IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 773 of 2021
(Assigned)

Pranab Kumar Roy

Vs

The Securities and Exchange Board of India.

For the Petitioner	: Mr. Debrup Bhattacharjee, Mr. Tirthankar Dey.
For the SEBI	: Mr. Sandipan Ganguly, Sr. Adv., Mr. Sudip Kumar Dutta.
Heard on	: 24.02.2023
Judgment on	: 27.03.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding being Special Case No. SEBI/27/2017 under Sections 56, 60 and 70 read with Section 56, 60 read with Sections 2(36), 73 of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013 read with SEBI (issue of Capital and Disclosure Requirements) Regulations, 2009 (the ICDR Regulations) Section 117B of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013 and the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (the ILDS Regulations) and Section 12(1) of the SEBI Act, 1992 read with Regulation 7 of the SEBI (Debenture Trustees Regulations 1993, which are punishable under Section 24 and 27 of the Securities and Exchange Board of India Act, 1992 pending before the Learned Judge-in-Charge, 5th Special Court, Kolkata and all orders passed therein including the order dated 29th July, 2019 qua the petitioner herein.

2. The petitioner's case is that the petitioner along with others have been arraigned as an accused along with others on the basis of a written complaint filed by the opposite party before the Learned 5th Special Court, Kolkata in Special Case No. SEBI/27/2017 as stated above.

3. The prosecution case, in short, is that the accused no.1 company, made a public issue of debentures without filing any offer document in violation of Section 56 of the Companies Act, 1956 nor did the accused persons file any statement instead of the prospectus. The accused persons also failed to file the Draft Red Herring Prospectus (DRHP) with the Securities and Exchange Board of India and violated the provisions of Section 73 of the Companies Act, 1956, and have also not complied with the aforesaid provisions for public issue of shares and thereby violated provisions of Sections 56, 60 and 70 read with Sections 56, 60 read with Sections 2(36), 73 of the companies Act, 1956 read with Section 465 of the Companies Act, 2013 read with SEBI (issue of Capital and Disclosure Requirements) Regulations, 2009 (the ICDR Regulations) Section 117B of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013 and the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (the ILDS Regulations) and Section 12(1) of the SEBI Act, 1992 read with Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993.

4. The petitioner entered appearance in the said proceedings and thereafter at a later stage preferred an application under Section 239 of the Code of Criminal Procedure, 1973 praying for discharge.

5. It is stated by the petitioner that the Learned Judge, upon purported consideration of materials on record, and after hearing the

rival contentions advanced on behalf of the petitioner and the prosecution, by an order dated 29.07.2019 was pleased to reject such application preferred by the petitioner and was further pleased to fix the next date for framing of charge.

6. It is submitted that the Learned Judge failed to appreciate that the allotment of the Non-Convertible Debentures (NCD) took place during the Financial Year 2012-2013 which is calculated from 1st April 2012 to 31st March, 2013.

7. **The petitioner states that the following facts are necessary for proper adjudication of the instant case :-**

I. The petitioner joined the company namely Chakra Infrastructure Limited being the accused no.1 before the Learned Court Trial, in the Month of November 2012 as an advisor to the company for a monthly remuneration of Rs. 20,000/- per month.

II. Sometime in the month of June 2013 at the request of the Managing Director of the accused no. 1 company, the petitioner joined the accused no. 1/company as its **Additional Director on 3rd July, 2013**.

III. In the month of November 2013 in the General Meeting of the members, the petitioner along with two other Directors **resigned** from the post of the Additional Director by way of a letter dated **28th November 2013** and submitted his resignation to the Board of Directors. Despite receipt of the aforesaid letter, the name of

the petitioner was not removed from the books of the Registrar of Companies, India, as the accused no. 1 failed to report the same to the Registrar of companies, India.

