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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2022

PRONOUNCED ON : 05.04.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

CRL.O.P.No.28705 of 2015
and CrI.M.P.No.01 of 2015

1.Khivraj Motors Pvt Ltd (A1)
Having its registered office at
617, Anna salai
Chennai 600 002
Represented by its Director

2.Navaratanmull Chordia (A2)

3.Bharatkumar Chordia (A3)

4.Kanta Devi Chordia (A4) ...Petitioners/Accused

Vs.

The Deputy Registrar of Companies, Tamil Nadu
Shastri Bhavan (2nd Floor), 'B' Block
26, Haddows Road
Chennai 600 006

...Respondent/Complainant

Prayer:- Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records in EO CC No.199 of 2015 pending before the Court of the learned Additional Chief Metropolitan Magistrate (EO.II), Chennai 600 003 and quash the same.

For Petitioners : Mr.AR.L.Sundaresan, Sr.Adv
For M/s.Aparajitha Vishwanath

For Respondent : M/s.Dr.D.Simson (CGSC)

ORDER

This is a petition to call for records in EO CC No.199 of 2015 pending before the Court of the learned Additional Chief Metropolitan Magistrate (EO.II), Chennai 600 003 and quash the same.



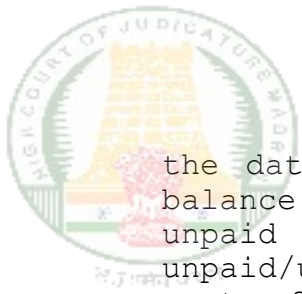
The first petitioner company is represented by petitioners 2 to 4 as the Directors of the first petitioner company. As per the balance sheet for the financial year 31.03.2013, there is unpaid dividend of Rs.10,00,000/-. Section 205 C of companies Act 1956 requires that this amount shall be credited to the Fund "Investors Education and Protection Fund".

4. Petitioners have not filed E form 5 INV as required under the above rule. Show cause notice was issued on 21.07.2014. No reply was received from the petitioners. Therefore, petitioners are liable to be prosecuted for the offence aforesaid.

a) The show cause notice dated 21.07.2014 is silent as to period and as to which of the amounts mentioned under clauses (a) to (g) required under sub-Section (2) of Section 205 C of the Companies Act 1956 was not credited to the Investors Education and Protection Fund by the first petitioner/accused company;

c) Replies to the show cause notice dated 21.07.2014 issued by the respondent/complainant were indeed given by each of the petitioners/accused, and the said replies were not duly considered.

<https://hcservices.ecourts.gov.in/hcservices/>



the date it became due for payment. As per the complaint, the balance sheet for the financial year ending 31.03.2013 shows unpaid dividend of Rs.10,00,000/-. Only if it remains unpaid/unclaimed for the period of seven years, it would form part of Investors Education & Protection Fund. Therefore, the show cause notice issued on 21.07.2014 for the unpaid dividend of Rs.10,00,000/- as on 31.03.2013 and the prosecution launched is pre-mature and illegal.

e) No shareholder had given any complaint regarding unpaid dividend.

Therefore, the complaint is liable to be quashed.

6. In support of submission of learned counsel for the petitioners, he relied on the following judgments for the proposition that non consideration of reply shows non application of mind making the complaint liable to be quashed. In the judgment reported in 2014 (3) MWN (Cr.) 86 K.Masthan Rao Vs. State represented by Inspector of Factories, First Circle, Vellore, it is observed that,

29. As noticed above, there is no reference to the reply submitted by the petitioner. The complaint was signed by the respondent on 20.06.2012 and filed before the Court on 21.06.2012, presumably not in full form and appears to have been returned and re-presented on 30.09.2013. In the intergnum, the petitioner has been given the replies dated 16.04.2012 and 31.05.2012. That apart, the further explanations dated 12.07.2012 and 28.09.2012, were submitted much prior to the date on which, the complaint was re-presented i.e., on 30.09.2013. There is no explanation forth coming as to why the complaint which was presented on 21.07.2012 was returned and as to why the complaint was re-presented after more than one year. Therefore, this Court has no hesitation to hold that the complaint is vitiated on account of total non-application of mind.

