

CRM-M-32419 of 2017 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-32419 of 2017 (O&M)
Date of Decision: 07.02.2019

M/s WSP Consultants India Private Limited and others

...Petitioners

Versus

State of U.T., Chandigarh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Vikas Goel, Advocate,
for Mr. Kanwal Goyal, Advocate, for the petitioners.
Mr. Gautam Kaile, Advocate, for respondent No.1.
Mr. Piyush Khanna, Advocate, for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Through instant petition under Section 482 Cr.P.C. prayer has been made for quashing complaint No.7715 of 2016 (Annexure P-2) as well as summoning order dated 04.11.2016 (Annexure P-1) passed by learned Chief Judicial Magistrate, Chandigarh, summoning the petitioners under Section 297 of the Companies Act, 1956 (in short the 'Act').

Briefly, Petitioner No.1 – company was incorporated in the year 2004 as a public limited company, having two directors, namely, Siddharth Nath Singh, his wife Dr. Nita Singh and five shareholders. To achieve objects of the company, petitioner No.1 entered into an agreement with another company named “M/s Nissid Infrastructure Private Limited” on 01.01.2017, hiring its services for consideration agreed in the contract. At the time of entering into contract with M/s Nissid Infrastructure Private Limited, the paid up capital of petitioner No.1 – company was ₹5,00,000/-

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as per balance-sheet for the year 2007. On 19.05.2011 founder director Siddharth Nath Singh resigned from the management and severed all his relations. Consequently, its consultancy agreement with M/s Nissid Infrastructure Private Limited came to an end. Thereafter, petitioner No.2 was replaced by aforesaid managing director w.e.f. 12.01.2012, who also resigned on 01.04.2014. Everything was running smoothly till 16.07.2016 with the petitioner-company, on which date it received three notices dated 14.07.2016 from the office of respondent No.2 – Registrar of Companies, alleging certain non-compliances and violation of Section 297 of the Act by it. Said notices were duly replied. Thereafter, petitioner No.1 never received any communication from respondent No.2. Therefore, it believed that its replies have duly been accepted by respondent No.2 and matter must have stood closed. However, lateron, petitioner No.1 came to know that respondent No.2 had filed a complaint before the learned Chief Judicial Magistrate, Chandigarh, for violation of Section 297 of the Act, which has been assailed in the instant petition.

Learned counsel for the petitioners *inter alia* contends that impugned complaint is hopelessly time-barred in view of Section 468(2)(a) Cr.P.C., because maximum punishment under Section 297 of the Act is only fine and no physical imprisonment. Therefore, period of limitation is six months for commission of such offence.

On the other hand, learned counsel for respondent No.2 contends that cause of action to file complaint against the petitioners was continuing one. Impugned complaint were filed by respondent No.2 for violation of provisions of Section 297 of the Act in the year 2012-13.

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During that period paid up capital of petitioner No.1-company was more than ₹1.00 crore. Therefore, as per the Act, prior permission of the Central Government was required for related party contract.

Having given thoughtful consideration to the rival submissions, this Court finds that instant petition merits acceptance for the reasons to follow.

Related party agreement was entered into by petitioner No.1 in the year 2007, which automatically came to an end after resignation of its director Siddharth Nath Singh on 19.05.2011. Therefore, said related party agreement in the year 2012-13 had lost its significance. That apart, it came to an end and was non-executed as is clear from the balance-sheet for the year 2012-13 submitted by petitioner No.1 to the Registrar Companies, wherein transaction in the column of 'value of transaction' was show 'zero'. In fact, respondent No.2 with *mala fide* intention on cryptic ground illegally tried to prosecute petitioner No.1 for a time-barred action or otherwise without explaining as to why he did not scrutinise account of petitioner No.1 prior to 2011-12, and revived the time-barred action. More so, matter could have been disposed of by respondent No.2 at his own level by considering the case of petitioner No.1 on merit, giving due weight to its reply, instead of filing a complaint in Court, which he did not do for the reasons best known to him. The same amounts to unnecessary harassment to the petitioners

This practice is liable to be deprecated inasmuch as entrepreneur of this country is really fed up by highhandedness of the regulatory authorities. Time has come to deal with the entrepreneurs of this

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country with leniency and sympathetically in lawful manner without thinking as if every entrepreneur was unfair. It is dire need of the hour that official machinery sitting in closed corridors should start act fairly with intention to redress grievance of citizens of this country instead of harassing them. Petitioner No.3 has also been wrongly prosecuted. He, as a company secretary, joined petitioner No.1 after 21.05.2012 i.e. much after expiry of the agreement.

In view of above, petition is allowed. Complaint No.7715 of 2016 (Annexure P-2) as well as summoning order dated 04.11.2016 (Annexure P-1) is quashed.

February 07, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No