

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

% *Judgment pronounced on: 17th September, 2015*

+ **CRL.M.C. 5224/2014**

KAVI ARORA Petitioner
Through Mr.Anirban Bhattacharya,
Mr.Gauhar Mirza and Ms.Sukriti
Mago, Advs.

versus

THE REGISTRAR OF COMPANIES & ANR Respondents
Through Mr.Ajay Digpaul, Adv. with
Ms. Rishika Katyal,Adv. for UOI
along with Ms. Aparna Mudiam,
Assistant Registrar of Company in
person.

+ **CRL.M.C. 5225/2014**

PUNIT ARORA Petitioner
Through Mr. Aman Lekhi, Sr. Adv. with
Mr.Anirban Bhattacharya,
Mr.Gauhar Mirza and Ms.Sukriti
Mago, Advs.

versus

THE REGISTRAR OF COMPANIES & ANR Respondents
Through Mr.Ajay Digpaul, Adv. with
Ms. Rishika Katyal,Adv. for UOI
along with Ms. Aparna Mudiam,
Assistant Registrar of Company in
person.

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CRL.M.C. 5226/2014

ATUL GUPTA & ANR Petitioners
Through Mr.S. Ganesh, Sr. Adv. with
Mr.Anirban Bhattacharya,
Mr.Gauhar Mirza and Ms.Sukriti
Mago, Advs.
versus

THE REGISTRAR OF COMPANIES & ANR Respondents
Through Mr.Ajay Digpaul, Adv. with
Ms. Rishika Katyal,Adv. for UOI
along with Ms. Aparna Mudiam,
Assistant Registrar of Company in
person.

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CRL.M.C. 5391/2014

JATINDER SINGH GREWAL Petitioner
Through Mr.Anirban Bhattacharya,
Mr.Gauhar Mirza and Ms.Sukriti
Mago, Advs.
versus

THE REGISTRAR OF COMPANIES & ANR Respondents
Through Mr.Ajay Digpaul, Adv. with
Ms. Rishika Katyal,Adv. for UOI
along with Ms. Aparna Mudiam,
Assistant Registrar of Company in
person.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The above mentioned petitions under Section 482 Cr.P.C. by the petitioners, namely, Kavi Arora (Managing Director), Punit Arora

(Company Secretary), Atul Gupta (Ex-Whole Time Director), Anil Saxena (Director) and Jatinder Singh Grewal (Ex-Whole Time Director) have been filed for quashing of the complaint bearing case No.222/3/2014 titled "Registrar of Companies. vs. Mr. Kavi Arora and ors." pending in the Court of Additional Chief Metropolitan Magistrate, Tis Hazari Court, Delhi and the proceedings emanating therefrom.

2. As common legal issues are involved thus, the same are being decided together by a single order.

3. The petitioners are having their respective position as above said in the Company named Religare Finvest Limited (hereinafter referred to as the 'Company'). The Company being a non banking financial company focusing on financing small and medium enterprise (SME). It provides SME mortgage loans, SME working capital loans, and retail capital markets financing. The company is a subsidiary of Religare Enterprises Limited.

4. The brief relevant facts of the case are that on 1st June, 2010 the statutory auditors Price Waterhouse (PWC) issued its Audited report of the balance sheet of the Company, the related Profit and Loss Account and Cash Flow Statement as on 31st March, 2010.

On 30th May, 2011 PWC issued auditors' report of the balance sheet of the Company, related Profit and Loss Account and Cash Flow Statement as on 31st March, 2011. On 22nd May, 2012, PWC issued auditors' report of the balance sheet of the Company, related Profit and Loss Account and Cash Flow Statement as on 31st March,

2012. The respondent No.2 by its letter dated 16th January, 2013 directed the inspection of the books of account and other records of the Company under Section 209A of the Companies Act, 1956 (hereinafter referred to as the 'Act'). The inspection of the books of accounts of the Company was carried out by Assistant Director (Inspection) in April, 2013 for the financial years 2009-10, 2010-11 and 2011-12. Upon the said investigation, violations of Section 211(3A), (3B) and (3C) of the Act read with Accounting Standards-16 (AS-16) and Accounting Standards-26 (AS-26) were observed to have been allegedly committed by the petitioners Company. The respondent No.1 by its letter dated 22nd May, 2013 sought comments from the Company on the observations of the inspecting officer. By its detailed reply dated 18th June, 2013 the company replied and clarified as to why no violation as alleged could be said to have been made out. Inspection Report under Section 209-A of the Act was submitted by the Director (Inspection and Investigation) to the respondent No.1 on 24th June, 2013.

5. The respondent No.2 Regional Director issued direction on 2nd June, 2014 to the respondent No.1 to launch prosecution against the Company. On 17th June, 2014, the respondent No. 1 issued a show cause notice under Section 211(3A) of the Act, repeating the same set of facts and alleging violation of Section 211(3A), 211(3B) and 211(3C) of the Act read with AS-16 and AS-26. The Company filed a reply to the said show cause notice on 5th August, 2014. On 21st August, 2014, another show cause notice under Section 211(3A) of

the Act, repeating the same set of facts and alleging violation of Section 211(3A), 211(3B) and 211(3C) of the Act read with AS-16 and AS-26 was issued by the respondent No.1. The Company filed a reply to the said show cause notice on 1st September, 2014.

6. The said show cause notices raised two main allegations:

- a. Non-disclosure of capitalization of borrowing costs in the balance sheets for the year 31st March, 2010, 31st March, 2011, 31st March, 2012 stating that there was a violation of Sections 211 (3A), 211(3B), and 211 (3C) of the Act read with clause 23 (b) of AS-16 ("Borrowing Costs"),
- b. Non-disclosure of capitalization of computer software and non-disclosure of certain classes of intangible assets, which allegation is two-fold: - (i) non-disclosure of details of capitalization of computer software in the Company's books of accounts for the year 31st March, 2010, 31st March, 2011, 31st March, 2012; and – (ii) non-disclosure of each class of intangible assets, distinguishing between internally generated intangible assets and other intangible assets.

7. Without granting any hearing or any further discussions, the complaint was filed. In the complaint, the clarification/plea raised by the company was not specifically averred except the copy of the reply was filed as annexed. In the complaint it was stated that the petitioners had failed to comply with the statutory requirements of Sections 211(3A), (3B) and (3C) of the Act read with AS-16 and AS-26 and hence liable for prosecution under Section 211(7) of the Act. It

is the case of the respondents, the Ministry of Corporate Affairs, respondent No. 2 vide letter dated 16th January, 2013 directed that the Inspection of the books of account and other records of the company under Section 209A of the Act be conducted. The inspection of the books of accounts of the said company was carried out by Assistant Director (Inspection) in April, 2013. The Inspecting Officer submitted the Inspection report on 24th June, 2013 to Regional Director and the same was forwarded by Regional Director to the Ministry of Corporate Affairs on the same date as required under Section 209(6) of the Act. Thereafter, on the basis of directions received from the Ministry/Regional Director, the present complaint i.e., CC No. 222/3/2014 was filed by the office of respondent No. 1 on the basis of the inspection reports as well as allegations made in the show cause notice.