52. As regards the other points canvassed, the observations and the findings rendered by this Court in the previous paragraphs would be equally applicable to these batch of cases, the complaint is vitiated by total non-application of mind. The complainant did not afford an opportunity to the petitioners to rectify the so called defects and the show cause notice itself was issued with a threat of prosecution. The bonafides of the explanation offered, has not been considered rather not even referred to in the complaint. At the first instance, when the complaint is perused one gets an impression that the petitioners were never put on notice and no



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explanation was submitted by them. When the complainant has issued a show cause notice on 24.10.2013, calling upon the petitioners to explain within seven days, as to why the prosecution should not be launched or bound to disclose the issuance of notice, the reply given and then make a statement in the complaint as to how the offence still continues.

53. In the absence of any of these grounds in the complaint, it is a good ground to quash the complaint.....

This Court in Crl.O.P.Nos.23034 & 23035 of 2015 in L.Ganesh and one another Vs. The State of Tamil Nadu dated 19.08.2019, held that,

18.The petitioners have given a detailed reply for the show cause notice issued by the respondent. This reply has not been taken into consideration either at the time of granting sanction or at the time of filing of the complaint. This Court has already held that where a reply has been given to the show cause notice, the said reply has to be considered and dealt with at the time of filing of the complaint, failing which, the complaint itself becomes unsustainable on the ground of non application of mind.

In the judgment reported in 2019 SCC Online All 6789 Kaushal Kishore Vs. State of Uttar Pradesh, it is observed that,

21.Hon'ble the Supreme Court in a catena of decisions including the decision in Roop Singh Negi Vs. Punjab National Bank, reported in (2009) 2 SCC 570 specifically held that the authority conducting an enquiry against a delinquent employee clearly discharges a quasi-judicial function and is, therefore, required to act in a fair and impartial manner. It is obligatory upon the said authority not only to deal with the reply submitted by the delinquent employee but also a duty is cast upon him to find out the truth of the allegations leveled against the delinquent employee. The purpose of an enquiry is not to establish a delinquent employee guilty of the charges levelled against him.

22.The golden rule which stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. Its essence is good conscience in a given situation; nothing more but nothing less.

7.In response, learned Government Advocate submitted that petitioners are required to submit and upload on its website and also ministry's website or any other specified website in E Form



5 INV, the details aforesaid regarding unpaid dividend. For every financial year, these details should be uploaded on or before 31st July. Petitioners have not done that and therefore, they are liable to be prosecuted.

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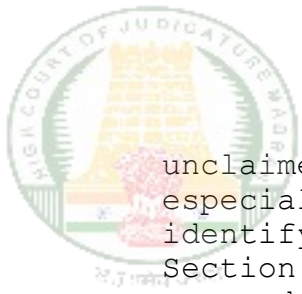
8. Considered rival submissions and perused the records.

9. The cause of action for filing this complaint is that every company shall within 90 days after holding its Annual General Meeting or the date on which it should have been held and every year thereafter, till completion of seven years period, identify the unclaimed amounts as referred to in sub-Section (2) of Section 205 C of the Act and upload on its own website and also on the Ministry's website or any other website specified by the Government through the E Form 5 INV giving details as aforesaid. Petitioners have not filed E Form 5 INV as required, leading to filing of this complaint.

10. One of the submissions of the learned counsel for the petitioners is that Sub-Section (2) of Section 205 C of the Act, the amounts referred in (a) to (d), shall form part of Investors Education and Protection Fund, only if it remains unclaimed and unpaid for a period of seven years from the date they became due for payment. The dividend was declared for the period ending 31.03.2013. Therefore, giving a show cause notice before the completion of seven years and launching the prosecution is illegal. However, this submission of the learned counsel for the petitioners, in the considered view of this Court cannot be entertained for the reason that Section 205 C of the Companies Act, 1956 deals only the amounts which are liable to be credited to Investors Education and Protection Fund. The following amounts shall be credited to the aforesaid fund.

- a) Amounts in the unpaid dividend accounts of companies;
- b) The application moneys received by companies for allotment of any securities and due for refund;
- c) Matured deposits with companies;
- d) Matured debentures with companies;
- e) the interest accrued on the amounts referred to in clauses (a) to (d),
- f) grants and donations given to the fund by the Central Government, State Governments, Companies or any other institutions for the purposes of the fund; and
- g) the interests or other income received out of the investments made from the fund;

11. It also refers that the amounts referred to in clauses (a) to (d), shall form part of the fund only if they remain unclaimed and unpaid for a period of seven years from the date they became due for payment. However, Investors Education and Protection Fund (uploading of information regarding unpaid and



unclaimed amounts lying with the companies) Rules 2012, especially Rule 3 requires that every company is required to identify the unclaimed amounts referred in Sub-Section (2) of Section 205 C of the Act, separately furnish and upload on its own website, and also on the Ministry's website or any other website specified by the Government, a statement of information through E Form 5 INV, separately for each year. This information shall contain the following details,

- a) Name and last known address of the person entitled to receive the sum.
- b) The nature of amount.
- c) The amount to which each person is entitled.
- d) The due date for transfer into Investor Educations and Protection Fund and
- e) Such other information as considered relevant for the purpose provided that for the financial year ended March 31, 2011 the information shall be filed latest by July 31st 2012.