IV. The petitioner conveyed the aforesaid information about his resignation on 28th November 2013 to the Securities and Exchange Board of India vide letter dated 16th September 2014 against SEBI's letter vide no. ERO/OW/PH/M-5700/2014/12 on 5th August 2014 and the said information was duly recorded by the Securities and Exchange Board of India in their order no. WTM/PS/07/IMD//ERO/APR/206 dated 20th April, 2016.

V. In the order dated 20th April 2016 passed by the Securities and Exchange Board of India it has been specifically mentioned that the allotment of the Non-Convertible Debentures (NCD) took place during the financial year 2012-2013 which initiates from 1st April 2012 and ends on 31st March 2013. **In the said order it has been specifically recorded by the Securities and Exchange Board of India that the present petitioner and few other Directors joined the said company after allotment of the Non-Convertible Debentures (NCD).**

In respect to the aforesaid statement Section 27 of the SEBI Act, 1992 which read as follows is relevant:-

"Offences by Companies:-

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-Section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence ad shall be liable to be proceeded against and punished accordingly Explanation.- For the purposes of this section, -

(a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

8. It is further stated that the aforesaid provision makes it abundantly clear that a person who was/were in charge and responsible for conducting the day to day affairs/business of the company when the offence has been committed shall be deemed to be guilty of the offence. The petitioner was not associated with the accused no. 1, company, as its Additional Director during the Financial Year 2012-2013 and was in no way responsible for the day to day functioning/conducting of its business and the same fact would further appear from the documents relied upon by the Opposite Party herein for initiation of the present proceedings.

9. It is also submitted that the instant criminal proceeding to the extent it relates to the petitioner is manifestly attended with malafide and the same has been maliciously instituted with an ulterior motive for wreaking vengeance upon the petitioner and on that score, the instant proceeding is liable to be quashed qua the petitioner.

10. **Mr. Debrup Bhattacharjee, learned counsel for the petitioner** has submitted that the impugned proceeding is a gross abuse of the process of the court which if allowed to continue beyond the stage it has already reached shall degenerate itself into a weapon of undue

harassment and persecution and as such the same is liable to be quashed for the ends of justice.

11. It is further submitted that the Learned Trial Court failed to appreciate that in the order dated 20th April 2016 passed by the Securities and Exchange Board of India it has been specifically mentioned that the allotment of the Non-Convertible Debentures (NCD) took place during the financial year 2012-2013 which initiates from 1st April 2012 and ends on 31st March 2013. In the said order it has been specifically recorded by the Securities and Exchange Board of India that the present petitioner and few other Directors joined the said company after allotment of the Non-Convertible Debentures (NCD).

12. **Mr. Bhattacharjee** has further submitted that the Hon'ble Apex Court on various occasions has held that Section 27 of the Securities and Exchange Board of India Act, 1992 deals with offences by Companies. Section 27 of Securities and Exchange Board of India Act, 1992 is pari materia to Section 141 of the Negotiable Instruments Act and similar provisions are also contained under the Drugs and Cosmetics Act, Income Tax Act, Essential Commodities Act, Food Adulteration Act, Environment Protection Act.

13. It is also submitted that the requirement of Section 141 of the N.I. Act is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at

the relevant time. This has to be averred as a fact as there has to be deemed liability of a director in such cases.

14. It is further submitted that various Tribunals have also held that if allotment of shares/debentures took place before the appointment of a particular Director without his knowledge and if such Director never attended any meeting of the Board of Directors and that he was not involved nor had any role in the decision making process for issuance of Non-Convertible Debentures then the said Director could not be said to be an Officer-in-Default under Section 5 of the Companies Act; A plain reading of the petition of complaint would reveal that the petitioner joined the said company as its Additional Director on 3rd July 2013 and the said incident of issuance of Non-Convertible Debentures took place in the Financial Year 2012-2013 prior to his appointment.

15. It is submitted that the petitioner was not associated with the accused no.1/company, as its Additional Director during the Financial Year 2012-2013 and was in no way responsible for day to day conducting of its business.

16. It is submitted that the Learned Court failed to appreciate that the order issuing summons, order dated 29.07.2019 and the subsequent orders are baseless, unjustified, unwarranted and should be quashed, as the proceeding is even otherwise bad in law.

