

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 2102 OF 2004

V.L.S. FINANCE LTD.

...APPELLANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

JUDGMENT

CHANDRAMAULI KR. PRASAD, J.

This appeal by special leave arises out of an order dated 5th of November, 2003 passed by the Company Judge, Delhi High Court in Company Appeal (B) No. 1 of 2001 whereby it has dismissed the appeal assailing the order of the Company Law Board allowing the compounding of offence under Section 211(7) of the Companies Act.

Short facts giving rise to the present appeal are that the Registrar of Companies, NCT of Delhi and Haryana laid complaint in the Court of Chief Metropolitan Magistrate, Tis Hazari, inter alia alleging that during the course of inspection it was noticed in the balance sheet of 1995-96 Schedule of the fixed assets included land worth Rs. 21 crores. According to the complaint, M/s. Sunair Hotels Ltd., for short 'the Company', had taken this land from New Delhi Municipal Corporation on licence and the Company only pays the yearly licence fee thereof. Thus, according to the complainant, without any right land has been shown as land in the Schedule of fixed assets, which is not a true and fair view and punishable under Section 211(7) of the Companies Act, hereinafter referred to as "the Act". The Company and its Chairman-cum-Managing Director, S.P. Gupta were arrayed as accused.

However, before the court in seisin of the case could proceed with the complaint, the Company and

its Managing Director jointly filed an application before the Company Law Board for compounding the offence. The Northern Region Bench of the Company Law Board, by its order dated 9th of August, 2000 acceded to the prayer and compounded the offence against the Managing Director on payment of Rs. 1000/- for each offence each year. While doing so, the Company Law Board has held as follows:

"...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 Company Law Board without any reference to sub-section (7), even in cases where prosecution is pending in a criminal court. Thus, it is clear that Company Law Board if so approached can compound offences and in such case no prior permission of the Court is necessary."

Aggrieved by the same, appellant preferred Company Appeal before the High Court, inter alia, contending that the power of compounding could be exercised by the criminal court and not by the

Company Law Board. Said submission has not found favour and the Company Judge, in this connection, observed as follows:

"18. 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 Criminal Procedure Code 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 Criminal Procedure Code. 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 Criminal Procedure Code is to be followed in that regard provided the prosecution is pending in that Court. I also hold the Company Law Board 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.....”

Accordingly, the Company Judge dismissed the appeal.

That is how the appellant is before us.

We have heard Mr. R. Shankaranarayanan, for the appellant, Ms. Binu Tamta, for the respondent-Union of India and Mr. Jayant Bhushan, Senior Advocate for the Company and its Managing Director.

It is an admitted position that the allegations made exposed the accused to an offence punishable under Section 211(7) of the Act. The same reads as under:

“211. Form and contents of balance-sheet and profit and loss account.—

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(7) If any such person as is referred to in sub-section (6) of section 209 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the

provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section and the other requirements aforesaid were complied with and was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

xxx xxx xxx"

Thus, the offence alleged is punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 10,000/- or with both.

Mr. Shankaranarayanan has taken an extreme stand before this Court and contends that the

Company Law Board has no jurisdiction to compound an offence punishable under Section 211(7) of the Act as the punishment provided is imprisonment also. Mr. Bhushan, however, submits that imprisonment is not mandatory punishment under Section 211(7) of the Act and, hence, the Company Law Board has the authority to compound the same. He also points out that this submission was not at all advanced before the Company Law Board and, therefore, the appellant cannot be permitted to raise this question for the first time before this Court. We are not in agreement with Mr. Bhushan in regard to his plea that this question cannot be gone into by this Court at the first instance. In our opinion, in a case in which the facts pleaded give rise to a pure question of law going to the root of the matter, this Court possesses discretion to go into that. The position would have been different had the appellant for the first time prayed before this Court for adjudication on an issue of fact and then to apply the law and hold

that Company Law Board had no jurisdiction to compound the offence.

Here, it is an admitted position that the allegation made exposed the Company and its Managing Director for punishment under Section 211(7) of the Act which provides for imprisonment or fine or with both. In the face of the same, no fact needs to be adjudicated and the point being a pure question of law going to the root of the matter, same can be permitted to be raised before this Court for the first time. But that does not help the appellant as we are inclined to accept the submission of Mr. Bhushan on merit. Section 621A was inserted by the Companies Amendment Act, 1988 on the recommendation of the Sachar Committee. It was felt that leniency is required in the administration of the provisions of the Act particularly penalty provisions because a large number of defaults are of technical nature and arise out of ignorance on account of bewildering complexity of the provisions. Section 621A of the

Act; as stood at the relevant time and relevant for our purpose reads as follows:

"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-

(a) the Company Law Board; or

(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 this sub-section, the sum, if any,

paid by way of additional fee under Sub-section (2) of Section 611 shall be taken into account.

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(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.

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(7) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,-

(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."

From a plain reading of Section 621A(1) it is evident that any offence punishable under the Act, not being an offence punishable with imprisonment only or with imprisonment and also with fine, may be compounded either before or after the institution of the prosecution by the Company Law

Board and in case, the minimum amount of fine which may be imposed for such offence does not exceed Rs. 5000/-, by the Regional Director on payment of certain fine. The penal provisions of the Act provide for different kinds of punishments for variety of offences and can be categorised as follows:

- (i) offences punishable with fine only,
- (ii) offences punishable with imprisonment only,
- (iii) offences punishable with fine and imprisonment,
- (iv) offences punishable with fine or imprisonment,
- (v) offences punishable with fine or imprisonment or both.

