

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 2264-67/2006 & CRL.M.A. 3621-22/2006

Reserved on : February 4, 2009

Date of decision : March 20, 2009

HARBANS LAL & ORS. Petitioners
Through: Mr. Rajat Aneja, Advocate.

versus

REGISTRAR OF COMPANIES Respondent
Through: Ms. Maneesha Dhir with
Ms. Tripti Kekri, Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT
20.03.2009

1. The prayer in this petition under Section 482 Code of Criminal Procedure (Cr.PC) is for quashing of Company Case No. 122/2005 titled “*Registrar of Companies v. M/s Rishi Electronic Limited and Others*” under Sections 234(4)(a) read with 234(3A) of the Companies Act, 1956(‘Act’) pending in the court of the learned Additional Chief Metropolitan Magistrate (ACMM), New Delhi.

2. The aforementioned criminal complaint, filed in 2005 stated that Rishi Electronics Limited (REL) is a public limited company registered with the Registrar of Companies (ROC). The last Annual Return of REL was filed on 29.9.2001. While REL has been made accused No.1 in the criminal complaint, accused No.2 to 4 are Harbans Lal, Ravinder Kumar

Rishi and Smt. Nirmala Rishi respectively. It is stated in the aforementioned criminal complaint that the said accused No.2 to 4 are directors/officers of REL in terms of the Annual Return dated 29.9.2001 and the latest Form 32. The ROC received a complaint dated 10.10.2002 from one Gaurav Rishi alleging that some of the directors of REL have been trying to illegally sell the shareholding of REL. A show cause notice dated 20.11.2002 was accordingly issued by the ROC to REL seeking certain information. Annexure-3 to the criminal complaint was the copy of the said show cause notice together with the replies received thereto from REL. It is stated that on 23.12.2002, a further notice was sent by the ROC to REL to produce certain statutory registers and relevant records. It is alleged that since accused No.1 to 4 had failed to produce the said records, they had rendered themselves liable for penal action in terms of Section 234(4)(a) of the Act.

3. Summons were ordered to issue to the accused on the basis of the aforementioned criminal complaint on 31.1.2005 by the learned ACMM by the following order:

“Fresh Complaint filed be checked and registered.

Present: Shri P.K. Batta, Dy ROC
of Companies Alongwith Company Prosecutor.

The present complaint has been filed by Sh. P.K. Batta a public servant while discharging his duties as a public servant and as such his examination u/s 200 CR.P.C. is dispensed with.

I have perused the complaint and documents attached with the same. The complaint discloses commission of offence u/s 234(4)(a) of the Companies Act, 1956.

Accused be accordingly summoned for 4/7/05.

Complainant has also prayed for grant of exemption from appearance and he is a public servant and remain busy in discharging his duties as such that Company prosecutor has been appointed who has been appearing in the Court and looking after the cases filed by Registrar of Companies. Accordingly, exemption from appearance is granted to complainant till further orders.”

4. In the present petition, notice was directed to be issued by this Court on 24.4.2006. By the subsequent order dated 15.5.2006, this court stayed the order dated 10.2.2006 passed by the learned ACMM rejecting the application filed by the accused Ravinder Kumar Rishi seeking exemption from appearance and directing a non-bailable warrant to be issued against him.

5. On 4.2.2009, this Court was informed by learned counsel for the petitioner that Petitioner No.3 Smt. Nirmala Rishi had expired on 31.10.2008. Consequently, the criminal complaint as far as she is concerned, has abated. Therefore the present petition as far as Petitioner No.3 is concerned has been rendered infructuous.

6. On behalf of the remaining three accused who are petitioners No. 1, 2 and 4 respectively, it is submitted that the present complaint on behalf of the ROC was consequent to a complaint made to it by Gaurav Rishi who did not have any locus vis-à-vis REL. Moreover, the said complaint had failed to disclose that there was previous litigation involving Smt. Sushma Rishi, the mother of Gaurav Rishi, and the petitioners. The civil

