2023
JUDGMENT/ORDER signed by P.O. on	04.11.2023
JUDGMENT/ORDER uploaded on	04.11.2023