8. It is also observed that the financial statements should also disclose the following for each class of intangible assets, distinguishing between internally generated intangible assets and other intangible assets:-

- a. The useful lives or the amortization rates used;
- b. The amortization methods used;
- c. The gross carrying amount and the accumulated amortization
- d. A reconciliation of the carrying amount at the beginning and end of the period showing:-

- i. Additions, indicating separately those from internal development and through amalgamation;
 - ii. Retirements and disposals;
 - iii. Impairment losses recognized in the statement of profit and loss during the period (if any);
 - iv. Impairment losses reversed in the statement of profit and loss during the period (if any);
 - v. Amortization recognized during the period; and
 - vi. Other changes in the carrying amount during the period.
9. The reply given on behalf of the company on 1st September, 2014 are reproduced herein below:-

“September 01, 2014

Mr. P. L. Malik
Dy. Registrar of Companies
Office of the Registrar of Companies
NCT of Delhi and Haryana
Ministry of Corporate Affairs
4th Floor, IFCI Tower, Nehru Place
New Delhi-110019

Ref : Show Cause Notices dated 21.08.2014, received on 26.08.2014, bearing the following numbers :

1. 1480/ROC/209A/2013/6311 issued to Mr. Atul Gupta;
2. 1480/ROC/209A/2013/6312 issued to Mr. Jatinder Singh Grewal;
3. 1480/ROC/209A/2013/6313 issued to Mr. Punit Arora;

Sub : Reply by Religare Finvest Limited for withdrawal and cancellation of the aforementioned Show Cause Notice.

Dear Sir,

With reference to the above mentioned Show Cause Notices (the "SCNs"), and on behalf of the persons mentioned in these SCNs, Religare Finvest Limited ("RFL" or "Company") respectfully submits as under :

At the outset, we wish to state and submit for your kind consideration that the contents of the same are wholly misconceived, incorrect and are denied, the reasons for which are sought to be elucidated hereunder :

This reply is in three parts; Part A deals with the background in light of which the reply is being filed; Part B deals with the issues raised in these Show Cause Notices and other responses thereto; Part C deals with our submissions and preliminary objections. The responses in Part B are subject to the submissions made in Part C.

A. Background

1. The books of accounts and records of the Company were inspected under Section 209A of the Companies Act, 1956("Act") by an officer of the Office of the Regional Director (NR), Ministry of Corporate Affairs ("Inspecting Officer"). The Inspecting Officer observed that the Company has violated certain requirements of Sections 211(3A), 211 (3B) and 211 (3C) read with AS-16 and AS-26 issued by the Institute of Chartered Accountants of India (ICAI) for the Financial Years 2009-10, 2010-11 and 2011-12;
2. The Company had furnished a detailed response vide its letter dated June 18, 2013 refuting the alleged violation of the provisions of Sections 211 (3A), 211 (3B) and 211(3C) read with AS-16 and AS-26 issued by the ICAI. In addition, in its response to the SCN dated June 19, 2014, the company had again provided its explanation in relation to these provisions. The

same is reiterated below in response to the present SCNs.

B. Show Cause Notice Issues and Company's Response

Issue No.1

"It is observed from Schedule-S (Point No.2(p) of the Notes to accounts attached with Balance Sheet for the year ended 31/03/2010, 31/03/2011 and 31/03/2012 the details regarding the amount of borrowing costs capitalized during period as per requirements of clause 23(b) read with AS-16 issued by ICAI. Hence there is violation of Section 211 (3A), 211 (3B) and 211(3C) of the Act read with AS-16 issued by the ICAI."

Company's Submission:

1. Religare Finvest Limited is a Non-Banking Financial Company (NBFC) registered with Reserve Bank of India to carry out the activities related to providing finance to mainly small and medium enterprise (SME). The diversified suite of lending solutions includes SME Mortgage Loans and SME Working Capital Loans. Religare Finvest Limited also runs a retail capital markets financing business which includes Loan against Marketable Securities. For this, the Company borrows money from various sources for onward lending to its customers. The interest on money so borrowed has been recognized as the revenue expenditure and not capitalized in the financial statements. Since, no interest on borrowings has been capitalized; there is no disclosure in the Notes to the Accounts.

2. As defined in the Accounting Standard (AS) 16:

"A qualifying asset is an asset that necessarily takes a substantial period of time to get ready for its intended use or sale."

3. Para 5 of AS 16 – provides examples of qualifying assets which include manufacturing plants, power generation facilities, inventories that require a substantial period of time to bring them to a saleable condition, and investment properties. Other investments, and those inventories that are

routinely manufactured or otherwise produced in large quantities on a repetitive basis over a short period of time, are not qualifying assets. This means that assets that are ready for their intended use or sale when acquired also are not qualifying assets.

4. Para 6 of AS 16 further states that – Borrowing Costs that are directly attributable to the acquisition, construction or production of a qualifying asset should be capitalized as part of the cost of that asset. The amount of borrowing costs eligible for capitalization should be determined in accordance with this Statement. Other borrowing costs should be recognized as an expense in the period in which they are incurred.

5. Para 7 of AS 16 states that – Borrowing costs are capitalized as part of the cost of a qualifying asset when it is probable that they will result in future economic benefits to the enterprise and the costs can be measured reliably. Other borrowing costs are recognized as an expense in the period in which they are incurred.

6. Para 23 of AS 16 states that the financial statements should disclose :

- (a) the accounting policy adopted for borrowing costs; and
- (b) the amount of borrowing costs capitalized during the period.

7. Accordingly, the Company has made the following disclosures in Schedule S [Point 2 (o)] Notes to the Financial Statements :

“SIGNIFICANT ACCOUNTING POLICIES

Borrowing Cost

Ancillary costs incurred for arrangement of borrowings such as upfront fees/brokerages are amortized over the tenure of the borrowing as per the terms of sanction/agreement.”

8. Facts applied to Religare Finvest Limited (RFL) :

In RFL, the money which is borrowed (either by way of bank loans, debentures, commercial paper etc.) is immediately deployed in assets (Loans and Advances) and therefore there is no delay in generation of return from these assets (interest income on loan). Loan therefore does not fall within the definition of qualifying assets based on submission made in points 2, 3, 4, 5 and 6 above.

The company has not borrowed any fund for acquisition, construction or production of an underlying capital asset (Qualifying Assets). It is further submitted that there was no capital asset under development which is funded from borrowings.

Based upon the submissions made under Points 1 to 8 above and we believe that the borrowing cost incurred by the company is not required to be capitalized since there is no qualifying asset. Kindly note that in the event we opt for the capitalization of borrowing costs, the profit for the relevant current year would be overstated and it would be against the principle of prudence. Hence, there is no contravention of Section 211(3A) of the Act read with AS 16. We have also been given to understand that the process followed at RFL is similar to all other participants in NBFC and banking industry. In this connection, we would like to meet you so that we are able to personally explain our position and understand your perspective on this issue.