12. This rule makes it mandatory for every company to upload the information aforesaid within a period of 90 days after the holding of annual general meeting or the date on which it should have been held as per the provisions of Section 166 of the Act and every year thereafter till completion of seven years period. It also requires that for the financial year ending 31st March, the information shall be filed latest by July 31st of the succeeding year. This rule is made obviously for informing the persons interested to claim the amount publicly and to facilitate making their claim. This information should be uploaded in the website as indicated above for every financial year ending 31st of March latest by 31st July of succeeding year. Therefore, the contention of the learned counsel for the petitioners before the completion of seven years period, show cause notice cannot be given for not uploading the aforesaid information and prosecution cannot be launched, in the considered view of this Court, it is not legally sustainable. Therefore, on this ground petitioners cannot seek to quash the complaint.

13. The complaint allegation shows that petitioners have not filed E Form 5 INV as required in the show cause notice issued dated 21.07.2014 given by the respondent. However, it is the case of the petitioners that they gave reply dated 28.07.2014 explaining their position and requesting dropping the further action. The complaint allegation shows that no reply was received from the petitioners. Copy of the reply dated 28.07.2014 sent by the first petitioner shows that the reply was received by the office of the Registrar of Companies on 30.07.2014. Petitioners 2 to 4 had also sent a reply dated 05.08.2014, reading the reply dated 28.07.2014 of the first



petitioner. Their reply were received in the office of the Registrar's office on 08.08.2014. Therefore, it is clear that the allegation made in the complaint that respondent's show cause notice dated 21.07.2014 was not replied by the petitioners is not correct. It is apparent that though the petitioners had given a reply within the time given in the show cause notice, the reply was not considered. The ratio of the judgments referred by the learned counsel for the petitioners shows that filing complaint without considering the reply, amounts to non application of mind and that is a ground for quashing the complaint.

14. One more ground, a valid ground claimed by the petitioners is that the show cause notice is not specific as to what is the exact offence committed by the petitioners. It is true that the show cause notice dated 21.07.2014 had just reproduced the Section 205 C of the Companies Act, 1956. Though the amounts referred in (a) to (g) are liable to be credited to Investors Education and Protection Fund. The show cause notice is not specific about which one among these amounts is liable to be credited to Investor Educations and Protection Fund. In so far as the petitioner's company, the allegation against the petitioners is that unpaid dividend amount of Rs.10,00,000/- for the period ending 31.03.2013 was not uploaded in the website. Then, the show cause notice is expected to refer only that particular default committed by the petitioners. Reproduction of part of Section 205 C of Companies Act, 1956 cannot be appreciated. There is substance in the submission of the learned counsel for the petitioners that because of this ambiguous nature of show cause notice, petitioners were not able to give a proper reply. Therefore, due to this faulty show cause notice also, the complaint is liable to be quashed.

15. In fine, this Court finds that the show cause notice was defective, non consideration of reply sent by the petitioners amounts to non application of mind depriving petitioners to set up a valid defence and therefore the complaint is unsustainable in law. Accordingly, Criminal Original Petition in Cr1.O.P.No.28705 of 2015 is allowed and complaint against the petitioners in EO CC No.199 of 2015 on the file of the learned Additional Chief Metropolitan Magistrate (EO.II), Chennai is quashed. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar



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1.The Additional Chief Metropolitan Magistrate (EO.II),
Egmore, Chennai

2.The Deputy Registrar of Companies,
Shastri Bhavan (2nd Floor), 'B' Block,
26, Haddows Road,
Chennai 600 006.

+1cc to Dr.D.Simon, Advocate SR. No. 23758

+3ccs Mr.Abishek Jenasenan, Advocate SR. No. 23313

CRL.O.P.No.28705 of 2015
and CrI.M.P.No.01 of 2015

SJ (CO)
PR (19/04/2022)