

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.09.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.Nos.6388 to 6390 & 6929 of 2010
and
M.P.Nos.1, 1, 1 & 1 of 2010

1.M/s.Academic Centre of Software
and Management Excellence Pvt. Ltd. Rep. by
its Director Mrs.Rafat Siddiqui
MB-210, Shadipur,
Port Blair -744 106.
.. 1st Petitioner /
1st Accused in all Crl.O.Ps

2.M.Nadeem Siddiqui
Director, M/s.Academic Centre of Software
and Management Excellence Pvt. Ltd.,
MB-210, Shadipur,
Port Blair -744 106.
... 2nd Petitioners /
2nd Accused in all the Crl.OPs

Vs.

Registrar of Companies,
Shastri Bhavan, II Floor,
26, Haddows Road,
Chennai - 6.
... Respondent /
Complainant in all the Crl.OPs

Common Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records pertaining to the E.O.C.C.Nos.648, 647, 646 and 649 of 2009 pending on the file of the Additional Chief Metropolitan Magistrate Court (EO-I), Egmore, Chennai-8 and quash the same.

(In all the Crl.OPs)
For Petitioners : Mr.M.J.Jaseem Mohamed
For Respondent : Mr.Venkataswamy Babu
SPCG

COMMON ORDER

These criminal original petitions were preferred by the petitioners/accused against the proceedings pertaining to the

E.O.C.C.Nos.646 to 649 of 2009 pending on the file of the learned Additional Chief Metropolitan Magistrate Court (EO-I) Egmore, Chennai and quash the same.

2.Brief case of the petitioners/accused:

The facts of the case is that the petitioners/accused were the directors of the company when the offence was committed as per the particulars filed in the office of the complainant and they are officers who are in default within the meaning of the section 5 of the Companies Act. The Annual General Meeting of the company for the financial year 31.3.2006 should have been held latest by 30.9.2006 and the Annual Return made up to that date should have been filed with the complainant within 60 days from the said date i.e. on or before 29.11.2006, in case no Annual General Meeting was held within 60 days of the due date of Annual General Meeting in terms of section 159 of the Companies Act. That the petitioners/accused have not filed the annual return made up to 30.9.2006 before the respondent/complainant there by committed an offence under section 159 of the Act which is punishable under section 162 of the act. Both show cause notices was issued on 30.9.2008 by the complainant in this behalf. That as per the section 162 of the Companies Act, every officer of the company who is in default shall be punishable with the fine which may extend to five hundred rupees for every day during which the default continues. The offence under section 159 of the act is a continuing one within the meaning of the section 472 of the code of criminal procedure and therefore no question of limitations arises. The default commenced on 30.11.2006 is still continuing till the date of filing of this complaint in E.O.C.C.Nos. 646 to 649 of 2009. Aggrieved over the same, the petitioners/accused preferred this quash petition.

3.The learned counsel for the petitioners/accused submits that the company M/s.Academic Centre of Software and Management Excellence Pvt. Ltd., was closed under simplified Exit Scheme 2005 notified vide General Circular No.02/2005 No.17/78/2001-CL-V dated 28.1.2005, for striking off/removal of the names of defunct companies issued by the Ministry of Company Affairs, Government of India.

4.The learned counsel for the petitioners/accused submits that the petitioners had filed the application in the format along with the enclosures and also paid the prescribed fees by way of demand draft as per the procedure laid down under the aforesaid circular to strike out the name of the company to the Deputy Commissioner, Andaman and Nicobar Islands. The copy of

acknowledgement received by the Deputy Commissioner acting in charge of ROC Andaman dated 29.8.2005 is enclosed herewith.

5.The learned counsel for the petitioners/accused submits that after the receipt of the aforesaid demand draft the person in charge of the company affairs did not reply or reciprocate to the reply sent by him. It was only after a long span of three years the respondent woke up from deep slumber and issued a communication dated 19.9.2008. On receipt of the same the petitioners/accused herein sent a reply on 1.10.2008 to the respondent herein by fax and by courier which has been duly acknowledged. While so, the petitioners/accused is at a loss to understand as to how the present complaint is maintainable.

6.The learned counsel for the petitioners/accused submits that apart from the petitioner company there were similar placed companies which took umbrage under the present scheme and none of these companies have been mulcted or saddled with the present ordeal. It is also quite surprising to note that initially all matters pertaining to the company jurisdiction where taken care of by the Deputy Commissioner, Andaman District, Andaman and Nicobar Administration, in charge of ROC, Andaman.

7.The learned counsel for the petitioners/accused submits that the matter is purely one of civil nature and there is no criminality involved. The respondent with an intention to harass the petitioners is attempting to give a criminal colour to a civil transaction.