Issue No.2

(i) As per Accounting Standard (AS)-26, the financial statements should disclose the cost of a software purchased for internal use comprising its purchase price, including any import, duties and other taxes (other than those subsequently recoverable by the enterprise from the taxing authorities) and any directly attributable expenditure on making the software ready for its use, Trade discounts and rebates should be deducted in arriving at the cost. However, the company has failed to disclose details of capitalized in its books of account during the period 31/03/2010, 31/03/2011 and 31/03/2012.

(ii) Further it is also observed that the financial statements should also disclose the following for each class of intangible assets, distinguishing between internally generated intangible assets and other intangible assets:

- a) the useful lives or the amortization rates used;
- b) the amortization methods used;
- c) the gross carrying amount and the accumulated amortization
- d) a reconciliation of the carrying amount at the beginning and end of the period showing :
 - i) Additions, indicating separately these from internal development and through amalgamation;
 - ii) Retirements and disposals;
 - iii) Impairment losses recognized in the statement of profit and loss during the period (if any);
 - iv) Impairment losses reversed in the statement of profit and loss during the period (if any)';
 - v) Amortization recognized during the period;
 - vi) Other changes in the carrying amount during the period.

It is observed from the Balance Sheet as at 31/03/2010, 31/03/2011 and 31/03/2012 that the company has not disclosed the above classes of intangible assets, distinguishing between internally generated intangible assets and other intangible assets. Hence, there is violation of section 211(3A), (3B) and (3C) of the Act read with AS-26 issued by ICAI.

Company's Submission

We would like to draw your kind attention towards the following provisions with respect to the query raised in point (i):

3. As per Schedule VI, under each head of fixed assets the original cost, the additions and deductions thereto

therefrom during the year, and the total depreciation written off or provided up to the end of the year is/are to be stated.

4. As required in point(i) above, the details of capitalization of intangible assets is not required to be disclosed in the financial statements. An enterprise has to arrive at capitalization cost of intangible assets by following the treatment given in AS-26. The Company maintains that the record of capitalizations as per the accounting standard and Auditors have verified the same during the audit of respective financial years on materiality basis. AS-26 disclosure requirement does not ask for full disclosure of capitalization and to disclose only the gross carrying amount.

Furthermore, we would like to draw your kind attention towards the following disclosures in Schedule S notes to the Financial Statements with respect to the issue/observation raised in point (ii):

“SIGNIFICANT ACCOUNTING POLICIES”

Depreciation

Depreciation is provided on Straight Line Method, Pro-Rata to the period of use, at the rates specified in Schedule XIV to the Act or the rates based on useful lives of the assets as estimated by the management, whichever are higher. The annual depreciation rates are as under:

Asset Description	Depreciation Rate (%)
Data Processing Machines	16.21%
Office Equipment	Between 10% to 20%
Furniture and Fixtures	6.33%
Vehicles	9.50%
Buildings	1.63%
Intangible Assets-Software	16.21%

It is submitted that the only intangible asset of the Company is computer software and the same has been separately disclosed in the Fixed Assets schedule attached to the Balance Sheet disclosing the fact in accordance with the Para 90 of the AS-26.

Further, as required by Para 90 of AS-26, the Schedule contains the following details:-

- Gross block as at the beginning and at the end of the year
- Additions, deletions and adjustments during the year
- Depreciation for the year
- Accumulated depreciation as at the beginning and at the end of the year
- Net block as at the beginning and at the end of the year

It is further submitted that the Company does not have any self/internally generated intangible assets.

In view of the above, the Company has not violated the provision of Section 211(3A) of the Act read with Accounting Standard 26 as issued by the ICAI.

We have also been given to understand that the process followed at RFL is similar to all other participants in NBFC and Banking Industry. In this connection, we would like to meet you so that we are able to personally explain our position and understand your perspective on this issue.

C. Our Humble Submissions:

1. From the reply filed by the Company as above it is clear that the Company has complied with the provisions of Sections 211(3A), 211(3B) and 211(3C) of the Act read with AS-26 issued by the ICAI;

2. The Financial Statements of the Company for the years 2009-10, 2010-11 and 2011-12 have been audited by the Statutory Auditors, Price Waterhouse, which is a reputable firm of auditors, and have been audited in accordance with the applicable provisions of the Act and the Accounting Standards, guidance and clarifications issued by

the ICAI. The Auditors' Reports for the financial years ending on March 31, 2010, March 31, 2011 and March 31, 2012 (the "Auditors' Reports") which clearly mention the following:

- Firstly, the audit conducted by the auditors provides a reasonable basis of their opinion. Paragraph 2 in the reports states as follows:

"We conducted our audit in accordance with the auditing standards generally accepted in India. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion."

- Secondly, that in the auditors' opinion, the Balance Sheet, Profit and Loss Account and Cash Flow Statement dealt with by this report comply with the accounting standards referred to in sub-section(3C) of Section 211 of the Act.(paragraph 4(d) in the Auditors' Reports).

3. As far as the Show Cause Notice is concerned, we wish to make the following submissions:-

i. No copy of the Inspection Report has been attached to the show cause notice. In such a case, we wish to reserve our right to file an additional response once the complete report is received.

ii. The notices have been issued to all directors of the company, which ought not to have been done in light of the express provision of Section 211(7) of the Companies Act which prescribes such persons as referred to in Section 209 (6) and under Section 209 (6), such persons are following, namely:-

- where the company has a managing director or manager, such managing director or manager and all officers and other employees of the company, and
 - where the company has neither a managing director nor manager, every director of the company.
- iii. No specific facts have been mentioned in the Show Cause Notice as to-
- (a) What has been found in violations under Section 211 of the Companies Act and,
 - (b) What ought to have been stated in the Balance Sheet and Financial Statement in relation to Accounting Standards AS-16 and AS-26.
- iv. The notice under reply is vague and based on mere conjectures and surmises. There is nothing on record to show what was it that the company had to do with regard to every particular transaction and that it failed to do so. There is a complete omission of the particulars of which would be in any alleged violation of the Companies Act, 1956 and how that violation had any nexus with the specific provision.
- v. The show cause notice reflects utter lack of any application of mind in verifying any particular act of breach by the Company. Mere mechanical issuance of a show cause notice which is based on a vague Inspection Report is clearly an unlawful exercise of jurisdiction and violative of the principles of natural justice.

In light of these circumstances, and in the absence of such details, it is submitted that the notice is vague and hence, must be recalled.

4. Further, it is submitted that the directors and officers of the company have acted honestly and reasonably, and ought to be fairly excused since any breach under the provisions of Section 211 was not willful or deliberate. There is nothing on record to even vaguely suggest any willfulness in the alleged actions/omissions on the part of the company and/or its directions.

5. In our reply dated August, 5, 2014 to the SCN dated June 19, 2014, we had informed you that we were in the proceeds of obtaining an independent opinion on the accounting treatment and relevant disclosure under consideration. We have now obtained the external independent opinion which is annexed to this reply as Annexure A. The same is now being submitted for your kind consideration.

