

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.04.2015

Coram:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P.No.1155 of 2014

M/s Seico Paints,
rep. by its Managing Partner
Mr.N.Ashokkumar
No.42A, Phase IV, IDA, Jeedimetla
Hyderabad ..Petitioner

Vs.

1. The Registrar of Companies,
Block No.6B, Wing, 2nd Floor,
Shastri Bhawan - 26
Haddows Road, Chennai - 600 034
2. M/s Victory Transformers & Switchgears Limited
rep. by Managing Director,
No.850/64B, TH Road, Near Royal Enfield,
Thiruvotriyur, Chennai ..Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to direct the 1st respondent to initiate criminal proceedings against the 2nd respondent as per Section 621 of the Companies Act, 1956, in pursuant to the complaint by the petitioner dated 21.09.2013.

For Petitioner : Mr.S.P.Sudalaiyandi

For Respondents : Mr.E.Arasu, CGSC for R1
Mr.K.Koteeswararao for R2

O R D E R

This Petition has been filed by the petitioner to direct the 1st respondent to initiate criminal proceedings against the 2nd respondent as per Section 621 of the Companies Act, 1956, in

pursuant to the complaint by the petitioner dated 21.09.2013.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

3. The grievance of the petitioner is that the 2nd respondent has filed a balance sheet in which he has made the following averment:-

"17. The Company does not owe any sum exceeding Rs.1.00 Lac beyond 30 days to any party for supplies made by creditors who are SSI units." Therefore, the petitioner gave a complaint to the 1st respondent/ Registrar of Companies to direct to initiate prosecution against the 2nd respondent. The Registrar of Companies has filed a counter wherein in he has stated as follows:-

...From the above reply, of the 2nd respondent it is observed that the second respondent though denied his liability, but has not filed any appeal against the award passed by the council. However, the claim for recovery of award amount is very much available for the petitioner and the petitioner has also initiated execution proceeding for the said relief. Further the 2nd respondent in its reply stated that the company stated facts, not misrepresented in its balance sheet for the year 01.03.2010 to 31.03.2011.

4. According to the petitioner, the aforesaid averment is false, but, according to the 2nd respondent, the 2nd respondent does not owe any money to any one much less to the petitioner. In other words, the 2nd respondent is challenging the very liability, which the petitioner is asserting. The learned counsel for the petitioner submitted that there is an award in his favour by arbitration council.

5. Even assuming there is an award in favour of the petitioner, the other party is refuting, stating that it does not owe any money, which cannot be said to be a willful misrepresentation warranting criminal prosecution. Therefore, no positive direction can be issued to the 1st respondent to lodge prosecution against the 2nd respondent.

6.In view of the legal position stated above, this petition is closed with liberty to the petitioner to work out his remedies by filing execution proceedings, if he has got a valid decree against the 2nd respondent.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Registrar of Companies,
Block No.6B, Wing, 2nd Floor,
Shastri Bhawan - 26
Haddows Road, Chennai - 600 034

2. The Public Prosecutor,
High court, Madras.

1 cc to Mr.E.Arasu,Advocate, SR.No.21038

1 cc to Mr.S.P.Sudailaiyandi ,Advocate, SR.No.21003

1 cc to Mr.D.Chandar ,Advocate, SR.No.21029

1 cc to Mr. H.Mohammed Farook,Advocate, SR.No.20838

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rj(co)

pmk.7.5.2015

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