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.9160 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 the Code of Criminal Procedure, 1973 to quash the complaint under EOCC No. 287 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 P2]

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

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ORDER

The Criminal Original Petition is filed to quash the complaint in EOCC No. 287 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 217(AA) of the Companies Act, 1956.

3. The allegations made in the complaint are briefly as follows:

i) That the company, Subhiksha Trading Services, Ltd of which the petitioners is the Managing Director/ Secretary has not complied with the provisions of Section 217(AA) of the Companies Act for not including a Directors' Responsibility Statement indicating therein that in preparation of the Annual Accounts, the applicable accounting standards has been followed to material departure and has not followed the AS-2 in respect of the financial year ending 31.03.2005.

ii) That a show cause notice dated 31.3.2011 was issued.

iii) That replies received were not convincing. Hence the prosecution.

iv) That the Regional Director instructed the respondent herein to launch prosecution in and by a letter dated 28.3.2011.

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

4. The 1st petitioner would contend that the alleged offence under Section 217(AA) is not a continuing offence and since the complaint has been filed after the period of limitation under Section 468(2) of Cr PC, 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 has been immediately taken to prosecute.

6. Heard both sides and perused the records.

7. The directors' responsibility statement was infact filed with the balance sheet on or about 30.11.2005. Date of alleged knowledge was on 20.07.2009 to 30.10.2009. Complaint was filed on 18.04.2011.

8. Regarding whether the offence under Section 217(AA) is a continuing offence or not, reliance can be placed upon the judgment of this Hon'ble High Court 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:- "*
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> *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'.*
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> *26. In State of Bihar v. Deokaran Nenshi (1972) 2 SCC 890 wherein 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. Punishment for contravention of Section 217(AA) is provided under Section 217(5) of the Companies Act, 1956 wherein the said offence is punishable with imprisonment for a term which may extend to six months, or with fine which may extend upto two thousand rupees, or with both.In the instant case, the petitioners contended that the director's responsibility statement was filed with the balance sheet on or about 30.11.2005.The respondents inspected the company only from 20.07.2009 to 30.10.2009 and the complaint was filed only on 18.04.2011.

10. The period of limitation of one year applies to the instant case because the offence under Section 217(5) is not a continuing offence.

11. Hence, the **Criminal Original Petition is allowed** and the EOCC NO. 287/ 2011 on the file of the Additional Chief Metropolitan Magistrate(Economic Offences- II) Egmore stands quashed. Consequently, connected Miscellaneous Petitions are closed.

....mn.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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Pre-delivery order in
Crl.O.P.No.9160 of 2013 and
M.P.Nos. 1 and 2 of 2013

04.11.2022