6. The Company requests you to reconsider the above and kindly withdraw and not to initiate any proceedings under the Show Cause Notice issued against the Company and its officers/directors named therein.

7. The Company may be given an opportunity for a meeting to present its case in person so that the matter could be explained in detail, and further clarification and information may be provided. This request was previously made in our letter seeking personal hearing dated 13th August, 2014. This request is most humbly reiterated. This letter has been annexed for your kind perusal.

We sincerely hope that the above explanations are considered favourably. We shall be pleased to provide any further information or clarification as may be required in this regard.

We expressly reserve our right to challenge the authority and the manner of issuing the show cause notice and this reply must not be deemed or construed in any manner to be a waiver of that right.

Yours sincerely,
For Religare Finvest Limited

Sd/-
Punit Arora
Company Secretary
Membership No.A18880

Address : D3, P3B, District Centre
Saket, New Delhi-1100 17

Encls. : Annexure A as above.

Copy to :

- i) The Regional Director Office (NR), Ministry of Corporate Affairs – Noida (UP)
- ii) The Secretary, Ministry of Corporate Affairs, New Delhi.”

10. It is observed from the Balance Sheet as on 31st March, 2010, 31st March, 2011, 31st March, 2012 that the company has not disclosed the above classes of intangible assets, distinguishing between internally generated intangible assets and other intangible assets. Hence there is violation of Section 211(3A), (3B) and (3C) of the Act read with AS- 26 issued by ICAI.

11. The said complaint was filed by the respondent No.1, Registrar of Companies (NCT of Delhi & Haryana) on 18th September, 2014 under Section 211(7) of the Act for alleged contravention of Sections 211(3A), (3B) and (3C) of the Act, read with AS-16 and AS-26 against the petitioners and other persons including the Directors and other employees of the Company.

In the said complaint the ACMM took cognizance of the alleged offence under Section 211(7) of the Act and issued summons against the petitioners and others by summoning order dated 18th September, 2014, returnable on 11th November, 2014.

12. The summoning order dated 18th September, 2014 has been reproduced here as under:-

“18.09.2014

Fresh complaint filed. It be checked and registered.

Present : Complainant Rajneesh Kumar Singh with Company prosecutor.

Present complaint has been filed by the complainant, a public servant in discharge of his official duties. Therefore, pre-summoning evidence of the complainant is dispensed with u/s 200 of Cr.P.C.

Heard.

It is submitted that complaint is within limitation as the offence alleged against the accused is continuing in nature.

I have perused the complaint along with documents attached with the same.

Perusal of complaint, prima facie discloses commission of offence u/s 211(3A), (3B) and (3C) r/w AS-16 and AS-26 of the Companies Act, 1956. Issue summons to all the accused on steps to be taken by the complainant.

Complainant has prayed for grant of exemption of his personal appearance stating that being public servant he will remain busy in discharging his official duties. In view of the facts stated, complainant is exempted through Ms. Kusum Yadav, company prosecutor who is appearing in the court and looking after the case of the complainant, till further order.

Issue summons to all accused returnable for 11.11.2014.

(D.K. Sharma)
ACMM(Spl.Acts)/
CENTRAL
DELHI/
18.09.2014”

13. In the summoning order dated 18th September, 2014 it was observed that the offences under Section 211(3A), (3B) and (3C) of the Act read with AS-16 and AS-26 are continuing in nature and thus the cognizance of the same could not be taken without reference to Section 473 Cr.PC.

14. *Vakalatnama* was filed on behalf of the petitioners and an application for exemption from personal appearance was also moved on 11th November, 2014, which application was dismissed by the ACMM by order dated 11th November, 2014. The ACMM by the said order also issued bailable warrants against the petitioners, but the issuance of the same stands deferred till the next date of hearing i.e. 20th November, 2014. In the meanwhile, the present petitions have been filed wherein the interim order was passed on 22nd January, 2015.

15. The allegations against the petitioners are for alleged contravention of Sections 211(3A), (3B) and (3C) of the Act in respect of the Balance Sheets of the Company, for the years ended 31st March, 2010, 31st March, 2011, 31st March, 2012 in the complaint is that the said Balance Sheets did not comply with AS-16 and AS-26 as framed by the Institute of Chartered Accountants.

16. The offence under Section 211(7) of the Act is punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs.10,000 or with both and as such, under Section 468(2)(b) Cr.P.C., the period of limitation is one year.

17. The first submission of the learned counsel for the respondents is that the power under Section 482 Cr.P.C. should not be used to quash a proceeding where disputed questions of fact are involved since disputed questions of fact can only be decided during trial. Learned counsel has referred the following decisions:-

a. In the case of **Manjit Jaju v. Registrar of Companies** 2010 (159) Comp Cas 112 this Court held as under:-

"5. With due regard to the, Single Judge, under Section 482, the Court cannot enter into an inquiry and cannot decide the disputed questions of facts. Disputed questions of fact can only be decided during trial. The power under Section 482 Cr.P.C. is to be exercised very sparingly and only where the trial court has acted in gross illegality. Where the trial court had not even gone into the issue of limitation and the facts are yet to be proved, this Court cannot go into the issue of limitation, since limitation is a mixed question of law and facts, and quash the complaint"

b. In the case of **Ajay Jain v. Registrar of Companies** 2010 (119) DRJ 545 this Court held as under:-

"5.Whether the directors had resigned or not which is a question of fact which cannot be gone into by this Court and only the trial court, during trial can decide whether the directors had resigned or they continued to be the directors. I find no force in this petition. The same is hereby dismissed with no orders to costs."

c. In the case of **Iridium India Telecom Ltd. Vs. Motorola Inc.**, (2011) 1 SCC 74, the Supreme Court held as under:-

"76. As noticed earlier, both the appellants and the respondents have much to say in support of their

respective viewpoints. Which of the views is ultimately to be accepted, could only be decided when the parties have had the opportunities to place the entire materials before the Court. This Court has repeatedly held that the power of quash proceedings at the initial stage has to be exercised sparingly with circumspection and in the rarest of rare cases. The power is to be exercised *ex debito justitiae*. Such power can be exercised where a criminal proceeding is manifestly attended with malafides and have been instituted maliciously with ulterior motive. This inherent power ought not be exercised to stifle a legitimate prosecution.

78. In our opinion, the High Court clearly exceeded its jurisdiction in quashing the criminal proceeding in the peculiar facts and circumstances of this case. The high court noticed that while exercising jurisdictions under Section 482 Cr.P.C "the complaint in its entirety will have to be examined on the basis of the allegations made therein. But the High Court has no authority or jurisdiction to go into the matter or examine its correctness. The allegations in the complaint will have to be accepted in the face of it and the truth or falsity cannot be entered into by the Court at this stage." Having said so, the High Court proceeded to do exactly the opposite."

