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.NOS.4422 AND 4424 OF 2018
AND
CRL.M.P.NOS.2085, 2086, 2089 AND 2090 OF 2018

Giridharan
...Petitioner in both petitions

Versus

The Deputy Registrar Of Companies,
Tamil Nadu,
Having Office at,
Shastri Bhavan,
26, Haddows Road, Chennai-06
...Respondent in both petitions

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in E.O.C.C.Nos.230 & 232 of 2017 on the file of the Learned Additional Chief Metropolitan Magistrate, E.O-II, Egmore, Chennai as against the petitioner.

For Petitioner in both petitions	:	A.Nagarajan
For Respondent in both petitions	:	Mr.K.Ramanamoorthy Central Government Standing Counsel

COMMON ORDER

The petitioner has filed these petitions to call for the records and quash the proceedings here in E.O.C.C.Nos.230 and 232 of 2017, 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 of the said Company. The petitioner herein who is before this Court is A2. The respondent herein had filed a complaint for non-compliance with Section 166 of the Companies Act, 1956 which mandates that the accused Company should have to conduct its Annual General Body Meeting for the financial years 31.03.2013 and 31.03.2014. Against the said complaints, the petitioner has come before this Court to quash the same.

3. The case of the petitioner is that before filing of the complaints 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 2017 that the petitioner has violated Section 166 of the Companies Act, 1956 is wholly unsustainable. In terms of above said provision, the accused Company should have to conduct its Annual General Meeting for the financial year 31.03.2013 and 31.03.2014. 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 24.10.2016 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, 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 therefore, these petition deserves to be allowed 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 24.10.2016. Hence the said complaint was filed in accordance with the procedures prescribed under the provisions of the Companies Act, 1956 read with Rules and hence prays for dismissal of this petition.

6. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and also perused the materials available on record as also the relevant provision of law which is said to have been violated.

7. It is pertinent to note that the allegation against the petitioner is that the accused Company should have to conduct its Annual General Body Meeting for the financial year 31.03.2013 and 31.03.2014, as per the above said provision, however, the fact is that the Company has ceased business activities during the year 2013 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, these Criminal Original Petitions are allowed and quashed the proceedings here in E.O.C.C.Nos.230 and 232 of 2017, 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. The Learned Additional Chief Metropolitan Magistrate,
   E.O-II, Egmore, Chennai.

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

+2ccs to M/s.K.R.Ramesh Kumar, Advocate, S.R.No.41179, 41180

CRL.O.P.Nos.4422 and 4424 of 2018

PA(CO)
RLP(04/10/2021)