suit filed in this Court involving the parties came to be settled and the settlement was recorded by this Court on 28.3.2000. Pursuant to the said settlement, Ravinder Kumar Rishi, who is the petitioner No.2 in the present petition, paid a sum of Rs.1.25 Crores to Smt. Sushma Rishi and Rs.25 Lakhs each to her children Gaurav Rishi and Gauri Rishi. It is submitted that the said settlement was binding on both the parties. However, Dr. J.C. Rishi, father of petitioner No.2 and husband of petitioner No.3, expired on 29.7.2002. Thereafter, Gaurav Rishi attained majority. Smt.Sushma Rishi then used that opportunity to extract further money from the petitioners. It is stated that all of these facts were brought to the notice of the ROC in the reply dated 9.12.2002 in response to the letter dated 20.11.2002 written by the ROC to it. It was specifically pointed out in the reply that Gaurav Rishi did not hold any shares in REL and further that as on that date, the shareholding held by J.C. Rishi was still pending transfer. It is further pointed out that on 27.1.2003, a detailed reply had been sent to the show cause notice dated 23.12.2003 stating that the office of ROC should not be used for the ulterior motives of individuals and that the notice issued was ill conceived. Reference is also made to the letter written by the Chartered Accountant of REL to the ROC on 8.2.2003 referring to the meeting held on 31.1.2003. This was followed by a further letter dated 5.3.2003 stating that on 4.2.2003, certain records had been shown to the ROC. It is further specifically stated as under:

“In the Board of Directors meeting held on 28th June 2002, Dr. J.C. Rishi was appointed as Managing Director of the company. A certified copy of the Board Resolution is enclosed herewith as Annexure 1. Further, the custody of documents/records relating to the issue of shares

etc. was given to the Managing Director of the company vide Board Resolution under reference. Unfortunately, Dr. Rishi expired on 29.7.02. When your order u/s 234 was received sometime in Oct/Nov 02, efforts were made to trace the records. Some of the records like Share Transfer Deed were not available. By carrying out extensive search fortunately for us we could lay our hands on the following records relating to issue and transfer of shares:

- 1) Board of Directors meeting minute books
- 2) Register of Members
- 3) Share Transfer Register
- 4) Copies of Annual Returns.

Therefore, we will be pleased to produce the following records as desired by you:

- 1) Register of Members
- 2) Register of Share Transfers
- 3) Board of Directors minute book from 1984
- 4) Copies of Annual Returns.

So far as copies of Annual Returns are concerned, we regret to point out that it has not been possible for us to produce the copies of the Annual Returns from 1984 to 1993. On examining the minute books, it was noticed that Annual Returns from 1984 to 1993 have been destroyed in compliance with the Companies (Preservation & Disposal of Records) Rules, 1966, as the period of eight years expired from the date of filing Annual Returns in the office of the Registrar of Companies. In the circumstances the Annual Returns for the years 1994 to 2002 can be produced for inspection.

In the last visit around 4th Feb. 2003, you desired to be furnished with certified copies of all the documents which are required to be produced for inspection. In this connection, it may not be out of place to mention that copies of Annual Returns are already filed in your office. Therefore, in all probability, you may depend upon those documents available in the document file. In the circumstances, it may not be required to furnish certified copies of the Annual Returns as are available.”

7. Annexed to the aforementioned reply was a copy of a complaint given to the police on 24.3.2003 regarding certain records of REL including share certificates and share transfer forms being missing from the office of REL. A letter dated 13.3.2003 written by J.K. Rishi to the Directors of REL stating that “since 1995, neither my wife Sushma Rishi nor Gaurav Rishi hold any shares in Rishi Electronics Ltd.” has also been placed on record.

8. In the reply filed to this petition, there is no denial at all by the ROC of the receipt of the aforementioned numerous replies given by REL to the various show cause notices and letters written by it to REL. Surprisingly, the stand taken by the ROC is that of denial for want of knowledge or that “they are matter of record and hence merit no reply”. The reference is made only to the letter dated 27.3.2003 written by REL informing the ROC that certain records were not available and therefore it had not been possible for REL to produce copies of Annual Returns from 1984 to 1993. It is stated that the complaint was based on the order of the Regional Director (Northern Region), Kanpur dated 1.10.2003 directing the ROC to file the present complaint. In the written submission filed on behalf of the ROC, it is sought to be contended that the complaint is not barred by limitation since the failure to comply with Section 234(2)/(3) is a continuing offence. Reliance is placed on the judgment of the Supreme Court in *Bhagirath Kanoria v. State of Madhya Pradesh AIR 1984 SC 1688*. It is also stated that Gaurav Rishi had claimed in his complaint dated 10.10.2002 that he was a shareholder.

It is contended that all other contentions are disputed questions of fact which can be examined only at the trial.

9. Having considered the submissions of counsel for the parties, this Court is of the view that the petition should succeed.

