IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2020

PRONOUNCED ON : 11.12.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.Nos.12867 & 12869 of 2010
and
M.P.Nos.1 & 1 of 2020

1.M/s.Subhiksha Trading
Services Limited
Represented by its
Managing Director
R.Subramanian
6th Floor, "Habib Complex"
No.5, Durgabai Deshmukh Road
R.A.Puram,
Chennai - 600 028.

2.R.Subramanian ..Petitioners in both petitions

Vs.

1.The Deputy Registrar of Companies,
Tamil Nadu,
Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006.

2.The Official Liquidator,
High Court of Madras,
Corporate Bhavan,
Rajaji Salai, Chennai - 600 001. ..Respondents in both petitions

Prayer in Crl.O.P.No.12867 of 2010: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.49 of 2010 on the file of the Additional Chief Metropolitan Magistrate Court, Economic Offence, Egmore, Chennai and quash the same.

Prayer in Crl.O.P.No.12869 of 2010: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.48 of 2010 on the file of the Additional Chief Metropolitan Magistrate Court, Economic Offence, Egmore, Chennai and quash the same.

For Petitioners
in both petitions: Mr.Prakash Goklaney
For R1
in both petitions: Mr.D.Ramesh Kumar
Central Government Standing Counsel
For R2
in both petitions: Mr.S.Gopalakrishnan

COMMON ORDER

These criminal revision petitions have been filed seeking to call for the records in C.C.Nos.49 & 48 of 2010, respectively, on the file of the Additional Chief Metropolitan Magistrate Court, Economic Offence, Egmore, Chennai and quash the same.

2. The Deputy Registrar of Companies has initiated two prosecutions in E.O.C.C.Nos.48 & 49 of 2010 in the Court of Additional Chief Metropolitan Magistrate, Economic Offence, Egmore, Chennai, against Subhiksha Trading Services Limited (in short "Subhiksha"), for not holding the Annual General Meeting and for not filing the balance sheet and profit and loss accounts in time.

3. For quashing the aforesaid prosecutions, Subhiksha has filed the present petitions under Section 482 Cr.P.C.

4. The allegations in the complaint in C.C.No.48 of 2020 against Subhiksha is as under:

> "4. That the Annual General Meeting of the Company for the financial year 31.03.2008 should have been held latest by 30.09.2008 the Annual Return made up to that date should have been filed with the Complainant within 60 days from the said date i.e. on or before 29.11.2008 in case no Annual General Meeting was held within 60 days of the due date of Annual General Meeting in terms of Sec.159 of the Act."

5. Similarly, the allegations in the complaint in C.C.No.49 of 2010 against Subhiksha is as under:

> "4. That according to the Provisions of Section 220 of the Act, the company and its Directors are under statutory obligation to file with the complainant Balance Sheet and Profit and Loss Account

in the prescribed form duly placed in the Annual General Meeting within 30 days from the said date i.e.on or before 30.10.2008 and in case no Annual General Meeting was held within thirty days of the due date of Annual General Meeting.”

6. It is seen that Subhiksha had made a representation dated 31.07.2008 to the Government of India, Ministry of Company Affairs, for extending the period of the financial year 30.06.2008, for which, the Central Government, by order no.46/101/2008-CL-III, had passed the following order:

“2. The Central Government being satisfied that an order under sub-section (4) of section 211 of the Companies Act, 1956, should be issued and in exercise of the powers conferred by the said section hereby order order that the disclosure of quantitative details in compliance of para 3(ii)(b) of Part-II, Schedule-VI to the Companies Act, 1956 as amended vide Notification No.GSR 494(E), dated the 30th October, 1973 shall not be necessary for M/s.Subhiksha Trading Services Limited in respect of their financial year ended on 30.06.2008 subject to the following conditions:

i. This approval is valid for the financial year ended on 30.06.2008.
ii. That the fact regarding the grant of the above exemption would be suitably disclosed in the Notes forming part of the balance sheet and profit and loss account of the company for the financial year ended on 30.06.2008.
iii. The company shall conform to the prescribed accounting standards.
iv. While not required to present the information as per para 3(ii)(b) of Part-II of Schedule-VI, the company shall ensure that its financial documents represent a true and fair state of affairs of its finances.
v. The company shall maintain and file such information as may be prescribed called for or required by the RBI, any Regulator or the Government.
vi. For representation of the foreign currency holdings, if any, exchange rate as on 30.06.2008 shall be applicable.

3. This Supersedes this Ministry's Order No.46/101/2008-CL-III dated 15.07.2008. ”

7. In fact, this was the subject matter of the Company Petitions in C.P.Nos.239 & 240 of 2008, in which, this Court had passed the following order on 25.10.2010:

> "120. Viewed from the above perspective, it is seen that C.P.Nos.239 and 240 of 2008 were filed in November 2008. In the Petitions themselves, the Transferor and the Transferee have disclosed the financial position of the Transferor and the Transferee as on 31.03.2008. While the financial position indicated in respect of the Transferee, is as per the audited accounts, the financial position indicated in respect of the Transferor, is as per the unaudited accounts. The companies have stated that due to the extension of the financial year upto 30.06.2008, the annual accounts were to be audited and laid in the AGM to be convened on or before 30.12.2008. Since the Petitions were filed on 11.11.2008 and the audited results were to be placed before the AGM by 30.12.2008, there was justification for the Transferor, not filing the audited results."

8. In view of the above, the prosecution of the petitioners for not holding the Annual General Meeting and for not filing balance sheet and profit and loss accounts within the period stated in the complaint is ill-founded.

In the result, these criminal original petitions are allowed and the prosecutions in C.C.Nos.49 & 48 of 2010, respectively, on the file of the Additional Chief Metropolitan Magistrate Court, Economic Offence, Egmore, Chennai, are hereby quashed. Connected M.Ps. are closed.

Sd/-
Assistant Registrar(CJ CONF)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Additional Chief Metropolitan Magistrate,
   Economic Offence, Egmore, Chennai.

2. The Deputy Registrar of Companies,
   Tamil Nadu,
   Shastri Bhavan,
   No.26, Haddows Road,
   Chennai - 600 006.

3. The Official Liquidator,
   High Court of Madras,
   Corporate Bhavan,
   Rajaji Salai, Chennai - 600 001.

+1CC To Mr.D.Ramesh Kumar, Advocate, SR40661

Crl.O.P.Nos.12867 & 12869 of 2010

CO(RLD)
BDL/06/01/2021