

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.1393 of 2016

and

Crl.M.P.Nos.647 & 648 of 2016

M/s.Soumag Electronics Limited
represented by its Director
New No.67, Old No.19, II Floor,
Dr.Ranga Road, Mylapore,
Chennai - 600 004
Tamilnadu

2. Venugopalan Ravikumar

3. Sunil Rambabu Khandelwal

4. Vinod Panalal Shah ... Petitioners

Vs

The Deputy Registrar of Companies,
Tamilnadu, Chennai,
having its office at
"Shastri Bhavan"
Second Floor,
26, Haddows Road,
Chennai-600 006

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C.
to call for the records and quash the E.O.C.C. No.288 of 2015
pending on the file of the learned Additional Chief Metropolitan
Magistrate, Economic Offences-I, Egmore, Chennai - 600 008.

For Petitioners : Mr.K.Balasubramaniam.

O R D E R

This petition has been filed to call for the records and
quash the E.O.C.C. No.288 of 2015 pending on the file of the
learned Additional Chief Metropolitan Magistrate, Economic
Offences-I, Egmore, Chennai - 600 008.

2. The first petitioner is the Company and the petitioners 2 to 4 are the Directors of the first petitioner Company. They have been arrayed as accused Nos.2 to 4 in E.O.C.C.No.288/2015. A complaint has been filed as against these petitioners under section 149 of the Companies Act by the respondent. The paid up share capital of the petitioner company is more than rupees One Hundred Crores and the turn over is more than Rupees Three Hundred Crores. It is submitted that as required under the provisions of Section 149, sub-section (1) and (2) of the Companies Act 2013 read with Rule 3 of the Companies (Appointment & Qualification of Directors) Rules 2014, every unlisted Public Company, having

(a) paid up share capital of One Hundred Crore Rupees or more (OR)

(b) Turn over of Rupees Three Hundred Crore Rupees or more

as on the last date of latest audited Financial Statements of the Company, shall appoint at least one Women Director on the Board of Directors of the Company within one year from the date of commencement of the Act. Accordingly, the respondent claims that petitioner company/ accused should have appointed at least one Women Director on the Company's Board of Directors on or before 31.03.2015.

3. The case of the respondent is that the petitioner company should have appointed at least one women Director as on 1.4.2015 but from the e-records filed by the petitioner company, it could be seen, no women Director is appointed within the due date as mentioned above and hence, the accused persons have violated the provisions of the Companies Act, 2013. Hence, a complaint has been filed by the respondent. The present petition has been filed by the petitioners to quash the said complaint.

4. Heard the learned counsel appearing for the petitioners and perused the entire materials available on record. In view of the limited order going to be passed hereunder, this Court is of the opinion that there is no need to issue notice to respondent.

5. The main submission of the learned counsel for the petitioners is that since the 1st petitioner company's paid up share capital is only Rs.1,93,49,800/- and the turn over was a loss of Rs.27,056/- for the financial year ending March, 2014, the above provisions of Rule 3 of the Companies (Appointment and Qualification of Directors) Rule, 2014 of the Companies Act, 2013, i.e., every unlisted public company having (a) paid

up share capital of One Hundred Crore Rupees or more; or (b) Turn over of Rupees Three Hundred Crore Rupees or more, shall appoint at least one Women Director on the Board of Directors of the Company within one year from the commencement of the Companies Act, 2013 i.e., 01.04.2014, shall not be applicable to the 1st petitioner company. Hence, the petitioners have come forward with the above petition to quash the complaint.

6. Considering the submissions made, I am of the opinion that the ground raised by the petitioners is purely a matter of evidence. The same cannot be gone into by this Court in the quash petition. It is well settled legal position that only when the allegation made in the complaint do not constitute an offence, for which, the accused is charge sheeted, the complaint could be quashed. In the instant case, the petitioner has not made out any case within the purview of Section 482 Cr.P.C. warranting to quash E.O.C.C. No.288 of 2015 pending on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences-I, Egmore, Chennai - 600 008. The submissions made by the petitioner is all the matter of evidence. Hence, the criminal original petition is dismissed. However, the petitioners 2 to 4 are at liberty to file a petition before the Additional Chief Metropolitan Magistrate, Economic Offences-I, Egmore, Chennai - 600 008, for dispensing with their appearance and on filing such application, the learned Additional Chief Metropolitan Magistrate, Economic Offences-I, Egmore, Chennai - 600 008, is directed to pass appropriate orders. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

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To

The Additional Chief Metropolitan Magistrate,
Economic Offences-I,
Egmore, Chennai - 600 008.
Now at Allikulam Commercial Complex,
Chennai-3.

+1cc to Mr.K.Balasubramaniam, Advocate sr.3654

Cr1.O.P.No.1393 of 2016

mg

srg 27/01/2016