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Section 211(7) of the Act provides for punishment with imprisonment for a term which may extend to six months or with fine or with both. Therefore, an accused charged with the offence under Section 211(7) of the Act has not necessarily to be visited with imprisonment or imprisonment and

also fine but can be let off by imposition of fine only. Therefore, the punishment provided under Section 211(7) of the Act comes under category (v) aforesaid. Section 621A(1) excludes such offences which are punishable with imprisonment only or with imprisonment and also with fine. As we have observed above, the nature of offence for which the accused has been charged necessarily does not invite imprisonment or imprisonment and also fine. Hence, we are of the opinion that the nature of the offence is such that it was possible to be compounded by the Company Law Board.

Mr. Shankaranarayanan, then submits that sub-section (7) of Section 621A confers jurisdiction on the court to accord permission for compounding of the offence punishable with imprisonment or with fine or with both, the jurisdiction of the Company Law Board is excluded and, therefore, the Company Law Board erred in acceding to the request of the accused for compounding of the offence. Sub-section (1) of Section 621A and sub-section (7)

thereof are differently worded but on their close reading it is evident that both cover such offences depending upon the nature of punishment. Sub-section (1) of Section 621A excludes offence punishable with imprisonment only or with imprisonment and also fine and includes the residue offences which will obviously include offence punishable with imprisonment or with fine or with both whereas sub-section (7) specifically include those and excludes, like sub-section (1), offences punishable with imprisonment only or with imprisonment and also fine. Therefore, both cover similar nature of offences. Hence, the power for compounding can be exercised in relation to the same nature of offences by the Company Law Board or the court in seisin of the matter with the difference that the Company Law Board can proceed to compound such offence either before or after the institution of any prosecution. In this connection, it shall be relevant to refer to Section 621A(4)b) of the Act, which provides that 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 7 days from the date on which the offence is compounded. Section 621A(4)d) mandates that where the composition of any offence is made after the institution of any prosecution, such composition would 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 accused in relation to whom the offence is so compounded shall be discharged.

From the conspectus of what we have observed above, it is more than clear that an offence committed by an accused under the Act, not being an offence punishable with imprisonment only or imprisonment and also with fine, is permissible to be compounded by the Company Law Board either before or after the institution of any prosecution. In view of sub-section (7) of Section 621A, the

criminal court also possesses similar power to compound an offence after institution of the prosecution.

Now the question is whether in the aforesaid circumstances the Company Law Board can compound offence punishable with fine or imprisonment or both without permission of the court. It is pointed out that when the prosecution has been laid, it is the criminal court which is in seisin of the matter and it is only the magistrate or the court in seisin of the matter who can accord permission to compound the offence. In any view of the matter, according to the learned counsel, the Company Law Board has to seek permission of the court and it cannot compound the offence without such permission. This line of reasoning does not commend us. Both sub-section (1) and sub-section (7) of Section 621A of the Act start with a non-obstante clause. As is well known, a non-obstante clause is used as a legislative device to give the enacting part of the section, in case

of conflict, an overriding effect over the provisions of the Act mentioned in the non-obstante clause.

Ordinarily, the offence is compounded under the provisions of the Code of Criminal Procedure and the power to accord permission is conferred on the court excepting those offences for which the permission is not required. However, in view of the non-obstante clause, the power of composition can be exercised by the court or the Company Law Board. The legislature has conferred the same power to the Company Law Board which can exercise its power either before or after the institution of any prosecution whereas the criminal court has no power to accord permission for composition of an offence before the institution of the proceeding. The legislature in its wisdom has not put the rider of prior permission of the court before compounding the offence by the Company Law Board and in case the contention of the appellant is accepted, same would amount to addition of the words "with the

prior permission of the court" in the Act, which is not permissible.

As is well settled, while interpreting the provisions of a statute, the court avoids rejection or addition of words and resort to that only in exceptional circumstances to achieve the purpose of Act or give purposeful meaning. It is also a cardinal rule of interpretation that words, phrases and sentences are to be given their natural, plain and clear meaning. When the language is clear and unambiguous, it must be interpreted in an ordinary sense and no addition or alteration of the words or expressions used is permissible. As observed earlier, the aforesaid enactment was brought in view of the need of leniency in the administration of the Act because a large number of defaults are of technical nature and many defaults occurred because of the complex nature of the provision.

From what we have observed above, we are of the opinion that the power under sub-section (1) and

sub-section (7) of Section 621A are parallel powers to be exercised by the Company Law Board or the authorities mentioned therein and prior permission of Court is not necessary for compounding the offence, when power of compounding is exercised by the Company Law Board. In view of what we have observed above, the order impugned does not require any interference by this Court.

In the result, we do not find any merit in the appeal and it is dismissed accordingly but without any order as to costs.

JUDGMENT

.....J
(CHANDRAMAULI KR. PRASAD)

.....J
(V.GOPALA GOWDA)

NEW DELHI,
MAY 10, 2013.