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.9161 of 2013
and
M.P.Nos.1 and 2 of 2013

1. 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.

2. 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.288 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

ORDER

The Criminal Original Petition is filed to quash the complaint in E.O.C.C.No.288 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 211 (3A) read with 211 (3C) 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 217(AA) of the Companies Act for not including a Directors' Responsibility Statement indicating therein 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 31.03.2007.

(ii) That a show cause notice dated 31.03.2011 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 28.03.2011.

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

4. The 1st petitioner R.Subramanian, appeared in person and would contend that the alleged offence under Section 211 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 six months imprisonment. Consequently, the limitation under Section 468 of Cr.P.C., is one year. Date of alleged knowledge is 20.07.2009 to 30.10.2009. Complaint is filed on 18.04.2011.

8. Whether the offence under Section 211 of the Companies Act, is a continuing offence or not is no longer *res integra*. In the decision reported in ***2002 (1) CTC 321*** *[C.K.Ranganathan, Managing Director, Cavinkare Ltd., Vs. Registrar of Companies, Government of India, Ministry of Law & Justice & Company Affairs]*, it is held as under:

> "9. Section 211(2) of the Companies Act requires every company to give a true and fair view of the profit and loss of the company for the financial year and shall comply with the requirements of Part-II of Schedule VI and the offence of the breach thereof is complete with the failure of the person concerned to take all reasonable steps to secure compliance by the company as respects any counts laid before the

company with the provisions of the section as to the matters to be stated in the accounts. Such an offence is committed once and for all as and when one commits the default. It gives rise to a single default and to a single punishment. The provision does not contemplate that the obligation to secure compliance continues from day to day until the compliance is actually met nor does it provide that continuation of business without securing compliance becomes a continuing offence. Hence, the offence under Section 211(7) of the Companies Act is not a continuing offence and there is a period of limitation for taking cognizance of such offence."

Hence, the period of limitation of six months has to be calculated and further at paragraph no.13 of the above cited judgment, it is held as follows:

"13. Since the offence under Section 211(7) of Companies Act is not a continuing one, the learned Magistrate ought not to have taken cognizance of the offence in the present case after the expiry of the period of limitation in view of the bar under Section 468 of Cr.P.C., and the proceedings are liable to be quashed."

9. Therefore, on the above factual matrix, I find that the complaint has been filed beyond the period of limitation and in view of the decision cited supra, **this Criminal Original Petition is allowed** and the complaint in E.O.C.C.No.288 of 2011 on the file of the learned Additional Chief Metropolitan Magistrate Court, (Economic Offences-II), Egmore, Chennai, stands quashed. Consequently, connected Miscellaneous Petitions are closed.

04.11.2022

Internet : Yes
Index : Yes/No
ars/nvi

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.9161 of 2013 and
M.P.Nos. 1 and 2 of 2013

.11.2022