17. It is finally submitted that the Learned Trial Court without application of judicial mind, has come to the aforesaid finding against the petitioner and as such the instant proceedings being otherwise bad in law is liable to be quashed for the ends of justice.

18. **Mr. Sandipan Ganguly, learned counsel for the Opposite Party (SEBI)** has submitted:-

a) That a brief perusal of the order dated 20.04.2016 passed by SEBI would show that the specific case against **the petitioner is that the petitioner was appointed as a director of the accused company on 03.07.2013 (i.e. after the issuance of the non-convertible debentures) but thereafter, he had continued to be the director of the accused company and never resigned (inner page 27 of order dated 20.04.2016).** Therefore, even though the petitioner became a director of the accused company after the issuance of the debenture, he had a continuing liability to make repayment/refund of the money raised illegally from the public by the accused company as envisaged under **Section 73(2) of the Companies Act, 1956 and Regulation 28 of SEBI (Issue and Listing of Debt Securities) Regulations, 2008** and non-compliance of such duty was to be visited by punishment as provided under Section 24(1) of the SEBI Act and Section 629A of the Companies Act, 1956. As the petitioner had neither remedied his violations by making the

necessary refunds nor taken steps to reports the violations to the regulators, he is liable for all enforcements actions in the prescribed Acts. From the said order of the Whole Time Members of SEBI Passed on 20.04.2016, it is also established that the petitioner, being a director, appointed after issuance of the illegal debenture, obtained the monetary benefits of the debenture amount illegally raised by the accused company and subsequently, refused to make repayments of the said debenture despite specific directions from SEBI. Keeping the said facts in mind, SEBI in the order dated 20.04.2016 was of the view that the petitioner cannot claim ignorance of law in the manner in which the accused company operated and mobilised funds from public and thus, called upon the petitioner and others to refund their illegal gains and imposed appropriate penalty upon them.

b) It is further submitted that against the said order passed by SEBI, the petitioner has never preferred an appeal before the Securities Appellate Tribunal and therefore, the said order dated 20.04.2016 has attained finality along with the directions passed therein.

c) That the Learned Trial Judge, after considering the submissions advanced by the parties, by an **order dated 29.07.2019** was pleased to dismiss the prayer for discharge of the petitioner on the ground that even though the petitioner was appointed as a

director of the accused company after issuance of the debenture, no evidence has been brought forward to show that the resignation of the petitioner was accepted and on the contrary, record reveal that the petitioner continued to be a director of the accused company till the filing of the case. Hence, the petitioner has no scope to escape from his liability as one of the directors of the accused company, which was identified by SEBI as a wrongdoer.

d) It is the specific case against the petitioner that even though he became a director of the accused company after the issuance of the debenture, he had a continuing liability to make repayments of the money illegally raised from the public by the accused company under **Section 73(2) of the Companies Act, 1956 and Section 24/27 of the SEBI Act read with Regulation 28 of SEBI (Issue and Listing of Debt Securities) Regulations, 2008**. It is submitted that the role and duty of a director is not limited to mere issuance of debenture instead it continues till the time the said amount of debenture repaid back to the public. Therefore, even though the petitioner was appointed as a director after issuance of the debenture, he was duty bound to repay back the same, especially when the accused company had not obtained any permission from SEBI for the issuance of such debentures. Failure on his part to act in terms thereof visits him

with the penal consequence provided under Section 629A of the Companies Act, 1956 and Section 24 of the SEBI Act.

e) **Regulation 28(a) of the SEBI (ISSUE AND LISTING OF DEBT SECURITES) REGULATIONS, 2008** clearly lays down that SEBI has powers to issue directions thereby directing an issuer to refund the application monies to the applicants in a public issue. Non-compliance of any direction passed under the any Rule or Regulation of SEBI, is an offence punishable under Section 24 (1) of the SEBI Act. In the instant case as well, SEBI by its order dated 20.04.2016 had passed directions upon the petitioner to repay the illegal gains made from the issuance of the illegal debenture, which has not been compiled by the petitioner and failure to comply with such direction is an offence punishable under Section 24(1) of the SEBI Act. Thus, it is palpably clear that the petitioner has committed an offence under Section 24(1) of the SEBI Act by not making repayments for the illegal debenture raised from the public.

