IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.08.2022

PRONOUNCED ON : 04.11.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.O.P.No.9155 of 2013
and
M.P.No's 1 and 2 of 2013

1. M/s.Subhiksha Trading Services Limited,
"Habib Complex", Cabin "A",
Flat No.2, 2nd Floor,
No.5, Durgabai Deshmukh Road,
R.A.Puram, Chennai – 600 028.

2. R.Subramanian,
Managing Director,
M/s.Subhiksha Trading Services Limited,
"Habib Complex", Cabin "A",
Flat No.2, 2nd Floor,
No.5, Durgabai Deshmukh Road,
R.A.Puram, Chennai – 600 028.

Now at
Shop 11, Ground Floor (Rear Side),
No.15/1, Thambiah Road,
West Mambalam, Chennai – 600 033.

3. M.Rathinakumar,
Secretary,
M/s.Subhiksha Trading Services Limited,
7A, Rajaji Nagar, Pillayar Koil Street,
Chennai- 600 041.

Now at:
G2-I-Block, Land Marvel Garden,
Pillaiyar Koil Street, Rajaji Nagar,
Thiruvanmiyur, Chennai – 600 041. .. Petitioners/Accused

Vs.

The Deputy Registrar of Companies,
Shastri Bhavan,
Chennai – 600 006. .. Respondent/complainant

PRAYER : This Criminal Original Petition is filed under Section 482 of Cr.P.C., to quash the complaint in E.O.C.C.No.281 of 2011 on the file of the learned Additional Chief Metropolitan Magistrate Court, (Economic Offences-II), Egmore, Chennai.

For Petitioners : Mr.R.Subramanian [P1]
Party-in-person
No appearance [for P1 & P3]

For Respondents : Dr.D.Simon
Central Govt. Standing Counsel

ORDER

The Criminal Original Petition is filed to quash the complaint in E.O.C.C.No.281 of 2011 on the file of the learned Additional Chief Metropolitan Magistrate Court, (Economic Offences-II), Egmore, Chennai.

2. The petitioners have been accused of an alleged offences under Section 303(2) of the Companies Act. The allegations made in the complaint are briefly as follows:

(i) That the company, M/s.Subhiksha Trading Services Ltd., of which the petitioners are the Managing Director/Secretary has not complied with the provisions of Section 303(2) of the Companies Act that M/s.ICICI Venture Funds Management Company Limited vide letter dated 08.01.2009 has intimated the company about the withdrawal of Mrs.Renuka Ramanath and Mr.Rajeev Bakshi as nominee Directors of the Company. The company was asked to state as to why the company has not filed the return in form 32 with the Registrar of Companies for their cessation as Directors of the company.

(ii) As per Article 21.1, the Articles of Association of the company M/s.ICICI Venture Funds Management Company Limited shall have a right to appoint and remove from time to time Nominee Directors. As such, M/s.ICICI Venture Funds Management Company Limited vide letter dated 08.01.2009 has intimated the company about the withdrawal of Smt.Renuka Ramnath and Mr.Rajeev Bakshi as Nominee Directors of the Companies for their cessation as Director of the company.

(iii) That a show cause notice dated 31.03.2011 was issued.

(iv) That replies received were not convincing. Hence the prosecution.

(v) That the Regional Director instructed the respondent herein to launch prosecution in and by a letter No.13(34)/2010 dated 28.03.2011.

3. The complaint has been taken on file by the learned Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai.

4. The 2nd petitioner R.Subramanian, appeared in person and would contend that the alleged offence under Section 303(2) of the Companies Act, is not a continuing offence and since the complaint has been filed after the period of limitation under Section 468 (2) of the Cr.P.C., the learned Magistrate ought not to have taken cognizance.

5. Per contra, the learned Central Government Standing Counsel appearing on behalf of the respondent would contend that steps have been immediately taken to prosecute.

6. Heard both and perused the records.

7. From the records, the balance sheet was filed with the Registrar of Companies around 30.11.2007. The punishment prescribed thereof is only fine. Consequently, the limitation under Section 468 of Cr.P.C., is six months. Date of alleged knowledge is 20.07.2009 to 30.10.2009. Complaint is filed on 18.04.2011.

8. Regarding whether the offence under Section 303 (2) of the Companies Act, is a continuing offence or not, in ***Teledata Technology Solutions Limited and others V The Deputy Registrar of Companies, Chennai*** *reported in* ***2022 SCC OnLine Mad 102*** dated 11.01.2022, the Court held as follows:

12. The expression "continuing offence" has not been defined in the Code of Criminal Procedure, 1973. However, the courts have explained the same in number of judgments. In the case of continuing offence, the ingredients of offence continues even after the offence takes place, whereas in an instantaneous offence, the offence took place once and for all, in such case, there is no continuance of offence. For the offence arising out of a failure to comply with a statutory provision, which is involves penalty, the liability continues until the default is complied with complied with and on every moment of such non compliance occurs and recurs, there is an offence committed and it is a continuing offence until the default is complied with.

