

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 15th January, 2019

+ W.P.(C) 5199/2015, CM No.9444/2015

VIRESH INFOTECHNICS LIMITED

..... Petitioner

Through: Mr. Sachin Chopra, Adv. with
Ms. Astha Gupta, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Mr. Anil Soni, CGSC with
Mr. Abhinav Tyagi, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed with the following prayers:-

"In the above premises, it is most respectfully prayed that this Hon'ble Court may be please to:

a. Issue a writ of Certiorari setting aside / quashing the Para 2 of Table B of Table of Fee issued under Rule 12 of Registration of Offices and Fees Rules, 2014 issued by Respondent No.2 as ultra vires and unconstitutional to Article 20 of the Constitution of India and also for excessive use of power by Respondent no.2;

b. Issue a writ of mandamus or any other appropriate writ order or directions to Respondent No.1 to 3 to accept Form SH-7 of the Petitioner with, fee and additional fee as per Schedule X of the Companies Act, 1956 for period of delay occurring prior to the commencement of

Companies Act, 2013 and thereafter as per the provision of the Companies Act, 2013; and/or

c. pass such further order or directions as this Hon'ble Court may deem just and proper in the circumstances of the case."

2. It is the submission of Mr. Sachin Chopra, learned counsel appearing for the petitioner that the petitioner is a Company incorporated in the year 1989. In the year 2010, the petitioner Company increased its authorized share capital pursuant to a preferential allotment. Similar increase was made in the years 2012 and 2013 pursuant to bonus issue.

3. It is the case of the petitioner and contended by Mr. Chopra that it had taken approval in the respective extraordinary General Meetings and Annual General Meetings and it complied with the provisions of the Companies Act, 1956 except that in respect of increased authorized share capital it did not file Form 5 with the respondent No.3. He submits that the non-filing of the said Form was neither deliberate nor intentional but due to some change in the global circumstances and financial constraints in the business. He concede to the fact that the Companies Act, 2013 and the Companies (Registration of Offices and Fee) Rules, 2014 came into force on April 01, 2014 and consequently the provision for filing e-

Form SH-7 (in lieu of e-Form 5) was made. He submits that the Rules of 2014 even though specifically state that the fee for belated filing of the said Form after the enactment of new Act shall be calculated as applicable on the date of filing, which would result in payment of ₹ 5,65,73,117.08/- instead of ₹ 2,30,07,549.68.

4. It is his submission that the petitioner is liable to pay fee under the old Companies Act / Rules, and not the new fee, which have been framed in the year 2014. In substance, it is his submission that no person can be convicted of any offence, except for violation of law in force at the time of commission of the act, charged as an offence nor be subjected to a penalty greater than what might have been inflicted under the law in force at the time of commission of offence. He would rely upon the following judgments in support of his submissions:-

(i) 2014 SCC Online Del 6963 Malik Training Industries v. Union of India;

(ii) (2006) 3 SCC 620 Mahabir Vegetable Oils (P) Ltd. & Anr. v. State of Haryana & Ors.;

(iii) (2007) 5 SCC 77 Vice Chancellor, M.D. University v. Jahan Singh.

5. On the other hand, the respondents have taken the following stand in their counter affidavit:-

1. That the petitioner company namely Visesh Infotecnics Limited having CIN L30007DL1989PLC131190 was incorporated on 20.01.1989 and presently its Registered Office is situated at 703, Arunachal Building, 19 Barakhamba Road, Connaught Place, New Delhi – 110001.

2. That as per records available the petitioner company passed the Special resolution dated 03.09.2010 in regard to increase of its Authorized Share Capital pursuant to preferential allotment by issuing of Twenty Two Crore warrants convertible into equal number of equity shares of Rs.10 each at Rs.10 on preferential Basis to promoters and non-promoters in the year 2010 wherein the registration of Special Resolution of same was submitted with the answering respondents vide filing the Form 23 with SRN No. A95235487 dated 02.10.2010 in compliance with Section 192 of the Companies Act, 1956. Further purpose of passing the resolution dated 03.09.2010 as reiterated was to increase the Authorised Capital from Rs.50,00,00,000 divided into Five Crores Equity shares of Rs.10/- each to Rs.2,85,00,00,000/- divided into 28,50,00,000 equity shares. Annexure P-3 (Colly.)

