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.9157 of 2013
and
M.P.Nos.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.284 of 2011 on the file of the learned Additional Chief Metropolitan Magistrate Court, (Economic Offences-II), Egmore, Chennai.

For Petitioners : Mr.R.Subramanian [P2]
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.284 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 193(1) of the Companies Act, 1956. 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 193(1) of the Companies Act, that the minute of the proceedings of general meetings and board meetings ought to have kept with their pages consecutively numbered as required under the provision of the Act.

(ii) However he has not comply with the provisions of Sec.193(1) of the Companies Act that the pages of general meetings minutes books and board meetings minute books are not numbered.

(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 193(1) 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 complaint has been filed only on 18.04.2011, while the date of alleged knowledge is 20.07.2009 to 30.10.2009. The punishment prescribed therefor is only fine. Consequently, the limitation under Section 468 of Cr.P.C., is six months.

8. Regarding whether the offence under Section 193(1) 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.*
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> *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..... 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'.

26. In State of Bihar v. Deokaran Nenshi [(1972) 2 SCC 890 the Court while dealing with the case of continuance of an offence has held as under :

*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.*

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.

...... 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. 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.

9. By applying the above principle to find out as to whether the offence under Section 193(1) of the Companies Act, which is punishable only with fine, the period of limitation may be fixed only with six months and in the instant case, since for the alleged offence the punishment is only fine, and since it is not a continuing offence as explained in the above said decision, the case is barred by limitation. Hence, the **Criminal Original Petition is allowed** and the complaint in E.O.C.C.No.284 of 2011 on the file of the learned Additional Chief Metropolitan Magistrate Court, (Economic Offences-II), Egmore, Chennai, stands quashed. Consequently, connected M.P's 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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