8.The learned counsel for the petitioners/accused submits that the ingredients of sections 159 r/w and 162 and 220 is completely absent and there is absolutely no offence committed by the petitioners. The allegations made in the complaint are casual and stereo typed as made by the respondent in all the similar complaints filed by them before different Magistrate.

9.The learned counsel for the petitioners/accused submits that the complaint is time bared debt. The complaint is filed after more than 3 years of the winding up of the company which is beyond the period of limitation and it is silent about the date of closure.

10.The learned counsel for the petitioners/accused cited the following decisions in support of their contentions:

i) Kerala High Court Crl.M.C.Nos.713,790,806,
817,833&834 of 2006 (The Assistant Registrar of companies,
Vs State of Kerala.)

ii) In the High Court of Kerala WP(C)No.17053 of 2007
(E) (M/s.Kaveri Meat Exports Co. Ltd. and others Vs
Union of India.)

11.The learned Central Government Standing Counsel appearing for the respondent opposed the quash petition and the grounds raised therein.

12.I heard Mr.J.Jaseem Mohammed, learned counsel for the petitioners and Mr.Venkataswamy Babu, learned Central Government Standing Counsel for the respondent in all the criminal original petitions and perused the entire materials available on record.

13.In the case on hand, admittedly the respondent/complainant ought to have followed the procedures as per the Companies Act. Further the application should be accompanied by an affidavit by the applicants mentioned in para 5(1) sworn before a Magistrate/Executive Magistrate /Oath Commissioner/Notary, to the effect that the company has not carried on any business or the company did some business for a period upto a date and then discontinued its operations, as the case may be, and has no assets or liabilities. The draft of the affidavit is as per draft prescribed and enclosed at Annex B to this circular.

14.The purpose of the scheme is to allow eligible companies to avail of this opportunity to exit from the Registrar of companies after fulfilling the requirements laid down in this circular. No penal action would be initiated against eligible companies availing this scheme from the date of filing of the application for simplified exist. After the scheme ends, the Ministry would take necessary penal action under the companies act 1956 against such defunct companies which have not availed of this opportunity and have not complied with the provisions of the companies' act 1956 or are not filing documents with ROCs in a timely manner. The applicant company under this scheme would be deemed to be struck off from register of Companies from the date of issue of order/notification by the ROC.

15.According to the provisions of section 220 of the act, the company and its directors are under statutory obligation to file with the complainant balance sheet and profit and loss

account in the prescribed form duly placed in the Annual General Meeting within 30 days from the said date i.e. on or before 30.10.2006 and in case no Annual General Meeting was held within thirty days of the due date of annual general meeting.

16.That if a default is made in complying with the provisions of section 220 every officer of the company who is in default shall be liable for the punishment as is provided under section 162. That as per the section 162 of the Companies Act every officer of the company who is in default shall be punishable with the fine which may extend to five hundred rupees for every day during which the default continues.

17.That the balance sheet and profit and loss accounts of the company for financial year ending 31.3.2006 were required to be placed in the annual general meeting by a date not later than 30.9.2006 i.e. within six months of the close of the financial year and was further required to be filed with the office of the complainant not later than 30.10.2006 i.e. 30 days of the holding of the Annual General Meeting and in case no Annual General Meeting held within 30 days of the due date of the Annual General Meeting.

18.The accused company has filed the copies of the balance sheets profit and loss account with the complainant. The accused company and accused being the officers complied with the statutory requirements of section 220 of the Act. Both showcause notices dated 19.9.2008 was issued by the complainant in this behalf which is seen from the annexures filed in the typed set. Therefore no valid ground existed against the petitioners/accused in continuing the proceedings before the Lower Court.

19.In the result, all the criminal original petitions are allowed and the complaints filed in E.O.C.C.Nos.646 to 649 of 2009 pending on the file of the learned Additional Chief Metropolitan Magistrate (E.O.II), Chennai is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

vs

To

- 1) The Additional Chief Metropolitan
Magistrate Court (EO-I),
Egmore, Chennai-8.
- 2) Registrar of Companies,
Shastri Bhavan, II Floor,
26, Haddows Road,
Chennai - 6.

+1 cc to Mr.Venkataswamy, Advocate, S.R.No.62868

+1 cc to Mr.M.J.Jaseem Mohamed, Advocate, S.R.No.63365

order made in
Crl.O.P.Nos.6388 to 6390 & 6929 of 2010
and M.P.Nos.1, 1, 1 & 1 of 2010

MR(CO)
SSM(04/04/2019) .