IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-35828-2010
DATE OF DECISION:-05.03.2019

MAX INDIA LTD. AND ORS. **...PETITIONERS...**

V.

THE REGISTRAR OF COMPANIES, PUNJAB **...RESPONDENT...**

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. R.S. Cheema, Sr. Advocate with
Mr. A.S. Cheema, Advocate for the petitioners.

Mr. Anil K. Lamdharia, APP,
for UT., Chandigarh.

Mr. Piyush Khanna, Sr. Panel Counsel for Union of India.

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RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., prayer has been made for quashing complaint No.12699 of 2010, dated 11.06.2010, titled as ***"Registrar of Companies vs. Max India Ltd."*** pending in the Court of CJM, Chandigarh (P-1) along with summoning order dated 21.08.2010 (P-2) and all subsequent proceedings arising therefrom.

Briefly, on 11.05.2006, Mr. R.C. Meena, Joint Director (Inspection) and Sh. R.K. Meena, Deputy Director (Inspection), Ministry of Corporate Affairs carried out inspection of the petitioners' company in compliance to some order of Ministry of Corporate Affairs under Section 209-A of the Companies Act, 1956 (for short, "Act") and prepared inspection report dated 11.05.2006 (P-4), thereby reporting violation of provisions of Sections 269, 198(1), 309(1) of the Act that Directors of the petitioners' company withdrew excess remuneration beyond the limit prescribed under Section 309, sub-section (5)(a) of the Act without prior sanction of the Central Government. Consequently, respondents issued notice dated 04.07.2007 (P-22) to the petitioners' company. In response thereto, petitioners filed reply dated 05.09.2007 (P-23), clarifying that Director, Surindera Kaul had already deposited the excess remuneration of ₹24.56 lacs in between 01.04.2001 to 31.03.2005 and refunded the same to the company on 31.03.2005. Thus, he had kept the excess remuneration in default of Section 309 of the Act for 1460 days. Managing Director, Vivek Jetley had kept the excess remuneration of ₹10,22,097/- for 2585 days w.e.f. .01.04.2001 to 30.04.2008 and refunded the same to the company on 30.04.2008. Director, B. Anantharaman withheld excess remuneration of ₹15,66,046/- for 2529 days w.e.f. 01.04.2001 to 05.03.2008 and refunded the same on 05.03.2008.

However, respondent, rejecting the said reply of the petitioners' company advised it, to approach the Company Law Board vide its letter dated 29.01.2009 (P-24). Consequently, petitioners approached the Company Law Board vide application dated 10.02.2009 (P-25), but its Bench Officer/Clerk returned the application to the petitioners to remove certain objections. However, thereafter, petitioners sat silent and did not remove the objections pointed out by Bench Officer/Clerk of the Company Law Board. Consequently, respondent No.1 filed a complaint under Sections 269(1) read with Section 198(1), 309-(1) and 310 of the Act (P-1) against the petitioners' company.

Learned counsel for the petitioners contends that Section 309 5(a) of the Act does not provide any penalty or fine. At the most, if a Director withdraws excess remuneration than prescribed by the Central Government without sanction. Even, according to the reply of the respondent, compounding application could be filed before Company Law Board by making the default good by paying interest to the company. Therefore, at the most aforesaid Directors of the petitioners' company can be directed to pay reasonable interest on the alleged excess remuneration withdrawn and retained with them for the period detailed above.

On the other hand, learned counsel for the respondent refuting the above submissions, contends that apart from interest, aforesaid Director of petitioners' company are liable to pay compounding fee on the excess remuneration for the period during the aforesaid Directors retained excess remuneration without prior sanction of the Central Government to be calculated as per provision of Section 629(a) read with Section 309 of the Act.

Having given thoughtful consideration to the rival submissions, this Court is of the considered opinion that at the most, and in the interest of justice, aforesaid Directors of the petitioners' company namely, Surindera Kaul, Vivek Jetely, B. Anantharaman can only be directed to pay simple interest @ 12% per annum for the period, during which, they retained the excess remuneration of ₹24.56 lakh, ₹10,22,097/- and

₹15,66,046/-respectively to safeguard the interest of the shareholders of the petitioners' company, within one month from today.

Provisions of Section 629-A of the Act cannot be invoked in the instant case, because no penalty or fine is prescribed for violation of provisions of Section 309-A of the Act, inasmuch as, the provisions of the same are only applicable, in case, the aforesaid Directors would not deposit the excess remuneration at all.

In view of the discussion above, the impugned complaint dated 11.06.2010 (P-1) filed against the petitioners, summoning order dated 21.08.2010 (P-2) and all subsequent proceedings, are quashed qua the petitioners.

Instant petition is disposed of in the above terms.

05.03.2019 **(RAMENDRA JAIN)**
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whether speaking/reasoned: Yes/No
whether reportable: Yes/No