f) **Section 629A of the Companies Act, 1956** provides for "Penalty where no specific penalty is provided elsewhere in the Act". Thus, for the violation of Section 73(2) of the Companies Act, 1956, the petitioner is liable to be prosecuted and under Section 629A of the Act.

g) Proviso to Section 621 of the Companies Act, 1956 clearly lays down that the court can take cognizance of offence relating to issue and transfer of securities and non-payment of dividend on a complaint in writing by a person authorized by the Securities Exchange Board of India. Thus, SEBI has powers to simultaneously prosecute the petitioner for the violation of Section 72(3) of the Companies Act, 1956 as well as under Section 24/27 of the SEBI Act, 1992. As such the revision is liable to be dismissed.

19. **From the materials on record the following facts are before this court:-**

a) The accused No. 1 company allegedly violated the provisions of Companies Act, 1956 while making public issue of shares (allotment of the Non-Convertible Debentures during the financial year 2012-2013, which is calculated from 1st April 2012 to 31st March, 2013.

b) The petitioner joined the company in November, 2012 as Advisor.

c) He joined as Additional Director on 03.07.2013.

d) The petitioner resigned from the said post by a letter dated 28th November, 2013 submitted to the board of directors, which was duly received.

e) He informed the same to the Opposite Party, which was recorded in their order dated 20.04.2016.

f) Order of SEBI being number WTM/PS/07/IMD/ERO/APR/2016 is in respect of the company.

g) **The relevant portion of the order in respect of the petitioner is at paragraph 6(e) at page 10.**

*"**Mr. Pranab Kumar Roy**, vide letter dated March 09, 2015 (sent by his wife Ms. Nabanita Roy) read with letter dated September 16, 2014 submitted as follows:-*

i. *He joined Chakra Group in January 2013 as Advisor to look after their B.Ed College and agriculture business for a monthly remuneration of Rs. 20,000/-.*

ii. *In August 2013, at the request of Mr. Partha Chakraborty, he was inducted as a director in three companies of the Chakra Group, namely, Chakra Infrastructure Limited, Chakra Wealth Management Advisory Limited and Chakra Agrotech (P) Limited.*

iii. *In November 2013, in the general meeting of the members, **two directors including the noticee were released from directorship** and two new directors were inducted. The noticee had submitted his resignation to Mr. Partha Chakraborty from all three companies and **left the company on November 30, 2013**.*

iv. *The noticee now understands that Mr. Partha Chakraborty did not remove his name from RoC records for reasons best known to him.*

v. *During his tenure, the Company did not pay any remuneration/fees to him.*

vi. *Further, during his tenure of four months, the Company did not mobilize funds* ***through issuance of bonds and did not convene*** *any meeting.*

vii. *In view of the above, he is not in a position to provide information as sought by SEBI.*

viii. *He does not have any connection with the Company since November 2013.* ***The noticee further submitted that the Company's registered*** *office was closed and indicated that Mr. Partha Chakraborty was the key person cum promoter of the Chakra group who would be able to provide information."*

(h) **In paragraph 22(e) at page 27 of the order, it is held:-**

"From the details pertaining to the tenure of the directors, as mentioned in the table above, it can be inferred that:–

a) *Partha Chakraborti, Soma Chakraborti, Swapan Kumar Sen, Biplab Halder, Litan Chandra Sen, Prithwis Kumar Das and Swapan Majumdar were the directors of the*

Company when the Company made the offer and allotment of NCDs during 2012-2013 in violation of the law.

b) Bijoy Das, Pranab Kumar Roy, Subhas Bose and Santosh Kumar had joined the board pursuant to the allotment of NCDs.