10. It is plain that the ROC had before it the various detailed replies filed by the petitioners to the show cause notices issued to them. In particular, there is no denial of the receipt of the replies dated 9.12.2002, 27.1.2003, 8.2.2003 (written by the auditor), 5.3.2003, 27.3.2003 and 1.5.2003. However, in the reply filed to the present petitions, only the reply dated 27.3.2003 is adverted to. In the complaint filed before the learned ACMM, none of the replies is adverted to. This is strange considering the fact that the records show that extensive correspondence having taken place between the ROC and REL.

11. Paragraph 5 and 6 of the complaint reads as under:

“5. The matter was taken up with the company vide this office letters No. STA/Comp/2548/5431-32 dated 23.10.2002 followed by show cause notice bearing No. STA/Comp/2548/15914 to 18 dated 20.11.2002 issued by Shri Saud Ahmad, Asstt. ROC and information/explanation was insufficient/ inadequate resulting in that the company has contravened the provision of section 234(3A) of the Companies Act, 1956. The photocopies of the above said letters and the reply are collectively annexed as ANNEXURE-3 to the complaint.

6. That show cause notice u/s 234(3A) of the Companies Act, 1956 was issued to the company and its officers in default vide this office letter No. STA/Comp/2548/6622 to 26 dated 23.12.2002 by

Shri Saud Ahmad, Asstt. ROC to produce certain statutory registers and other relevant records. However, they have failed to produce the records as called for vide show cause notice dated 23.12.2002 making themselves liable for prosecution u/s 234(4)(a) of the Companies Act, 1956. Copy of the show cause notice is annexed as ANNEXURE-4 to the complaint.”

12. This Court is unable to appreciate the vagueness with which the aforementioned averments have been made. The replies sent by REL have been collectively annexed to the complaint without any reference whatsoever to their contents. The replies in fact refer to the previous litigation between Sushma Rishi, on one hand, acting on her behalf and on behalf of her children Gaurav Rishi and Gauri Rishi, and the petitioners herein on the other hand. They refer to the settlement arrived at in the civil litigation. They enclose the letter written by the father of Gaurav Rishi and the husband of Sushma Rishi to REL specifically stating that neither Sushma Rishi nor Gaurav Rishi held any share. In the teeth of all these replies, it is surprising that the ROC proceeded only on the basis of a single letter of 10.10.2002 by Gaurav Rishi asserting that he was a shareholder when perhaps the records show otherwise.

13. The explanation for not filing the complaint within the stipulated period of six months from the date of the offence is also surprising. From the Show Cause Notice dated 23.12.2002, it is seen that the company had been asked to produce the complete books of accounts for the years “1998-99, 1999-2000 and 2000-01”. It has also been asked to furnish copy of Annual Returns and Balance Sheets for the last three years. The question of deliberate non-compliance with the said direction

to produce documents is not possible to be inferred on a perusal of the replies to the show cause notices.

14. Section 234(4)(a), which has been invoked by the ROC, reads as under:

“If the company, or any such person as is referred to in sub section (2) or (3), refuses or neglects to furnish any such information or explanation or if the company or any such person as is referred to in sub section (3A) refuses or neglects to produce any such books and paper –

a. the company and each such person shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing offence, with an additional fine which may extend to five hundred rupees for every day after the first during which the offence continues.”

15. The requirement of the above provision would be, at the bare minimum, a willful refusal by the company concerned to produce the records. However, in the instant case, as has been seen hereinabove, REL offered an explanation why it was unable to produce the records. Unfortunately, the complaint filed by the ROC does not advert to the above replies. In particular it makes no reference to the fact that the representative of the company met the ROC with some of the records and later offered to produce more records after they were traced out. The complaint by the ROC is totally vague and bereft of the particulars which were available to it from the replies filed by the REL. In its reply filed to the present petitions also, the ROC is unable to dispute the above facts.

16. In the background of the above facts and circumstances, the

conclusion that this Court arrives at is that on a perusal of the complaint and the accompanying material as a whole, not even a prima facie case can be said to be made out for proceeding against the petitioners for the offence under Section 234(4)(a) of the Act.

17. Consequently, Company Case No. 122/2005 titled “***Registrar of Companies v. M/s Rishi Electronic Limited and others***” and all proceedings consequent thereto hereby stand quashed. The petitions and the pending application accordingly stand disposed of with no order as to costs. A copy of this order will be sent to the learned ACMM concerned forthwith.

S. MURALIDHAR, J.

MARCH 20, 2009
Pankaj.