IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.02.2020
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.Nos.14260 and 13999 of 2014

S.C.Sharda @ Shubh Chandar Sharda
(Wrongly named Smt.S.C.Sharada)
... Petitioner in both the Crl.O.Ps.

Vs.

Assistant Registrar of Companies,
Tamil Nadu, Chennai,
Shastri Bhavan, IInd Floor,
No.26, Haddows Road,
Chennai - 600 006.
... Respondent in both the Crl.O.Ps.

Common Prayer:
Petitions filed under Section 482 of Cr.P.C., seeking to call for the records and quash the complaint in E.O.C.C.Nos.271 and 273 of 2005 respectively, on the file of the learned Additional Chief Metropolitan Magistrate Court, (EO-I), Egmore, Chennai as against the petitioner and allow the said petitions.

For Petitioner : Mr.Prakash P.Goklaney
For Respondent : Mr.D.Rameshkumar
CGSC

C O M M O N O R D E R

These criminal original petitions have been filed seeking to call for the records and to quash the complaints in E.O.C.C.Nos.271 and 273 of 2005 respectively, on the file of the learned Additional Chief Metropolitan Magistrate Court, (EO-I), Egmore, Chennai, as against the petitioner.

2.The petitioner is the Director of M/s.Square D Distilleries Limited. The petitioner is arrayed as the second accused in the complaints in E.O.C.C.Nos.271 and 273 of 2005 respectively. Challenging the said complaints, these petitions have been filed.

3.The allegation in E.O.C.C.No.271 of 2005 is that M/s.Square D Distilleries Limited was inspected under Section 209 A of the Companies Act, 1956, by an Officer authorized by the Ministry. During the course of inspection, it was observed that the amount of Rs.20.00 Crores borrowed from M/s.DSQ Bio-tech Limited and subsequently the loans made to M/s.Uniforge Steel Works Limited has not been reflected in the Balance Sheet for the year 31.03.2001 under the headings 'unsecured loan' and 'loans and advances' respectively. On account of the non-disclosure of the above details, the accounts do not give a true and fair view of the state of affairs of the Company. Hence, violated the provisions of Section 628 of the Companies Act, 1956.

4.The allegation in E.O.C.C.No.273 of 2005 is that M/s.Square D Distilleries Limited was inspected under Section 209 A of the Companies Act, 1956, by an Officer authorized by the Ministry. During the course of inspection, it was observed that the amount of Rs.20.00 Crores borrowed from M/s.DSQ Bio-tech Limited and subsequently the loans made to M/s.Uniforge Steel Works Limited has not been reflected in the Balance Sheet for the year 31.03.2002 under the headings 'unsecured loan' and 'loans and advances' respectively. On account of the non-disclosure of the above details, the accounts do not give a true and fair view of the state of affairs of the Company. Hence, violated the provisions of Section 628 of the Companies Act, 1956.

5.The learned counsel appearing for the petitioner would submit that the respondent had knowledge of the alleged irregularities under the Companies Act during March, 2001 and March, 2002 respectively, however, they issued the show cause notices only during February, 2005 and filed the complaints during July, 2005. He would further submit that it is clearly barred by Section 468 of Cr.P.C. and would further submit that no Court shall take cognizance of the offence after expiry of the limitation period. He would further submit that the complaints filed by the respondent is barred by limitation. Accordingly, he prayed for allowing the criminal original petitions.

6.The learned Central Government Standing Counsel appearing for the respondent would submit that the limitation aspect has been considered by the Delhi High Court in its decision dated 22.09.2010 made in Crl.MC.No.4007 of 2009 in the case of Ajay Jain Vs. Registrar of Companies NCT of Delhi & Haryana, wherein, it is held that the limitation of offences under Sections 63 and 628 of the Companies Act, 1956, starts from the date of knowledge of making a false statement.

7.The learned Central Government Standing Counsel appearing for the respondent would further submit that in the present case, once the respondent had knowledge of the offence, the respondent issued the show cause notices during February, 2005 and filed the complaints during July, 2005. Hence, the complaints have been filed well within the limitation period. Accordingly, he prayed for dismissal of the criminal original petitions.

8.Heard the arguments advanced on either side and perused the materials available on record.

9.The relevant portion of the decision of the Delhi High Court, relied upon by the learned Central Government Standing Counsel appearing for the respondent, dated 22.09.2010 made in Crl.MC.No.4007 of 2009 in the case of Ajay Jain Vs. Registrar of Companies NCT of Delhi & Haryana, reads as follows:

> "5.As far as limitation aspect is concerned, limitation of offences under Sections 63 and 628 of the Companies Act, 1956, starts from the date of knowledge of making a false statement. The Registrar of Companies learnt about making of false statement after filing of balance sheet in the year 1999-2000, therefore, limitation would start only after the date of filing of balance sheet and not from the date of issuing prospectus and this plea, therefore, is not tenable. Whether the directors had resigned or not which is a question of fact which cannot be gone into by this Court and only the trial court, during trial can decide whether the directors had resigned or they continued to be the directors. If find no force in this petition. The petition is hereby dismissed with no orders to costs."

10.A perusal of the decision cited supra makes it clear that limitation of offences under Sections 63 and 628 of the Companies Act, 1956, starts from the date of knowledge of making a false statement.

11.Section 628 of the Companies Act, 1956, deals with penalty for false statements and it is useful to extract hereunder the said Section:

> "Penalty for false statements.
>
> 628.If in any return, report, certificate, balance sheet, prospectus, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement -
>
> (a) which is false in any material particular, knowing it to be false; or
>
> (b) which omits any material fact, knowing it to be material; he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine."

12.In the present case, no date was mentioned in the complaints as to when inspection under Section 209 A of the Companies Act, 1956, was conducted. Hence, it is presumed that the date on which the balance sheets have been filed is the date of knowledge of making the false statements. The balance sheets have been filed on 31.03.2001 and 31.03.2002 respectively, hence, the respondent had knowledge of the alleged irregularities under the Companies Act during March, 2001 and March, 2002 respectively, itself, however, they issued the show cause notices only during February, 2005 and filed the complaints during July, 2005.

13.The maximum punishment for the offence under Section 628 of the Companies Act, 1956, is imprisonment for two years and shall also be liable to fine. Hence, the complaints should have been filed within a period of three years from the date of knowledge of making false statements. In the present case, though the respondent had knowledge of the alleged irregularities under the Companies Act during March, 2001 and March, 2002 respectively, they issued the show cause notices only during February, 2005 and filed the complaints during July, 2005, which is beyond the period of three years. Hence, the complaints are clearly barred by limitation.

14.In view of the above, I have no hesitation to allow these criminal original petitions. These criminal original petitions are accordingly allowed and the complaints in E.O.C.C.Nos.271 and 273 of 2005 respectively, on the file of the learned

Additional Chief Metropolitan Magistrate Court, (EO-I), Egmore, Chennai, is hereby quashed in respect of this petitioner alone. Consequently, connected miscellaneous petitions, if any, are closed.

Sd/-
Asst.Registrar (CS V )

/true copy/
Sub Asst. Registrar

To

1.The Additional Chief Metropolitan Magistrate Court,
(EO-I), Egmore, Chennai.

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

+2 ccs to Mr.Prakash Goklaney Advocate sr15871,15872
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