The liability of the company and directors to repay under Section 73(2) of the Companies Act, 1956 and Section 27 of the SEBI Act, is a continuing liability and the same continues till all the repayments are made. Therefore, the directors (irrespective of whether they continue or resign) who were present during the period when the Company made the offer and allotted NCDs shall be liable for violation of Sections 56, 60 and 73 of the Companies Act, including the default in making refunds as mandated therein. As the liability to make repayments under Section 73(2) of the Companies Act read with Section 27 of the SEBI Act is a continuing liability, the persons who join the Company's Board pursuant to the offer and allotment of NCDs shall also be liable if the Company and the concerned directors have failed to make refunds as mandated under law."

20. The table at paragraph 22 (page 25) of the order shows that the petitioner still continues as a director since 03.07.2013 (no mention of the resignation rendered).

21. The complaint in this case has been filed on 10.02.2017 and the petitioner's prayer for discharge has been rejected vide order No. 45 dated 29.07.2019 by the learned Trial Court.

22. Written notes of argument has been filed on behalf of the petitioner and the following judgments have been relied upon:-

i. Nimain Charan Biswal vs Securities and Exchange Board of India, Appeal No. 156 of 2020, On 30.07.2020.

ii. Securities and Exchange Board of India vs Nimain Charan Biswal, Civil Appeal No(s). 3174/2020, on November 18, 2020.

iii. Sayanti Sen vs Securities and Exchange Board of India, Appeal No. 163 of 2018, on 09.08.2019.

iv. S.M.S. Pharmaceuticals Ltd. vs Neeta Bhalla and Anr., Criminal Appeal No. 664 of 2002, on September 20, 2005.

23. The Opposite Party has submitted as follows:-

(a) The Opposite Party No. 2 herein submit that in the petition of complaint it has been specifically averred that the accused no. 2-11 are the directors/promoters/manager/key management personnel/persons in charge of the business of the accused company and are responsible for the day to day affairs of the company and such averments are sufficient to bring the petitioners under the dragnet of Section 27 of the SEBI Act. The Opposite Party No. 2 also relies upon **S.M.S**

Pharmaceutical Ltd. Vs Neeta Bhalla & Anr. (2005) 8 SCC 89 (Para 10, 18 and 19) wherein it had been clearly laid down that **to make a director liable for the acts of the company, it has to be specifically averred in the complaint that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company.** Such averments are clearly laid down in the instant petition of complaint and therefore, it is prima facie established that the petitioner is vicariously responsible for the acts of the company.

(b) The Opposite Party No. 2 has also relied upon **Gunmala Sales Pvt. Ltd Vs Anu Mehta and Ors. (2015) 1 SCC 103 (para 31, 31)** wherein it has been held that **a complaint cannot be quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment, would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial.** Hence, with requirement of basic averment being fulfilled in the instant petition of complaint, the role of the petitioner with regard to his involvement in making public issue has to be established during the trial of the case. Thus a prima facie case been made out against the

petitioner and any presumption of innocence and non-involvement in the commission of alleged offence, as has been claimed by the petitioner, can only be discharged at the time of trial by either cross-examination of the prosecution witnesses or through adducing of defence evidence. Thus, it is fervently appealed that this Hon'ble Court may refrain from exercising its jurisdiction under Section 482 of the Code of Criminal Procedure to quash the petition of complaint being Special Case No. SEBI/27/2017 qua the petitioner pending before the Court of the Learned Judge, 5th Special Court, at Calcutta.

24. **Section 168 of the Companies Act, lays down:-**

> *"**Section 168. Resignation of director.**-*
> *(1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in immediately following general meeting by the company:-*
> *Provided that a director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.*
> *(2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:-*
> *Provided that the director who has resigned shall be liable even after his*

resignation for the offences which occurred during his tenure.

(3) Where all the directors of a company resign from their offices, or vacate their offices under Section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting."

