

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order delivered on: 17th April, 2015

+ **CRL. MISC. NO.2694/2010**

K M CAPITAL LTD & ORS. Petitioners
Through Mr.Kuldeep Mansukhani, Adv.
with Ms.Bhavna Mansukhani, Adv.

versus

REGISTRAR OF COMPANIES & ORS. Respondents
Through Mr. R.V. Singh, Adv. with Mr.M.P.
Singh, Adv. for R-1

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioners have filed the present petition under Section 482 Cr.P.C. for quashing of Complaint Case No.1026/99 under Section 205/205A of the Companies Act, 1956 pending in the Court of Additional Chief Metropolitan Magistrate, Tis Hazari Courts, Delhi as the process was issued against the petitioners for violation of the provisions of Section 205/205A of the Companies Act, 1956 (hereinafter referred to as the "Act").

2. The main allegations *inter alia* raised by the respondent No.1 before the Additional Chief Metropolitan Magistrate, Tis Hazari on 3rd November, 1999 were (a) that petitioner No. 1 is a company and petitioner Nos. 2 to 7 being the directors of the

company are liable for the default committed under Section 205/205A of the Act. It is alleged that for the year 1995-96 petitioner No.1 declared an interim dividend @12.5% which was to be paid within 42 days from the date of declaration and the petitioner failed to make payment within the stipulated time.

3. The complaint filed by respondent No.1 was based on a few complaints of non receipt of dividend by some investors. It is further alleged by the petitioners that in the absence of any instruction/directions from the Department of Company Affairs the complaint could not have been filed in the Court. The necessary direction was accorded on 31st January, 1999 and the complaint could only be filed on 3rd November, 1999. It was also averred that the provision of Section 468 Cr.P.C is not applicable as offence is of a continuing nature.

4. It is argued on behalf of the petitioners that from the allegations made by respondent No.1, no case is made out against the petitioners on account of the reasons that (a) the complaint of the respondent is squarely covered under the provision of Section 468 Cr.P.C which reads as under:

Section 468 Cr.P.C.- Bar to taking cognizance after lapse of period of limitation-

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2) after the expiry of the period of limitation

(2) the period of limitation shall be –

- (a) six months, if the offence is punishable with fine only;
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
- (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence, which is punishable with more severe or, as the case may be, the most severe punishment.

5. Section 205/205A of the Act and punishment under Section 207 of the Act prior to the amendment w.e.f 13th December, 2000, the penalty under Section 207 of the Act for failure to distribute the dividends within 42 days reads as under "Where a dividend has been declared by a company but has not been paid, or the warrant in respect thereof has not been posted, within forty two days from the date of the declaration, to any shareholder entitled to the payment of the dividend, every director of the company; its managing agent or secretaries and treasurers; and where the managing agent is a firm or body corporate, every partner in the firm and every director of the body corporate; and where the secretaries and treasurers are a firm, every partner in the firm and where they are a body corporate, every director thereof; shall, shall if he is knowingly a party to the default, be punishable with

simple imprisonment for a term which may extend to seven days and shall also be liable to fine."

6. From the foregoing provision and averments made in the present petition, it is clear that respondent No.1 ought to have filed the complaint within one year of occurrence of the alleged offence whereas the respondent No. 1 has actually filed the complaint after three years and as such the complaint is hopelessly time barred.

7. As per the complaint the dividend was allegedly declared for the year 1995-96 whereas the respondent did not mention the date of such declaration of dividend. The complaint was filed on 3rd November, 1999 i.e. after a delay of more than three years.

8. The argument addressed by the learned counsel appearing on behalf of the petitioners has force in view of settled law on the issue in hand.

i) In the case of **Mr. M.Mahani vs Securities and Exchange Board of India** in CrI.M(M) No.919/2002 decided on 1st August, 2003 wherein it was held that the offence under Section 113 of the Act is not a continuing offence and is therefore covered under Section 468 Cr.P.C.

ii) Similar view have also been held in **S.P Punj vs Registrar of Companies** (1991) 71 Comp Cas 509(Delhi) and in **K.K Mehra vs. Registrar of Companies** (1991) 71 Comp Cas 669 (Delhi). In **NEPC India Ltd & Ors. vs Registrar of Companies** (1999) 97 Comp Cas 500 held that in view of Section 468 Cr.P.C the complaint under Section 207 of the Act ought to have been filed

within one year prima facie it was clear that the complaint was time barred.

iii) It is also observed that the respondent No.1 has not filed any application for condonation of delay. It has been held in ***Hindustan Wire And Metal Products*** (1983) 54 Comp. Cas 104(Cal.) and in ***S.P. Punj*** (supra) that without the condonation of delay cognizance of the offence cannot be taken and that unless the bar of limitation was lifted by condonation of delay through an order of the magistrate under Section 473 Cr.P.C, cognizance of an offence cannot be taken by mere filing of the complaint.

9. Section 5 of the Act provides that the liability in respect of offences committed under the Act devolves upon the officer in default but the respondent No.1 has not mentioned the name of officer in default. It has arrayed all the directors including directors who had resigned before the alleged declaration of dividend for the year 1995-96. Section 207 of the Act mentions that only the directors who are knowingly a party to the default are liable for the offence. There is no allegation as to which director was knowingly party to default.

In the complaint no averments have been made as to whether the non recipients of the dividend were the shareholders of the Company as the copy of the share certificate were not placed on record. In the absence of primary evidence no offence can be deemed to have been made out.

10. Another valid reason assigned by the petitioner is that the charges have not been framed for more than 12 years after filing of the complaint by respondent No.1.

11. In view of foregoing reasons, the petitioners have been able to make a strong case for quashing of proceedings due to delay in filing of complaint and on account of delay of 12 years even the charges have not been framed. The Complaint No.1026/99 in question is quashed by allowing the prayer made in the present petition.

(MANMOHAN SINGH)
JUDGE

APRIL 17, 2015