3. That further for the year 2012 the petitioner has passed the Special Resolution dated 29.09.2012 to increase its Authorized share capital and submitted the Form 23 with the answering respondents with SRN No. B59216655 dated 09.10.2012 wherein the subject matter to increase the

authorized capital of the Company from Rs.287.45 Crores to Rs.343.135 Crores and for that purpose Memorandum of association of the Company was also to be suitably altered had been mentioned along with other subject matters. For the year 2013 also the petitioner has passed the Special Resolution dated 22.02.2013 to increase the authorized share capital of the company from 343.135Croes to Rs.377.50 pursuant to Bonus issue and submitted the same with the answering respondents vide SRN no. B69857142 dated 11.03.2013. Annexure P-3 Colly.

4. That as per the relevant provisions of the Companies Act, 1956, a company after increase its authorized share capital needs to submit the e-From 5 (now Eform SH-7 as per Companies Act, 2013 with the answering respondent within thirty days pursuant to Section 95, 97, 94A(2) and 81(4) of the Companies Act, 1956. Simultaneously, Section 64 (1) of the Companies act, 2013 inter-alia stipulates that the company shall file a notice in the prescribed form (new SH-7) with the Registrar of Companies within a period of 30 days of such alternations. However the petitioner had not fulfilled the statutory compliance of filing Eform 5 (Now e-form SH-7 as per Companies Act 2013) with the answering respondents till date.

5. That the rules relating to Companies (Registration of Offices and Fees) Rules, 2014 has been implemented w.e.f 01.04.2014 after the draft rules have been placed before the

stakeholders and finalized after due deliberations. It is pertinent to mention here that the petitioner should have filed the e-form 5 (now SH-7) for increase of authorized share capital in the years 2010, 2012 and 2013 itself when the eform 5 was very much in-force as per schedule X of the Companies Act, 1956 and shifting of liability to the Central Government when they could not file the form 5 in time during the years 2010, 2012 and 2013 does not arise due to the fact that such form needs to be filed within 30 days from the respective general meetings in accordance with sections 94/95/97 of the Companies Act, 1956 read with schedule X of the said Act and the present petition filed by the petitioner after implementation date has no merit.

6. That considering the reason furnished for not filing the such e-form 5 for the years 2010, 2012 and 2013 and also the submissions made by the petitioner it is observed that the Petitioner company itself admitted its fault for deliberately / intentionally not filing the required e-form 5 within the stipulated time limit vide its contention that various other forms were filed during the said period in spite of the fact that e-form 5 was also very much in operation / existence till 31.03.2014 for filing the same pursuant to the increase in the share capital by the Petitioner Company.

6. Mr. Anil Soni had reiterated the stand taken by the respondents in their counter affidavit.

7. Having heard the learned counsel for the parties, we are not impressed by the submissions made by Mr. Chopra for the simple reason, that there is no dispute that the authorized share capital was increased when the provisions of the Companies Act, 1956 were in vogue and the petitioner was required to deposit fee along with documents / form in terms of the Rules, as in place then but the fact remains and also conceded by Mr. Chopra that the petitioner had filed the e-Form only in the year 2014 after the Rules of 2014 were framed. If that be so, the fee as payable under the said Rules (of 2014), need to be deposited by the petitioner, as it is clear from the reading of the Rules that it is the fee, as applicable at the time of actual filing of the documents / Forms, which were due to be filed under the Companies Act, 1956 shall be payable. So it is the fee as in vogue on the date of filing of the documents / forms that shall be payable. We agree with the stand taken by the respondents in the counter affidavit.

8. The judgments relied upon by Mr. Chopra have no bearing, insofar as the facts of the present case are concerned.

9. We do not see any merit in the petition, the same is dismissed. No costs.

CM No.9444/2015

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

JANUARY 15, 2019/*ak*