18. It is stated by the learned counsel for the respondents that in the complaint filed by the respondent No. 1, the notice under Section 251 Cr.P.C. has not yet been framed. Therefore, the petitioners have an alternate and efficacious remedy available to them to urge the pleas taken herein before trial court at the time of framing of notice under Section 251 Cr. P.C. Therefore at this stage, the petitions are liable to be dismissed as the petitioners have failed to take all reasonable steps to secure compliance by the Company as

respects any accounts laid before it, in general meeting with the provisions of the Section as to the matters to be stated in the accounts by the person concerned is undoubtedly an offence punishable under Section 211(7) of the Act and it is punishable with imprisonment for a term which may extend to six months or with fine or with both. A complaint in respect of such an offence has to be filed within one year as per Section 468(2) (b) of the Cr. PC.

19. It is true and it has been rightly held by the Supreme Court in ***Iridium India Telecom*** (supra) which merely lays down the general and well settled principle that the complaint has to be examined in its entirety, on the basis of allegations made therein and the truth or falsity of the allegations in the complaint cannot be entered at the stage of Section 482 Cr.P.C. In the present case, as pointed out in the written submissions filed by the petitioners on 19th August, 2015, that in the complaint there is not even a bare allegation that Company had capitalized interest on borrowing, as part of the cost of its assets, or that the Company had self-created softwares, over and above the purchased softwares. In the absence of the bare allegations, even if the complaint is read as a whole and its contents are assumed to be true, no tenable allegation of commission of offence can be said to have been made out against the Company or the petitioners. In the said circumstances, ***Iridium India Telecom*** (supra) also has no application in the present case.

20. The quashing of a complaint is permissible where the allegations made in the complaint, even if they are taken at their face

value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused. The quashing of a complaint is permissible if there is an express legal bar engrafted in any of the provisions of the Cr.P.C. to the institution and continuance of the proceedings.

Scope of Interference

21. The scope of Section 482 Cr.P.C. has been discussed in various cases including the case of ***State of Bihar v. Murad Ali Khan***, reported in AIR 1989 SC 1 where the Supreme Court held as under:-

“It is trite jurisdiction under Section 482 Cr.P.C. which saves the inherent power of the High court, to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the Court or not.”

22. In the case of **Zandu Pharmaceutical Works Ltd. & Ors. v. Mohd. Sharaful Haque & Anr.**, reported in (2005) 1 SCC 122, the Supreme Court held that there may not be any straight jacket formula for exercising power under Section 482 Cr.P.C. but the same has to be exercised sparingly and in rarest of rare cases. Similar view was taken by the Supreme Court in the case of **Popular Muthiah v. State represented by Inspector of Police**, reported in (2006) 7 SCC 296.

23. Thus, it is to be examined as to whether on the face of the complaint any offence is made out or the complaint filed by the respondents is time barred or not, if the answer is yes, then the Court is empowered to interfere with, otherwise no.

24. Normally, while exercising the discretion, the High Court should not interfere, unless it is found from the impugned order passed by the trial Court that it is a perverse order and against the law then the Court is empowered to quash the summoning order as per law laid down by the Supreme Court and High Courts from time to time.

The Supreme Court in **State of Karnataka v. L. Muniswamy and Others** AIR 1977 SC 1489, observed as under:-

“In the, exercise of this whole some power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the

prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the, ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

25. In the case of ***State of Haryana v. Bhajan Lal***, 1992 (2) Supp

(1) SCC 335 wherein it was held that :-

“102. In the backdrop

“(1) where the allegations made in the First Information Report or the Complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.”

(2) ...

(3) ...

(4) ...

(5) ...

(6). Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.”

26. Learned Senior counsel has argued that the petitioner in the present case is not disputing any fact. In the present case the complaint taken on its face value and assuming every allegation therein to be true, is not only barred by limitation but also no offence is made out in the complaint against the petitioners and therefore

since there are no disputed questions of fact involved in the present case, the aforesaid decision of **Manjit Jaju** (supra) has no application in the present case.

27. His main argument is that the issues raised by the petitioners do not give rise to any disputed facts, either with respect to limitation or in respect of whether any breach of any Accounting Standards could possibly be alleged to have been committed by Company. Consequently, the said judgment is wholly irrelevant and inapplicable in the present case. Similarly, the judgment of this Court in **Ajay Jain** (supra) lays down that disputed questions of fact cannot be decided by this Court. For the reasons already explained, this judgment is also irrelevant in the present case.

28. There is a reason behind the said logic about the scope of interference of summoning order while exercising the power vested with the High Court under Section 482 Cr.PC., as it is settled law that summoning of an accused in a criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the

Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. Reliance is placed on ***Pepsi Food Ltd. and Another v. Special Judicial Magistrate and Others***, (1998) 5 Supreme Court Cases 749.

29. The AS-16 requires that where a company has taken a loan for acquiring an asset and has capitalized the interest on the loan in the cost of the asset, then the amount of such interest must be shown separately in the books of accounts. In the present case, the Company never took any loan to acquire any asset and therefore, never capitalized any interest. Therefore, there is no requirement for the Company to comply with AS-16.

The AS-26 requires that where a company owns purchased software as well as self-created software, such self-created software must be shown separately. In the present case, the Company had no self-created software and, therefore, no question arises of showing the same separately or of complying with AS-26 at all.

30. It is submitted by the learned Senior counsel appearing on behalf of the petitioners that no interest was capitalized during the relevant period under consideration, therefore, the very question of disclosure of the same does not arise in the first place. The interest

on money borrowed has been recognized as revenue expenditure. The "borrowing costs are capitalized as part of the cost of a qualifying asset", but since in the present case there was no qualifying asset that existed in the balance sheets within the terms of AS-16, hence the question of capitalizing the borrowing costs did not arise. It is also submitted that the entire amount of interest incurred has been allowed as revenue expenditure by the income tax authorities.

Regarding the allegation of non-disclosure of certain classes of intangible assets, the only class of intangible asset that the Company had was 'computer software' and the same has been separately disclosed in the Fixed Assets schedule along with the depreciation/amortization rate and also the depreciation method used as a part of the notes to accounts; attached to the Balance Sheet disclosing the fact in accordance with the Para 90 of the AS-26. The Company does not have any self/internally generated intangible assets.

The particulars provided in relation to the software are same as that of the other companies which use computer software as intangible assets provide in their balance sheets. There is nothing extraordinary about the Company's approach in this regard. Therefore, the respondents have acted in a discriminatory manner against the petitioners.

