

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2017

CORAM

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**

Crl.OP No.8306 of 2016
and
Crl.M.P.Nos.4342 & 4343 of 2016

1.M/s.KAL Radio Ltd.,
Murasoli Maran Towers,
73 MRC Nagar Main Road,
MRC Nagar,
Chennai-600 028.

2.Kannappan Shanmugam

3.Uma Madhu

.. Petitioners

Vs.

The Deputy Registrar of Companies,
Tamil Nadu,
Having office at
Shastri Bhavan,
26, Haddows Road,
Chennai-600 006.

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the proceedings in E.O.C.C.No.24 of 2016 on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai and to quash the same.

For Petitioners

:Ms.M.Sneha

For Respondent

:Mr.K.Ramanamoorthy, CGSC

ORDER

Challenge in the present petition is against the complaint filed under Section 149 of the Companies Act, 2013 against the petitioners herein on the ground that the petitioners had failed to appoint atleast one Woman Director as on 01.04.2016 which is in contravention to the provisions of the Companies Act.

2.Heard Ms.Sneha, learned counsel appearing on behalf of the petitioners and Mr.K.Ramanamoorthy, learned Central Government Standing Counsel appearing on behalf of the respondent.

3.According to the averments made in the complaint, the petitioner's company had a paid up share capital of more than Rs.100 Crores as per the latest audited financial statements and as per Rule 3 of the Companies Act (Appointment and Qualification of Directors) Rule, 2014, the company shall appoint atleast one Woman Director within one year, from the commencement of the Companies Act and since the Company has contravened the said provision, they are liable for criminal prosecution.

4.Ms.N.Sneha, learned counsel for the petitioners submitted that insofar as the petitioners' company is concerned, they had applied to the Ministry of Information and Broadcasting (MIB) seeking for approval of appointment of one Woman Director in their Company within time and since the approval was kept pending by the MIB, they were unable to make the said appointment in time. The learned counsel further submitted that, the fact that their petition seeking approval for appointment of one Woman Director was pending before the MIB, was brought to the notice of the respondent in their reply dated 27.07.2015 to the show cause notice and the present proceedings has been initiated in total disregard of their reply.

5.The learned Central Government Standing counsel on the other hand submitted that since non appointment of a Woman Director in the petitioners' company amounts to violation of the provisions of the Companies Act, the proceedings have been initiated and hence, the petitioners are liable to be prosecuted.

6.Prior approval of Ministry of Information and Broadcasting for appointment of a Women Director is mandatory.

The petitioner had applied for the appointment of a Woman Director

and the approval has been kept pending before the Ministry of Information and Broadcasting. In this background, a show cause notice came to be issued on the petitioner under the provisions of the Companies Act. The petitioner had given a reply dated 27.07.2015 stating that the petition seeking approval is pending with the Ministry of Information and Broadcasting and hence, they were not in a position to appoint the Woman Director in accordance with the provisions of the Companies Act.

7. Thus, it is seen that the petitioners' company cannot be found fault for the inaction on the part of the Ministry of Information and Broadcasting who have kept the petitioners' application seeking for approval of the appointment of a Woman Director pending. It is not denied by the respondent that the pendency of such an application was within their knowledge, in view of the petitioners' reply dated 27.07.2015 to their show cause notice.

8. It is also seen that the petitioners' Company is governed by the FM Radio Phase -II Policy and as per Clause 23.5 of the Grant of Permission Agreement entered into by the Company with the Ministry of Information and Broadcasting (MIB), the Government of India, the Company is bound to get prior permission from the MIB before effecting any change in the Board of Directors

of the Company. This was brought to the notice of the respondent by the petitioners in their reply notice dated 27.07.2015 to the show cause notice. However, on a perusal of the impugned complaint, it is seen that the respondent had totally disregarded the explanation offered by the petitioners and chosen to initiate the present proceedings and hence in my considered view, the petitioners cannot be found fault for non compliance of the appointment of a Woman Director, in view of the fact, that they have already initiated steps seeking for approval of the appointment of a Woman Director for their Company and therefore, the present petition deserves to be allowed.

9.In the result, the Criminal Original Petition stands allowed. Consequently, E.O.C.C.No.24 of 2016 on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai is quashed. Connected Miscellaneous Petitions are closed.

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Index:Yes/No
Internet:Yes/No

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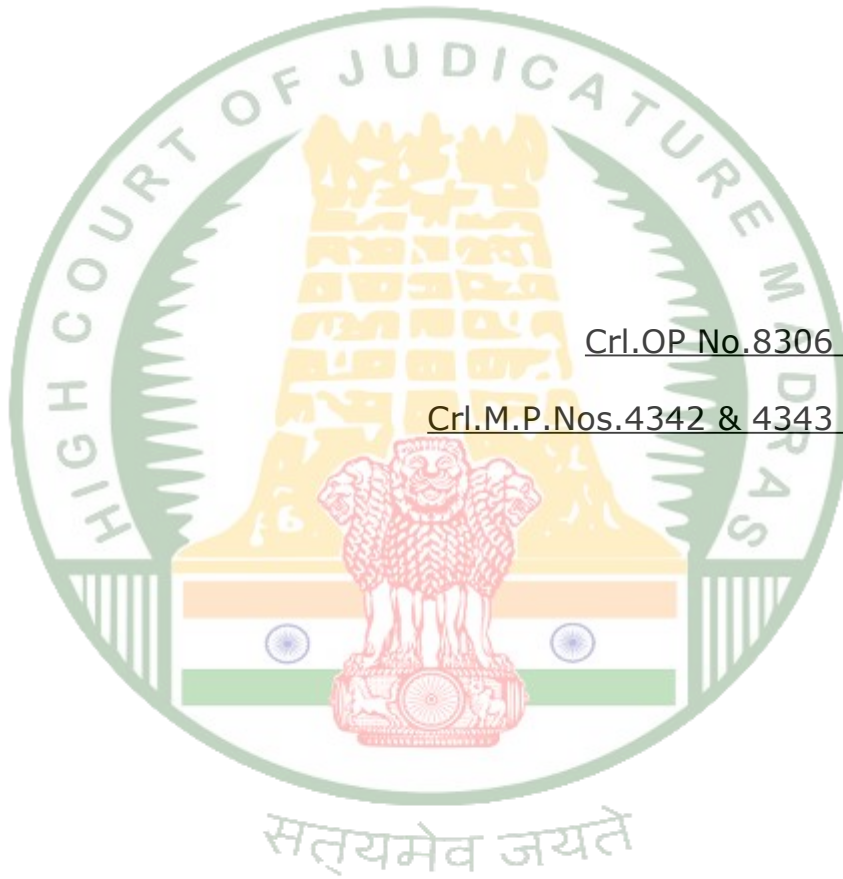
- 1.The Deputy Registrar of Companies,
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Having office at
Shastri Bhavan,
26, Haddows Road,
Chennai-600 006.
- 2.The Public Prosecutor,
High Court, Madras.



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M.S.RAMESH.J,

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