IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2019

PRONOUNCED ON : 26.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
CRL.OP.No.169 of 2012
and
M.P.Nos.1 & 3 of 2012

1. Brajesh Sharma
2. Deepak Bhalotia
3. Shiw Kumar Agarwal
4. K.V. Omprakash ...Petitioners/Accused

Vs.

M.O. Roy ..Respondent/complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records and to quash the complaint in C.C.No.140 of 2006 on the file of the Additional Chief Metropolitan Magistrate Court, Economic Offences Court-I, Egmore, Chennai.

For Petitioners : Mr.Prakash Goklaney

For Respondent : Mr.G. Rajagopal, Senior Counsel

for Mr.V.Venkatesan, SCGSC

O R D E R

This petition has been filed by the accused Nos.3 and 5 to 7 to quash the proceedings against them in C.C.No.140 of 2006 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences Court-I) Egmore, Chennai.

2. The respondent herein had filed a private complaint alleging that the first accused viz., DSQ software Limited is a Company in which the accused Nos.2 to 10 are the Chairman/Managing Director/Director/Company Secretary and they are the Officers in default during the relevant period within the meaning of Section 5 of the Companies Act, 1956(hereinafter referred to as 'the Act'). He further stated that as per sub-section (1) of Section 205 A of the Act where a dividend has been declared by a Company but has not been paid or claimed within 30 days from the date of declaration to the shareholders

entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of such period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called "Unpaid Dividend Account of ....Company Limited". He further stated that prior to the Companies (Amendment) Act, 2000, time limit specified was 7 days from the date of expiry of 42 days after the date of declaration of dividend. He further stated that the Company opened the dividend account in Vijaya Bank for the financial year 1995-1996, 1996-1997, 1997-1998 and 1999-2000 (interim and final dividend) and another account was opened in Vysya Bank for the financial year 1998-1999.He further stated that in the aforesaid financial years, the company has not deposited the unpaid or unclaimed dividend in the aforesaid accounts within the time stipulated under the Act and hence the accused persons have committed offence punishable under Section (8) 205-A of the Act.

3. Based on the aforesaid complaint, the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai (EOI) has taken the case on file in C.C.No.140 of 2006 and issued summons to the accused persons. After receipt of summons, the accused Nos.3 and 5 to 7 have filed Crl.OP.No.169 of 2012 under Section 482 Cr.P.C., to quash the proceedings against them in C.C.No.140 of 2006.

4. Heard Mr.Prakash Goklaney, learned counsel for the petitioners and Mr.G.Rajagopal, learned Additional Solicitor General for Mr.V.Venkatesan, Senior Central Government Standing Counsel.

5. The learned counsel for the petitioners has submitted that the petitioners were neither Directors/Company Secretary at the time of declaration of dividend nor during the gracy period and they were inducted only subsequently. He further submitted that the petitioners are not the officers in default as per Section 5 of the Act. He further submitted that as per sub-section (8) of Section 205-A of the Act, if the Company fails to comply with any of the requirements of the said section, the company or any of the officer of the company who is in default shall be punishable with fine only. He further submitted that as per Section 468 Cr.P.C., the limitation prescribed for taking cognizance of offence punishable with fine only is six months whereas the respondent has filed a complaint in the year 2006 alleging the violation committed for the period 1995-1996, 1996-1997, 1997-1998, 1998-1999 and 1999-2000 and hence the complaint is barred by limitation and therefore he prayed to quash the proceedings against the petitioners herein in the aforesaid C.C.

6. Per contra, the learned Additional Solicitor General has submitted that Sub-Section (1) of Section 205-A Act lays down that where a dividend has been declared by a Company but has not been paid or claimed within 30 days from the date of declaration to the share holders entitled to the payment of the dividend, the Company shall within 7 days from the date of expiry of such period of 30 days, transfer, the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the Company in any scheduled bank to be called "Unpaid Dividend Account of ....Company Limited" . He further submitted that as per Sub Section (8) of 205 A of the Companies Act that if the aforesaid amount is not paid within the aforesaid period, the Company and every officer of the Company who is a defaulter shall be punished with fine which may extend to Rs.5000/- for every day during the failure continues. He further submitted that the said offence is a continuing offence and hence the complaint is not barred by limitation. He further submitted that since the said offence is a continuing offence, it is immaterial where the petitioners were Directors/Company Secretaries during the aforesaid years. He further submitted that once the petitioners became Directors/Company Secretaries, they have to comply with the aforesaid directions as contemplated under Sub-Section (1) of Section 205-A of the Act. He further submitted that admittedly, till today the petitioners have not complied with the aforesaid directions and therefore they can be prosecuted for the aforesaid offence. He further submitted that a prima facie case is meted out against the petitioners and therefore he prayed to dismiss the petition.

7. In paragraph No.7 of the complaint, the statement showing the particulars of date of declaration of dividend, the amount of dividend paid, amount of unpaid/unclaimed dividend due to be transferred in unpaid dividend account after specified period are furnished which is extracted hereunder:-

Years	Amount of dividend (Rs.)	Date of declaration of dividend (Rs.)	Date of opening of Account/Account No. / Name of the dividend account (Rs.)	Amount of dividend paid till 42/30 days after the date of declaration (Rs.)	Amount of unpaid/ unclaimed dividend due to be transferred after 42/30 days (Rs.)	Actual amount of Unpaid/Unclaimed dividend transferred to special "Unpaid Dividend Account" (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Years	Amount of dividend (Rs.)	Date of declaration of dividend (Rs.)	Date of opening of Account/Account No. / Name of the dividend account (Rs.)	Amount of dividend paid till 42/30 days after the date of declaration (Rs.)	Amount of unpaid/ unclaimed dividend due to be transferred after 42/30 days (Rs.)	Actual amount of Unpaid/Unclaimed dividend transferred to special "Unpaid Dividend Account" (Rs.)
1995-96	4,05,00,000	19.09.1996	5.10.1996 A/C No.CA 270 'M/S Square D software Ltd Un-paid dividend account' vide Board Resolution dated 19.09.1996.	Nil	4,05,00,000	1,93,00,500 Short fall (2,11,99,500)
1996-97	2,02,50,000	26.09.1997	17.10.1997 A/C No.338 'MS Unpaid dividend account 1997 DSQ Software Ltd' vide Board Resolution dated 26.09.1997	Nil	2,02,50,000	500 Short fall (2,02,49,500)