31. In para 8 of the complaint it is mentioned that the show cause notices dated 17th June, 2014 and 21st August, 2014 were issued by the respondent No.1 to the Company. The complaint does not

disclose the fate of such show cause notices. The Company responded to the show cause notices. It is also relevant to mention that the Company vide its letter dated 13th August, 2014 and another letter dated 16th September, 2014 explained in detail as to how and why no offence is made out at all and also requested the respondent No.1 to grant an opportunity for personal hearing, but the same letters have neither been dealt with nor disclosed by the respondent No.1 in the said complaint. The personal hearing, if had been granted to the Company, would have provided an opportunity to explain the perceptual difference and would not have necessitated filing of the instant complaint. The Company was however, not granted any opportunity of hearing and the complaint was filed on 18th September, 2014 long after its limitation period expired. It also bears noting that such show cause notices were issued on 17th June, 2014 and 21st August, 2014 i.e. after administrative instructions were granted for filing complaints on 2nd June, 2014. The manner in which the respondent No.1 has conducted itself is arbitrary and unreasonable. Admittedly, the complaint is based on the inspection report which was indisputably filed on 24th June, 2013 and the same being the date of knowledge of the offence, the limitation period for filing of the complaint expired on 23rd June, 2014. The complaint having been filed on 18th September, 2014 is clearly time-barred, therefore, the consequent summoning and the proceedings commenced thereby are liable to be quashed.

32. In reply to the letter/notice of the Inspecting Officer dated 22nd May, 2013 the Company in its reply dated 18th June, 2013 has pointed out that it had no capitalized interest on loans nor any self-created software and therefore, the said AS-16 and AS-26 had no application at all. It was noted in the Inspection Report but not dealt with or commented upon at all. In the comments of the Inspection Officer, it would repeat that the reply of the Company was considered to be satisfactory, hence no action was proposed to be taken for the said alleged violation.

33. The learned counsel for the petitioners in the matters submits that the complaint does not contain any allegation whatsoever, either that the petitioners had capitalized interest in the cost of its assets or that the petitioners had any self-created software. In the absence of these specific allegations, the complaint does not make out any case at all against the petitioners of the said Balance Sheets being in violation of the AS-16 and AS-26. Even the plea raised by the company has not been specially referred in the complaint so that the trial court while issuing the summon orders ought to have examined the defence of the petitioners. Merely, the same was filed as annexures. The impugned order does not reveal or discusses the said aspect.

34. The objections are also raised on behalf of the petitioners that in the summoning order dated 18th September, 2014 the ACMM took cognizance of the offences upon a bare perusal of documents filed by the respondent No.1 which are not admissible in evidence. The

documents at Annexure-I, Annexure-II and Annexure-III to the complaint are not the documents which could have been taken cognizance of, since the same are not admissible in evidence (even for conducting pre summoning evidence) under Section 610(3) of the Act and/or Section 399(3) of the Act, 2013, since the said documents have not been certified by the Registrar or anyone so empowered under the Act.

35. The other issue raised by the petitioners is that the complaint is barred by limitation. Under Section 469(1)(b) read with Section 468 Cr.P.C, the complaint had to be filed within one year of the date on which the offence came to the knowledge of the complainant, the Registrar of Companies. Para 3 of the complaint expressly mentions that the complaint is based on the inspection report of the Assistant Director (Inspection).

36. The Inspection Report was admittedly received by the Registrar of Companies on 24th June, 2013. Thus, the Registrar of Companies became aware of the alleged offence on 24th June, 2013 and the complaint if any ought to have been filed on or before 23rd June, 2014.

37. The complaint was filed on 18th September, 2014. It is on the face of it barred by limitation. The following decisions are referred by the learned Senior counsel for the petitioners :

- a. ***Nalco & ors v. Registrar of Companies***, 96 (2003) CLT 592 it has been held as under:-
“14....the knowledge of the Registrar of Companies can be attributed as on the date when the inspecting Officer

on inspection found the anomalies and the Regional Director asked the Company to clarify the anomaly....”

- b. ***R. Aghoramurthy, Registrar of Companies, Bombay v. M/s Bombay Dyeing & Mfg. Co. Ltd. and Others. Criminal Appeal No. 585 of 1990*** JT 1991(5) SC 432 it has been held in para 10 that “date of knowledge should be taken from the date of receipt of the report”.
- c. ***Webcity Infosys Ltd v. Registrar of Companies (Delhi and Haryana)***, 2007 (98) DRJ 710 it has been held as under:-

“15. Before concluding, a submission made when judgment was being dictated may be noted. The submission was by learned Counsel for the respondent. It was urged that limitation would commence with effect from the date Regional Director accorded permission for filing of the complaint.

“16. I am afraid, the submission is based on a complete ignorance of law. Limitation has to commence when actionable knowledge is gained by the competent authority. In the instant case, it may be noted that the inspections were completed and reports were available with the Regional Director, Northern Region, Kanpur by the end of December 2000.”

38. In the summoning order of the Magistrate who accepted the averments made in the complaint that the “complaint is within limitation as the offence alleged against the accused is continuing in nature”. Thus, even according to the complainant and the Magistrate, the complaint would be time-barred if it is found that it is not a “continuing offence”. Mr. Ganesh, Senior counsel argued that the finding of the trial court in the summoning order is not sustainable in

view of well-settled law. No reasons are assigned by the trial court. Once on the face of the complaint, it is time barred, the summoning orders would not have been passed. The trial court by ignoring the law has passed the impugned order.

39. It is argued on behalf of the respondent No. 1 that as per Section 209 A (6) of the Act, the report of the inspector has to be mandatorily sent to the Central Govt. The Central Government may accept the report of the Inspector and order that the prosecution be filed against the "officer in Default" or may reject the findings of the Inspection report. Thus, it is only when the Central Govt. passes an order or accords its permission to file prosecution, the period of limitation would start. Moreover, the default continued without being rectified i.e. the offence was a continuing one and not barred by limitation. Pertaining to limitation in continuing offences, learned counsel appearing on behalf of the respondents have referred the following decisions:-

ii) In ***Udai Shankar Awasthi vs. State of U.P & Anr.*** (2013) 2 SCC 435 it has been held as under :-

"10. Section 472 Cr.P.C. provides that in case of a continuing offence, a fresh period of limitation begins to run at every moment of the time period during which the offence continues. The expression, 'continuing offence' has not been defined in the Cr.P.C because it is one of those expressions which does not have a fixed connotation, and therefore, the formula of universal application cannot be formulated in this respect."

- iii) In ***Balakrishna Savalram Pujari Waghmare & Ors V Shree Dnyaneshwar Maharaj Sansthan & Ors.***, AIR 1959 SC 798, this Court dealt with the aforementioned issue, and observed that a continuing offence is an act which creates a continuing source of injury, and renders the doer of the act responsible and liable for the continuation of the said injury. In case a wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the said act may continue. If the wrongful act is of such a character that the injury caused by itself continues, then the said act constitutes a continuing wrong. The distinction between the two wrongs therefore depends, upon the effect of the injury. In the said case, the court dealt with a case of a wrongful act of forcible ouster, and held that the resulting injury caused, was complete at the date of the ouster itself and therefore there was no scope for the application of Section 23 of the Limitation Act in relation to the said case.
- iv) In ***Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath & Ors.***, (1991) 2 SCC 141, this Court dealt with the issue and held as under:

"According to the Blacks' Law Dictionary, Fifth Edition, 'Continuing' means 'enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences.' Continuing offence means 'type of crime which is committed over a span of time.' As to period of statute of limitation in a continuing offence, the last act of the offence controls for commencement of the period. 'A

continuing offence, such that only the last act thereof within the period of the statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or action which may be deemed a single impulse.' So also a 'Continuous Crime' means "one consisting of a continuous series of acts, which endures after the period of consummation, as, the offence of carrying concealed weapons. In the case of instantaneous crimes, the statute of limitation begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act."

