

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

Crl.MC.No. 3386 of 2015 ()

**ST. NO.531/2013 OF ADDL. CHIEF JUDICIAL MAGISTRATE COURT (E&O),
ERNAKULAM.**

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PETITIONERS/ACCUSED:

- 1. M/S.TIK INNOVATOR'S & MARKETING LIMITED,
GROUND FLOOR, 19/332, 16, 5, 7, HIBA COMPLEX,
KALVARI ROAD, POOTHOLE, THRISSUR,
(A 1 REPRESENTED BY A2 MANAGING DIRECTOR).**
- 2. ALEX PALAKKAN,
S/O.PALAKKAN DEVASSY FRANCIS,
AGED ABOUT 29 YEARS, PALAKKAN HOUSE,
P.O. ARIMPUR, THRISSUR-680 620.**

**BY ADVS.SMT.R.LEELA,
SMT.SHYNI PELEXY.**

RESPONDENT/STATE & DEFACTO COMPLAINANT:

- 1. THE DEPUTY REGISTRAR OF COMPANIES,
KERALA, COMPANY LAW BHAVAN, BMC ROAD,
THRIKKAKARA. P.O., ERNAKULAM-682 021.**
- 2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

**R1 BY ADV. SRI.N.NAGARESH, ASST. S.G. OF INDIA.
ADV. SRI.K.R.RAJKUMAR, ADDL. CGSC.
R2 BY PUBLIC PROSECUTOR SRI.GITHESH. R.**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 07-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

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| ANNEXURE-A1 | THE TRUE COPY OF THE JUDGMENT IN C.C.7/2014 IN SPECIAL CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR DATED 28.08.2014. |
| ANNEXURE-A2 | THE TRUE COPY OF THE JUDGMENT IN CC.9/2014 IN SPECIAL CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR DATED 05/01/2015. |
| ANNEXURE-A3 | THE TRUE COPY OF THE JUDGMENT IN C.C.10/2014 IN SPECIAL CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR DATED 01/09/2014. |
| ANNEXURE-A4 | THE CERTIFIED COPY OF THE COMPLAINT S.T.531/2013 DATED 25/01/2013 ACJM (EO), ERNAKULAM. |
| ANNEXURE A5 | THE TRUE COPY OF THE FORM 23ACA PURSUANT SECTION 220 OF THE COMPANIES ACT DATED 01/04/2009 TO 31/03/2010. |
| ANNEXURE A6 | THE TRUE COPY OF THE FORM 23AC PURSUANT SECTION 220 OF THE COMPANIES ACT DATED 01/04/2009 TO 31/03/2010. |
| ANNEXURE A7 | THE TRUE COPY OF THE E-FILING RECEIPT DATED 21/10/2010. |

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3386 of 2015

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Dated this the 7th day of August, 2015

ORDER

This Crl.M.C. has been instituted by the 1st petitioner company for impugning Anx.A-4 complaint filed by the respondent Deputy Registrar of Companies alleging that under Sec.159 of the Companies Act, every company having a share capital shall, within 60 days from the date on which each of the annual general meetings referred to in Sec. 166 is held, prepare and file with the Registrar a return containing the particulars specified the Companies Act, which the petitioner company has not done. Therefore, it is projected that the petitioner accused company has failed to comply with the provisions of Sec.159 of the Companies Act and is liable to pay penalty as laid down in Sec.162 of the Companies Act. It is this complaint that is under challenge in this Crl.M.C.

2. Heard, Smt.R.Leela, learned counsel for the petitioners, Sri.K.R.Rajkumar, learned Central Government Counsel appearing

for the 1st respondent and the learned Public Prosecutor appearing for the 2nd respondent.

3. It is common ground that the default in question commenced from 30.11.2010 and is a continuing offence. The contention of the petitioners is that the entire premises of the establishment of the petitioner company was sealed by the State Police authorities on 18.6.2011 in connection with various crimes registered against the petitioner company for offences under the Kerala Money Lenders Act and that the company establishment continues to be so sealed by the State Police authorities even now. That the petitioners were accordingly implicated in about 68 cases, out of which they have been acquitted in 36 cases. That the trial in respect of the remaining cases is still pending and therefore the Police authorities have not defreezed their proceedings taken against the petitioners.

4. The learned Public Prosecutor appearing on behalf of the respondent State Police has filed a statement, wherein it is admitted that the establishment of the petitioner company was actually sealed by the Police on 18.6.2011. Further the Prosecutor has also submitted that the company premises even now continues to be so

sealed by the Police. That various documents and other materials of the company have accordingly been seized by the Police authorities.

5. The contention of the petitioners is that since the entire establishment of the petitioner company premises was sealed since 18.6.2011, they are disabled from performing the act in question. However, Sri.K.R.Rajkumar, learned Central Government Counsel appearing for the 1st respondent Deputy Registrar of Companies would submit that the default in this case had actually commenced on 30.11.2010, whereas the company premises was sealed by the Police authorities only on 18.6.2011 and that therefore the company cannot justify their inaction merely on the basis of the fact that the company premises was subsequently sealed by the Police.

6. Per contra, Smt.R.Leela, learned counsel for the petitioners would submit that it is provided in Sec.166 of the Companies Act that every company shall in each year holds in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it and not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next. Further it is made clear that in Sec.159(1) that every company

having a share capital shall within sixty days from the day on which each of the annual general meetings referred to in Sec.166 is held prepare and file with the Registrar a return containing the particulars specified therein. That in the instant case, the petitioner company's annual general meeting for the previous year viz. 2009-10 was held on 18.8.2010 as evident from Anx.A-5. Therefore, going by mandate of Sec.166 read with Sec.159, the petitioner company had time to conduct their annual general meeting for 2010-2011 within an outer time limit of 15 months from 18.8.2010. To this, the learned Central Government Counsel would urge that the company has to comply with the requirement of holding annual general meeting every financial year and that it cannot be transposed to the subsequent point of time.

7. The learned Central Government Counsel would also point out that Sec.633 of the Companies Act, 1956, says that the petitioner company can approach the court below by filing a petition under Sec.633 praying for discharge.

8. In the light of these rival submissions, it is pointed out that the petitioner company will be at liberty to file an appropriate application under Sec.633 of the Companies Act seeking the remedy

of discharge before the court below, in which case, the court below shall consider the same on merits and after hearing the petitioner company and the respondent, shall take a considered decision thereon taking into account all the relevant aspects of the matter. The decision in that regard shall be taken expeditiously without much delay.

With these observations and directions, the Crl.M.C. stands finally disposed.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge