

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1011 OF 2017

M/s.Alphacon Containers Limited & Anr. ...Applicants

Versus

Deputy Registrar of Companies & Anr. ...Respondents

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Mr.Sujit B. Shelar for the Applicants.

Mr.D.P. Singh for Respondent No.1.

Mr. A.R. Patil, APP for Respondent No.2-State.

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CORAM: MRS.MRIDULA BHATKAR, J.

DATED: 04 MARCH 2019

P.C.:

1. This Criminal Application is moved under section 482 of the Code of Criminal Procedure seeking direction that the order dated 5th February, 2012 of taking cognizance of the offence under section 162 of the Companies Act, 1956 in Criminal Case No. 3355/SS/2014 passed by the learned Metropolitan Magistrate 40th Court, Girgaum, Mumbai is to be quashed and set aside.
2. Heard submissions of the learned counsel of both the sides.
3. The Deputy Registrar of Companies has filed a complaint against the petitioner under section 162 of the Companies Act for

non-filing of annual return of the years 2004 to 2010 with the complainant's office. The learned Magistrate thereafter took cognizance of the offence under section 162 of the Companies Act and issued process accordingly.

4. My attention is drawn to the order dated 12th February, 2004 passed by this Court in Company Petition No. 1028 of 2003 along with Company Application No. 548 of 2003, which was filed by Clear Plastics Limited in which this Court had accepted the prayer of merger of transferor company -M/s.Alphacon Containers Limited, who is the present petitioner before this Court, with the transferee company- Clear Plastics Limited i.e., the petitioner in that proceedings.

5. Accordingly, the merger was effected from 1st April, 2003. By the order dated 12th February, 2004, this Court had directed the petitioner company i.e. transferee company to communicate this order of merger to the office of Registrar of Companies, Maharashtra, Mumbai for registration and it was declared that the transferor company shall stand dissolved without winding up and further directions were given to the Registrar of Companies in respect of maintaining certain record.

6. It was the duty of the Registrar of Companies to update its own record before filing complaint.

7. In view of this, the order dated 5th February, 2012 passed by the learned Metropolitan Magistrate 40th Court, Girgaum, Mumbai is hereby quashed and set aside.

8. Criminal Application is allowed and is accordingly disposed of.

(MRIDULA BHATKAR, J.)