While deciding the case in ***Gokak Patel Volkart Ltd.*** (supra), this Court placed reliance upon its earlier judgment in ***State of Bihar v. Deokaran Nenshi & Anr.***, AIR 1973 SC 908, wherein the court while dealing with the case of continuance of an offence has held as under:

"A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all." Reliance be also placed on

Bhagirath Kanoria & Ors. v. State of M.P., AIR 1984 SC 1688; and ***Amrit Lai Chum v. Devoprasad Dutta Roy***, AIR 1988 SC 733.

- v) In ***M/s. Raymond Limited & Anr., v. Madhya Pradesh Electricity Board & Ors.***, AIR 2001 SC 238, this Court held that it cannot legitimately be contended that the word "continuously" has one definite meaning only to convey uninterruptedness in time sequence or essence and on the other hand the very word would also mean 'recurring at repeated intervals so as to be of repeated occurrence'. That apart, used as an adjective it draws colour from the context too.
- vi) In ***Sankar Dastidar v. Smt. Banjula Dastidar & Anr.***, AIR 2007 SC 514, this Court observed as under: "A suit for damages, in our opinion, stands on a different footing vis-vis a continuous wrong in respect of enjoyment of one's right in a property. When a right of way is claimed whether public or private over a certain land over which the tort-feasor; has no right of possession, the breaches would be continuing one. It is, however, indisputable that unless the wrong is a continuing one, period of limitation does not stop running. Once the period begins to run, it does not stop except where the provisions of Section 22 of the Limitation Act would apply." The Court further held that: "Articles 68, 69 and 91 of the Limitation Act govern suits in respect of movable property. For specific movable property lost or acquired by theft, or dishonest misappropriation or conversion; knowledge as regards possession of the party shall be the starting point of

limitation in terms of Article 68. For any other specific movable property, the time from which the period begins to run would be when the property is wrongfully taken, in terms of Article 69. Article 91 provides for a period of limitation, in respect of a suit for compensation for wrongfully taking or injuring or wrongfully detaining any other specific movable property. The time from which the period begins to run would be when the property is wrongfully taken or injured or when the detainer's possession becomes unlawful. "

40. By referring these cases, learned counsel for the respondents submits that in the case of a continuing offence, the ingredients of the offence continue, i.e. endure even after the period of consummation, whereas in an instantaneous offence, the offence takes place once and for all i.e. when the same actually takes place.

41. His further contention is that the trial court *prima facie* already gave its opinion that the offence was a continuing one and, therefore, the bar of limitation was not attracted.

42. The issue as to what would be the starting point of the limitation in the cases filed by the Registrar of Companies, the High Court of Karnataka in the matter of **Registrar of Companies, Karnataka v. Fairgrowth Agencies Limited** CrI. Rev. P. Nos. 710 and 711 to 715 /2000 decided on 12th April, 2006 while relying on the judgment of **State of Rajasthan v. Sanjay Kumar**, 1998(5) SCC 82 has held as under:

"In a case registered on the Complaint lodged by the Registrar of Companies in respect of an offence against the Companies Act, one has to consider the date on which such offence came to his knowledge. In one case, it may be that the Registrar may have come to know about the offence on the date when the Inspecting Officer detects the contravention of the Act. In another case he may not be aware of Offence until a report is made by the Inspecting Officer to him. Determination of this date of knowledge of the Registrar depends on facts of each case. In cases where the inspection of Books of Accounts and other Books of the Company is done under Clause (ii) of the Section 209-A(1) of the Companies Act, a report of the Inspection will have to be made to the Central Government under sub-section (6) of Section 209-A of the Companies Act and the Registrar of Companies may come to know about the commission of such offence against the Companies Act only when he receives a communication from the concerned officer of the Department of Company Affairs. In such cases, the date on which he receives a communication from the Concerned Officer of Department of the Company Affairs. In such cases, the date on which he receives communication in this regard will have to be taken as the starting point for limitation under section 469(l)(b) of the Code of Criminal Procedure."

43. The next explanation given by the respondents on the issue of delay in the Counter-affidavit is that the Registrar of Companies received instructions on a subsequent date from the Ministry of Company Affairs to file the complaint.

44. Reliance has been placed on the following judgments wherein it has been held by this Court to be irrelevant and immaterial:-

- a. ***Webcity Infosys Ltd Vs Registrar of Companies (Delhi and Haryana)*** (supra);

15. Before concluding, a submission made when judgment was being dictated may be noted. The submission was by learned Counsel for the respondent. It was urged that limitation would commence with effect from the date Regional Director accorded permission for filing of the complaint.

“16. I am afraid, the submission is based on a complete ignorance of law. Limitation has to commence when actionable knowledge is gained by the competent authority. In the instant case, it may be noted that the inspections were completed and reports were available with the Regional Director, Northern Region, Kanpur by the end of December 2000”

- b. **N. Kumar Vs. M.O. Roy, Assistant Director, Serious Fraud Investigation Office, Ministry of Company Affairs, Government of India 2007 (3) CTC 650** “49. *There is no provision under the Act contemplating prior sanction for prosecution of the companies under Section 207 of the Act and as such the complainant cannot take shelter under the guise of obtaining sanction for the purpose of computing the period of limitation. ...*”

45. Thus, the time period taken by the Regional Director to take the decision to direct the Registrar of Companies to launch prosecution cannot be excluded for the purpose of computing the period of limitation as both the Regional Director, i.e. the Central Government as well as the Registrar of Companies was competent to launch prosecution once they had knowledge of the commission of the offences as on 24th June, 2013, i.e. when the inspection reports were filed with either of them. Since for the offences under Section 211(7), 211(3A), (3B) and (3C) of the Act, no consent/sanction for

prosecution from the Central Government is required. Section 470 (3) Cr.P.C cannot be relied upon by the respondents.

46. The relevant part of Section 469(1) Cr. PC relating to the commencement of the period of limitation is as follows:

"Commencement of the period of limitation.--(I) The period of limitation, in relation to an offender, shall commence,--

- (a) on the date of the offence; or
- (b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier: or
- (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier."

47. Admittedly, Section 211 of the Act is punishable with six months imprisonment and fine. Under Section 468 Cr.P.C - no Court shall take cognizance of an offence punishable with imprisonment for a term not exceeding one year from the date of offence or the date of knowledge of the offence. Admittedly, the Inspector submitted his inspection report on 24th June, 2013 and the said complaint was only filed on 18th September, 2014, after the expiry of a year from the date of knowledge of the offence as provided under Section 468 (2) (b) Cr.P.C.