*13. In **Udai Shankar Awasthi v. State of U.P., (2013) 2 SCC 435**, the Honourable Supreme Court has explained the expression "continuing offence" as under:- "*

25. In Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath [(1991) 2 SCC 141 : 1991 SCC (Cri) 315] this Court dealt with the issue and held as under : (SCC pp. 145-46, para 7) "7. … According to Black's Law Dictionary, [5th Edn. (Special Deluxe)], 'continuing' means 'enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences'. Continuing offence means 'type of crime which is committed over a span of time'. As to period of statute of limitation in a continuing offence, the last act of the offence controls for commencement of the period. 'A continuing offence, such that only the last act thereof within the period of the statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or action which may be deemed a single impulse'. So also a 'continuous crime' means 'one consisting of a continuous series of acts, which endures after the period of consummation, as, the offence of carrying concealed weapons. In *the case of instantaneous crimes, the statute of limitation begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act.'"*

26. While deciding the case in Gokak Patel Volkart Ltd. [(1991) 2 SCC 141 : 1991 SCC (Cri) 315] , this Court placed reliance upon its earlier judgment in State of Bihar v. Deokaran Nenshi [(1972) 2 SCC 890 : 1973 SCC (Cri) 114 : AIR 1973 SC 908] , wherein the Court while dealing with the case of continuance of an offence has held as under : (Deokaran Nenshi case [(1972) 2 SCC 890: 1973 SCC (Cri) 114 : AIR 1973 SC 908] , SCC p. 892, para 5)

5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or noncompliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all." (See also Bhagirath Kanoria v. State of M.P. [(1984) 4 SCC 222 : 1984 SCC (Cri) 590 : 1985 SCC (L&S) 30 : AIR 1984 SC 1688] , SCC p. 227, para 10 and Amrit Lal Chum v. Devoprasad Dutta Roy [(1988) 2 SCC 269 : 1988 SCC (Cri) 339 : AIR 1988 SC 733] .)

...... 29. Thus, in view of the above, the law on the issue can be summarised

to the effect that, in the case of a continuing offence, the ingredients of the offence continue i.e. endure even after the period of consummation, whereas in an instantaneous offence, the offence takes place once and for all i.e. when the same actually takes place. In such cases, there is no continuing offence, even though the damage resulting from the injury may itself continue."

14. The Companies Act, 1956, provides different kinds of punishments for various offences committed by the companies. For certain offences, took place once and for all, the Act provide only maximum punishment. For some kind of offences, for example, under Section 159, 160,161 and 220 of the Act, relating to non filing of returns and some other documents before the Registrar of Companies, the punishment is provided under Section 162 of the Act, which reads as follows:- "162. (1) If a company fails to comply with any of the provisions contained in section 159, 160 or 161, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues. (2) For the purpose of this section and sections 159, 160 and 161, the expression "officer" and "director" shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act." There is a clear distinction between the punishment. The penalty of payment of fine for every day till the default continues, indicates that, the offence continues until the default is complied with, which makes the offence a continuous offence.

15. In cases where the offence is a continuing offence, section 472 of Cr.P.C. saves limitation and a fresh period of limitation shall begin to run every moment of the time during which the offence continues. The relevant provision in the Code read as under:- "472. Continuing offence. In the case of a continuing offence, a fresh period of *limitation shall begin to run at every moment of the time during which the offence continues. "*

9) The offence under Section 303(2) of the Companies Act is punishable with fine which extends upto five thousand rupees for every day during which the default continues. Therefore, the offence under the present case is a continuing offence for which the period of limitation as under Section 468 of CrPC does not apply.

10. In view of the discussions stated supra, this Court has no hesitation to come to the conclusion that the commission of an offence under Section 303(2) of the Companies Act is a continuing offence. Consequently, the period of limitation prescribed under Section 468 of CrPC does not come to rescue to save the limitation as contended by the Petitioner and since the default in payment of fine continues to run and the petition filed by the respondent/ Registrar of Companies is held to be in time. Accordingly, the contention raised by the Learned Counsel for the Petitioner / Party in person is hereby stands rejected and further held that the filing of the complaint under E.O.C.C No. 281 of 2011 is held to be within the period of limitation and hence the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

04.11.2022

Internet : Yes
Index : Yes/No
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To

The Deputy Registrar of Companies,
Shastri Bhavan,
Chennai – 600 006.

RMT.TEEKAA RAMAN,J.,

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order in
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M.P.Nos. 1 and 2 of 2013

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