25. The order of the SEBI passed in April 2016 at page 27 held that the petitioner among some of the other directors had **joined the board pursuant to the allotment.** So it is apparent that the petitioner is not connected with the allotment of NCDs. At page 27 paragraph 22 (g) of the said order, the liability of the company and its directors has been held:-

"(g) The liability of the company and directors to repay under Section 73(2) of the Companies Act, 1956 and Section 27 of the SEBI Act, is a continuing liability and the same continues till all the repayments are made. Therefore, the directors (irrespective of whether they continue or resign) who were present during the period when the Company made the offer and allotted NCDs shall be liable for violation of Sections 56, 60 and 73 of the Companies Act, including the default in making refunds as mandated therein. As the liability to make repayments under Section 73(2) of the Companies Act read with Section 27 of the SEBI Act is a continuing liability, the persons who join the Company's Board pursuant to the offer and allotment of NCDs

shall also be liable if the Company and the concerned directors have failed to make refunds as mandated under law."

26. **Section 73 of the Companies Act, lays down:-**

> *"**Section 73. Prohibition on acceptance of deposits from public.***
>
> *(1) On and after the commencement of this Act, no company shall invite, accept or renew deposit under this Act from this public except in a manner provided under this Chapter:-*
>
> ***Provided** that nothing in this sub-section shall apply to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 (2 of 1934) and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.*
>
> *(2) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely:-*
>
> *(a) Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed.*
>
> *(b) Filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular,*
>
> *(c) **Depositing, on or before the thirtieth day of April each year, such sum which shall not be less than twenty per cent of the amount of its deposits maturing during***

the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account.

(d) Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default, and

(e) Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company:

Provided *that in case where a company does not secure the deposits or secures such deposits partially, then, the deposit shall be termed as "unsecured deposits" and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.*

(3) Every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

(4) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (3), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

(5) ***The deposit repayment reserve account referred to in clause (c) of sub-section (2) shall not be used by the company for any purpose other than repayment of deposits."***

27. The tenure of the petitioner was from August to November, 2013.

28. Section 27 of the SEBI Regulation relates to procedure for action in case of violation of regulations and inspecting board therein.

29. The petitioner was a director from August, 2013 (Four months). And documents showing he had submitted his resignation is on record.

30. As per Section 168 of the companies Act, it is the duty of the company who **SHALL** inform the ROC about the said resignation and process the same.

31. The petitioner **MAY** also inform the ROC.

32. Thus the resignation of the petitioner is in accordance with the provision of Section 168 of the Companies Act.

33. Next is the 'continuing liability' **which** continues till the present.

a) The Complaint in this case is of the year 2017.

b) Order of SEBI is of 2016.

c) The petitioner resigned in 2013.

d) No materials could be placed before this court that the petitioner was involved in the day to days affairs of the accused No. 1/Company.

(e) **The accused No. 1/Company has the 'continuing liability' which shifts from time to time upon the functioning directors of the company.**

34. There is thus no such material on record against the Petitioner No. 1 to proceed towards trial and in the interest of Justice the proceedings against the petitioner is liable to be quashed.

35. **CRR 773 of 2021 is allowed**.

36. The proceeding being Special Case No. SEBI/27/2017 under Sections 56, 60 and 70 read with Section 56, 60 read with Sections 2(36), 73 of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013 read with SEBI (issue of Capital and Disclosure Requirements) Regulations, 2009 (the ICDR Regulations) Section 117B of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013 and the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (the ILDS Regulations) and Section 12(1) of the SEBI Act, 1992 read with Regulation 7 of the SEBI (Debenture Trustees Regulations 1993, which are punishable under Section 24 and 27 of the Securities and Exchange Board of India Act, 1992 pending before the Learned Judge-in-Charge, 5th Special Court, Kolkata and all orders passed therein including the order dated 29th July, 2019 qua the petitioner herein, are quashed.

37. There will be no order as to costs.

38. All connected Application stand disposed of.

39. Interim order if any stands vacated.

40. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

41. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)