Years	Amount of dividend (Rs.)	Date of declaration of dividend (Rs.)	Date of opening of Account/Account No. / Name of the dividend account (Rs.)	Amount of dividend paid till 42/30 days after the date of declaration (Rs.)	Amount of unpaid/ unclaimed dividend due to be transferred after 42/30 days (Rs.)	Actual amount of Unpaid/Unclaimed dividend transferred to special "Unpaid Dividend Account" (Rs.)
1997-98	4,05,00,000	22.07.1998	06.08.1998 A/C No.CA 373 'M/S DSQ Software Ltd' vide Board Resolution dated 22.07.1998.	Nil	4,05,00,000	Nil Short fall (4,05,00,000)
1998-99 (15 months)	4,05,00,000	29.12.1999	10.01.2000 Vysya Bank - A/C No.5192 (new No.204011001374) 'M/S DSQ Software Ltd - Dividend Account' vide Board Resolution dated 29.12.1999.	Nil	4,04,99,400	77,36,000 Short fall (3,27,63,400)

Years	Amount of dividend (Rs.)	Date of declaration of dividend (Rs.)	Date of opening of Account/Account No. / Name of the dividend account (Rs.)	Amount of dividend paid till 42/30 days after the date of declaration (Rs.)	Amount of unpaid/ unclaimed dividend due to be transferred after 42/30 days (Rs.)	Actual amount of Unpaid/Unclaimed dividend transferred to special "Unpaid Dividend Account" (Rs.)
1999-00 (interim dividend)	4,21,52,000	29.12.1999	03.06.2000 Vijaya Bank A/C No.CA 444 'M/S DSQ Software Ltd'.	Nil	4,21,52,000	Nil Short fall (4,21,52,000)
1999-00 (Final dividend)	4,05,96,000	29.03.2001	11.05.2001 A/C.No.CA 459 'DSQ Software Ltd. DW A/C 99-00' vide Board Resolution dated 24.07.1999.	Nil	4,05,96,000	Nil Short fall (4,05,96,000)

8. From the aforesaid table, it is clear that though the Company opened unpaid dividend account in the years 1995-1996 and 1996-1997, the said amounts were not fully credited with the actual amount of unpaid/unclaimed dividend outstanding on the expiry of 42 days after declaration of dividend. Similarly in the years 1997-1998 and 1999-2000, the special 'un-paid dividend accounts' were not even opened and the accounts were also not credited or even unpaid/unclaimed dividends outstanding on the due dates respectively. It is also evident from the figures shown in the above table that there was a shortfall of funding special "Unpaid Dividend Account" in each year after the expiry of 42/30 days from the date of declaration of dividend.

9. As per the Companies (Amendment) Act, 2000 sub-section (1) of Section 205-A of the Act has been amended and as per the said amendment, the unpaid/unclaimed dividend shall be transferred to a special account within 7 days after the expiry of 30 days. Before the said amendment, it was 42 days.

10. The Company, admittedly has not transferred the unpaid/unclaimed dividend to the special account viz, unpaid dividend account within the aforesaid period. Further, the aforesaid table shows that even though the amount has been transferred with a delay, there is a huge shortfall in transferring the aforesaid amount.

11. At this juncture, it would be relevant to refer to sub-section (8) of Section 205-A of the Act which reads thus:

> "(8) If a company fails to comply with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to '[five thousand] rupees for every day during which the failure continues.]"

12. A plain reading of the aforesaid provision would show that if a company fails to comply with any of the requirements of the aforesaid section, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs.5000/- for everyday during failure of the complying with the act. So, it is clear that so long as the unpaid/unclaimed dividend is transferred to the special account viz., "Unpaid Dividend Account, the offence continues. As per Section 472 of Cr.P.C., in the case of continuing offence, a fresh period of limitation shall begin to run every moment of the time during which the offence continues. Therefore, the contention of the petitioners that the complaint is barred by limitation, cannot be accepted.

13. It is not the case of the petitioners that the aforesaid amount of unpaid/unclaimed dividend transferred to special account as contemplated under sub-section (1) of Section 205-A of the Act. So long as the aforesaid direction is not complied with, the offence continues. So, even if it is assumed that during the years 1995-2000, the petitioners herein were not inducted as Directors/Company Secretaries, as soon as the petitioners became the Directors/Company Secretaries, they are bound to set right the aforesaid defects. Since the said offence continues even today, the petitioners cannot contend that they cannot be prosecuted. Therefore, this court is of the view that there is a prima facie case to proceed against the petitioners herein under Section 205-A of the Act. Therefore, this petition is liable to be dismissed.

14.In the result, this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To
1. The Additional Chief Metropolitan Magistrate Court,
Economic Offences Court-I,
Egmore, Chennai.

+2 CCS to Mr.Prakash Goklaney, Advocate sr 41054.
+1 CC to Dr.V.Venkatesan, Advocate sr 41483.

CRL.OP.No.169 of 2012
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M.P.Nos.1 & 3 of 2012

SPD(CO)
SP(30/07/2019)