

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY APPLICATION No. 1517 2016

ORDER:

This Company Application is filed invoking Section 633 of the Companies Act, 1956 (for short 'the Act') seeking to direct respondent No.1 not to file complaints or launch prosecution against the applicant.

The assertion of the applicant in the instant application is that he is ceased to be a Director of the Company as he had submitted his resignation to the Company on 21.01.2008, and the same came to be accepted and to that effect, Form 32 was also filed by the authorised signatory. Thus, he is ceased to be the Director of the Company as on the date of the alleged donation of Rs.5,00,000/- i.e., 31.03.2008. On this solitary ground, the applicant submits that he could not be prosecuted.

The inspection report, dated 04.02.2015, submitted by the Registrar of Companies, Andhra Pradesh, to the Central Government with respect to the affairs of M/s. Hill County Properties Limited (formerly M/s. Maytas Properties Limited), reveals various commissions and omissions with respect to the affairs of the above said company and its Directors, who includes the applicant. It is stated therein that the balance sheet, dated 31.03.2008, discloses that a sum of Rs.5,00,000/- has been paid to CPI(M), a political party, as contribution. As per Section 293A of the Act, no other company, which has been in existence for

less than three financial years, shall contribute any amount to any political party. As the company was incorporated only on 20.05.2005 and the Board had not approved such payment, there is a violation on the part of the Company under Section 293A(1) of the Act. The Central Government approval has also not been obtained which is mandatory under the Act. For the said violation, the explanation submitted by the Company was to the effect that the donations were made during the financial year 2007-08 and the same has been reflected in the Notes to Account and as a matter of fact, the Board has approved the same. Further, the adoption of financial statements by the shareholders in the Annual General Meeting would tantamount to approval of the shareholders. The donations amounting to Rs.3,60,000/- during the financial year 2008-09 are not pertaining to the political parties as disclosed in the Notes to Accounts and the Notes to Accounts along with the financial statements were approved by the Board and adopted by the Members in the Annual General Meetings. It is also brought out in the report that the applicant was appointed as a Director of the Company on 20.05.2005 and in fact, submitted his resignation on 21.01.2008.

The fact that the applicant is ceased to be the Director of the Company with effect from 21.01.2008 and as a matter of fact, the contribution to the political party was made on 31.03.2018 is not in dispute as the same is evident from the inspection report, dated 04.02.2015, of the Registrar of Companies, Andhra Pradesh. Inasmuch as there is no role played by the applicant in

the alleged offence and the applicant not being an Officer of the Company as on the date of the alleged offence, the applicant would not fall within the definition of 'officer who is in default' as contemplated under Section 5 of the Act.

It is to be noted that the applicant filed the present Company Application on 17.10.2016 only on apprehension, and as a matter of fact, a complaint was filed before the Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad, and the same was numbered as CC No.75 of 2017 for the offences punishable under Sections 143(1), 193, 193(1), 194, 211(1), 211(3A) to (3C), 217(2AA), 219 of the Act read with Sections 53 and 227 read with Sections 233, 292, 292(1), 293A, 302(2), 303(1), 307, 372A of the Act.

In those circumstances, without expressing any opinion with respect to other offences under which the petitioner has been charged in C.C. No.75 of 2017, the Company Application filed under Section 633 of the Act, as regards the offence for violation of Section 293A(1) of the Act, is allowed.

CHALLA KODANDA RAM, J

Dt:12.04.2018
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