IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.O.P.No.3105 of 2018
and Crl.M.P.No.1321 and 1322 of 2018

Giridharan ... Petitioner/2nd Accused

Versus

The Deputy Registrar of Companies,
Tamil Nadu,
Having Office at,
Shastri Bhavan,
26, Haddows Road, Chennai-06 ... Respondent/Complaint

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings here in E.O.C.C.No.271 of 2015 pending on the file of the Learned Additional Chief Metropolitan Magistrare, E.O-II, at Egmore, Chennai till the disposal of the above Crl.O.P.

For Petitioner : Mr. A. Nagarajan

For Respondent : Mr.K. Ramanamoorthy
Central Government Standing Counsel

O R D E R

The petitioner has filed this petition to call for the records and quash the proceedings here in E.O.C.C.No.271 of 2015, pending on the file of the Learned Additional Chief Metropolitan Magistrare, E.O-II, at Egmore, Chennai

2. The facts leading to the present round of litigation is that the first accused Company, viz., M/s.Edserv Softsystems Limited, of which A2 and A3 are the Directors. The petitioner herein who is before this Court is A2. The respondent herein had filed a complaint for non-compliance with Section 149 of the Companies Act, 2013 which mandates that the accused Company should have appointed atleast one women Director as on 01.04.2015. Against the said complaint, the petitioner has come before this Court to quash the same.

3. The case of the petitioner is that before filing of the complaint by the respondent, company petition was filed on 06.02.2013 by India Factoring and Finance Solutions Private Limited, Mumbai for winding up of the company and also for appointment of Official Liquidator to take charge of the affairs of A1 Company and this Court has also passed an order for winding up of the accused Company. While being so, the allegation made in the year 2015 that the petitioners have violated Section 149(1) of the Companies Act, 2013 is wholly unsustainable. In terms of above said provision, woman Director should be appointed between 01.04.2014 and 31.03.2015. However, before the above said period, this Court had ordered winding up of the company and appointed Official Liquidator to take charge of the accused Company. Further the respondent stated in the complaint that no reply was received for the Show Cause Notice, which was issued on 01.07.2015 against the Company. It is the case of the petitioner that without having knowledge of the winding up order, the respondent claims to have issued the Show Cause Notice to the accused Company and therefore, the allegation that no reply was made to the show cause notice issued, as levelled against the petitioner is baseless and, hence, prays for quashment of the same.

4. Learned counsel appearing for the petitioner reiterated the grounds as raised by the petitioner in the above petition and submitted that the company having already directed to be wound up by appointing Official Liquidator and on the date of the commencement of Act, 2013, the company having already been wound up, the stand of the respondent that there is infraction of the Act and the Rules and that reply has not been given to the show cause notice are wholly misplaced and this petition deserves to be allowed. It is the further submission of the learned counsel for the petitioner that the particular provision of the Act and the Rules having come into force in 2014, applies prospectively and not retrospectively and prays for quashment of the complaint.

5. Mr.K.Ramanamoorthy, learned Central Government Standing Counsel appearing for the respondent submitted that as alleged by the petitioner the winding up proceedings have been initiated by the order of this Court dated 19.08.2013, the same has not been brought to the knowledge of the respondent complainant and the said official is not aware of the order with respect to the winding up of the Company. Though it is the duty of the petitioner to notify the respondent with regard to the actions taken in the process of winding up, the petitioner has failed to comply with the same and not disclosed any of the actions taken, including the winding up order, appointment of Official Liquidator, even after receiving the said Show Cause Notice dated 01.07.2015. Hence the said complaint was filed in accordance with the procedures prescribed under the provisions of

the Companies Act, 2013 read with Rules and hence prays for dismissal of this petition.

6. For better appreciation, it is relevant to extract Section 149(1) and (2) of the Companies Act and Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014:

> ''149. (1) Every company shall have a Board of Directors consisting of individuals as directors an shall have—
> (a) a minimum number of three directors in the case of a public company , two directors in the case of a private company , and one director in the case of a One Person Company ; and(b) a maximum of fifteen directors:
>
> Provided that a company may appoint more than fifteen directors after passing a special resolution:
>
> Provided Further that such class or classes of companies as may be prescribed, shall have at least one woman director.
>
> (2) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (1).
>
> 3.Woman director on the Board.—
>
> The following class of companies shall appoint at least one woman director-
>
> •every listed company;
>
> •every other public company having –
>
> •paid–up share capital of one hundred crore rupees or more; or
>
> •turnover of three hundred crore rupees or more:
>
> Provided that a company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation:

Provided further that any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Explanation.– For the purposes of this rule, it is hereby clarified that the paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.''

7. It is pertinent to note that the particular Rules and Act came into effect only on 01.04.2014 and allegation that the woman Director should be appointed between 01.04.2014 and 31.03.2015 would not apply to the present case on hand, in view of the fact that the rule applies prospectively and not retrospectively and further prior to the commencement of the said Act, the Company has ceased business activities and winding up proceedings were initiated in Company Petition No.53 of 2013. Therefore, this Court is of the considered view that the present complaint is not justifiable in the eye of law and hence it is liable to be quashed.

8. For the reasons aforesaid, this Criminal Original Petition is allowed and quashed the proceedings here in E.O.C.C.No.271 of 2015, pending on the file of the Learned Additional Chief Metropolitan Magistrare, E.O-II, at Egmore, Chennai. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

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To
1.Learned Additional Chief Metropolitan Magistrate,
Egmore, Chennai.

2.The Deputy Registrar of Companies,
Tamil Nadu, Having Office at,
Shastri Bhavan, 26, Haddows Road, Chennai-06

+1CC to M/s.K.Ramesh Kumar, Advocate, SR.No. 41178

CRL.O.P.No.3105 of 2018

SV I(CO)
B.VC (04/10/2021)