48. It is not mentioned in Section 211(7) of the Act rendering the offence a continuing one and the offence is complete with the failure

to take all reasonable steps to secure compliance as respects any account laid before the company and such an offence is committed once and for all as and when one commits the default and the Section does not lay down that the person concerned would be guilty of an offence if he continues to carry on without compliance or that the offence continues until the requirement is complied with. The offence under Section 211(7) of the Act is not in the nature of a continuing offence since the ingredient of continuance of the offence is absent unlike in Sections 113, 162 and 168 of the Act.

49. Under Section 621 of the Act, both the Regional Director, i.e. the Central Government as well as the Registrar of Companies are competent to file the complaint :

- a. **N. Kumar Vs. M.O. Roy, Assistant Director, Serious Fraud Investigation Office, Ministry of Company Affairs, Government of India** (supra)“49. *There is no provision under the Act contemplating prior sanction for prosecution of the companies under Section 207 of the Act and as such the complainant cannot take shelter under the guise of obtaining sanction for the purpose of computing the period of limitation.* ...”

50. For the computation of the period of limitation the respondents have placed reliance on ***Registrar of Companies, Karnataka v. M/s Fairgrowth Agencies Limited***, (supra). The said case can be distinguished from the present case as in the present case, both the Central Government as well as the Registrar of Companies had knowledge of the offence on 24th June, 2013 when the Director (Inspection and Investigation) submitted its report. As per Section

621 of the Act, cognizance of any offence, against the Company can be taken on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorized by the Central Government in that behalf, both the Central Government as well as the Registrar of Companies were competent to prosecute the Company as contemplated under Section 621(1) of the Act, but instead they slept over it and the complaint was filed by the Respondents only on 18th September, 2014 which was beyond the prescribed period of limitation.

In response to the same the petitioners have placed reliance on ***Webcity Infosys Ltd. Vs. Registrar of Companies (Delhi and Haryana)*** (supra) wherein it has been held by the Court that “Limitation has to commence when actionable knowledge is gained by the competent authority”. The Competent Authority in the present case includes the ROC and admittedly actionable knowledge was gained by the ROC on 24th June, 2013 when the Director (Inspection & Investigation) submitted its report to both the Regional Director (Central Government) as well as the ROC.

51. Respondents have also placed reliance on ***Udai Shankar Awasthi***. (supra) wherein the Supreme Court held that:-

“29.....the law on the issue can be summarised to the effect that, in the case of a continuing offence, the ingredients of the offence continue, i.e., endure even after the period of consummation, whereas in an instantaneous offence, the offence takes place once and for all i.e. when the same actually takes place. In such cases, there is no continuing

offence, even though the damage resulting from the injury may itself continue.....”

In ***Udai Shankar Awasthi*** (supra) This judgment merely lays down the general principles with regard to continuing offence in contrast with a completed offence. The said judgment merely reiterates the general principles laid down in judgment of ***State of Bihar vs. Deokaran Nenshi***, (supra) which in fact is being relied upon by the petitioners.

There are a number of judgments which are referred to and relied in ***Udai Shankar Awasthi*** (supra). However, all these judgments merely reiterate the general principles relating to continuing offence as contrasted with completed offence. However, none of these judgments refer to or deal with offence under Section 211 of Act in respect of a Balance Sheet filed by a company.

52. In ***Registrar of Companies, Karnataka v. M/s Fairgrowth Agencies Limited***, (supra) the said judgment does not deal at all with the issue of continuing offence versus completed offence. On the contrary, this judgment proceeds on the footing that an offence relating to the accounts of a company is a completed offence and not continuing, under the Act. The only issue considered in this judgment is with regard to a starting point of limitation. This judgment only lays down that limitation starts from the date the Registrar comes to know of the offence. But the date of knowledge may depend on each case. This judgment states “In one case, it may be that the Registrar may have come to know about the offence on the date when the Inspecting Officer detects the contravention of the Act. In another

case he may not be aware of Offence until a report is made by the Inspecting Officer to him”. In the present case there can be no doubt whatsoever that he Registrar of Companies, who is the Complainant came to know of the offence on 24th June, 2013, when the inspection report was submitted to him has been filed as Annexure P-1 read with Annexure P-9.

53. The petitioner does not dispute the aforesaid position. The said judgment relies on ***State of Bihar vs. Deokaran Nenshi***, (supra) which has been quoted in paragraph no. 26 “A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance, occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.” ***Deokaran Nenshi*** (supra) has also been followed in ***C.K. Ranganathan*** (supra) on which the petitioners place reliance.

54. The said plea of the petitioners is correct in law as an offence under Section 211 is not a continuing offence and is complete the moment the Balance Sheet in question is issued by the Company unlike offences under Section 113, 162 and 168 of the Companies Act, 1956 which are continuing in nature. Reliance is placed on **C.K. Ranganathan v. Registrar of Companies**- 2003 (4) SCL 500 (Mad) wherein it was held as under-

“13. Since the offence under Section 211(7) of the Act is not a continuing one, the learned Magistrate ought not to have taken cognisance of the offence in the present case after the expiry of the period of limitation in view of the bar under Section 468 of the Cr. PC and the proceedings are liable to be quashed.”

55. As per the complaint, the Regional Director by his letter dated 2nd June, 2014 directed the respondent No.1 to lodge prosecution. However, despite issuance of the said instruction, two show-cause notices dated 17th June, 2014 and 21st August, 2014 were issued by the respondent No.1 to the Company and its various officers. The said show-cause notices were duly replied to vide replies dated 5th August, 2014 and 1st September, 2014 respectively. The Company also wrote a letter dated 13th August, 2014. The reference of replies as well as the letter dated 1st September, 2014 does not even find a mention in the complaint. The explanation only given by the counsel for the respondents is that admittedly complaint do not mention about the replies given by the petitioners. However, the same are annexed with complaint.

56. The offences in the present case are not continuing in nature, limitation commenced as per Section 469 (1) (b) Cr.P.C. when actionable knowledge was gained by the competent authority i.e. when the Registrar of Companies had knowledge of the commission of the alleged offences, i.e. 24th June, 2013 when the Registrar of Companies received the report of the Inspector and ran out on 23rd June, 2014 and thus the complaint, which was admittedly filed on 18th September, 2014 was hopelessly barred by limitation. There is no provision under the Act whereby any consent/sanction of the Central Government is required for prosecution of the offences under Section 211(7), 211(3A), (3B) and (3C) of the Act. Therefore the complainant cannot take shelter of Section 470 (3) Cr.P.C. for exclusion of such time taken by the Central Government to give instructions to the Registrar of Companies.

57. The complaint is based on the inspection report of the officer. Consequently, in the present case there is no issue of fact at all with regard to the date of knowledge of offence to the Registrar of Companies. The complaint is, therefore, time barred.

58. The impugned summoning orders and other proceedings emanating from the said orders against the petitioners are accordingly quashed.

59. No costs.

(MANMOHAN SINGH)
JUDGE

SEPTEMBER 17, 2015