IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No. 24814 of 2017 and
Crl.M.P.Nos. 14329 and 14330 of 2017

Deva Jaya Thanga Thambi
Direcotr of M/s.Shapre Infotech (India) Limited
#1, Kannu Garden, New Washermenpet
Arunasala Eswarar Koil Street
Chennai - 600 081 ...Petitioner

Versus

The Deputy Registrar of Companies,
Tamil Nadu,
Shastri Bhavan II Floor, Block V & VI,
26, Haddows Road, Nungambakkam,
Chennai-600006 ...Respondent

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in E.O.C.C.No.197 of 2017, under Section 448 of the Companies Act, 2013, on the file of the Additional Chief Metropolitan Magistrate [Economic Offence I], Egmore, Chennai and quash the same.

For Petitioner : Mr.P.Vasanth

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

ORDER

This Criminal Original Petition is heard through Video-Conferencing, on account of the COVID-19 pandemic situation.

2. This Criminal Original Petition has been filed to quash the proceedings in E.O.C.C.No.197 of 2017, filed against the accused for the offence under Section 448 of the Companies Act, 2013, on the file of the learned Additional Chief Metropolitan Magistrate [Economic Offence I], Egmore, Chennai.

3. The crux of the complaint is that the petitioner company was inspected by the Inspecting Officer. The Inspecting Officer has observed that in the profit and loss account for the year ended 31.03.2011, it was shown that a sum of Rs.27,85,20,027/- (Rupees Twenty Seven Crore Eighty Five Lakh Twenty Thousand and Twenty Seven Only) has been written off as bad debts. As complete details of transactions and break up details of parties/debtors have been called for by the Officer In-charge and the reply notice was not satisfied, the prosecution has been initiated for the offence under Section 448 of the Companies Act.

4. The main contention of the learned counsel appearing for the petitioner is that the entire prosecution is nothing but an abuse of process of law and there is no details containing the entire complaint as to the nature of suppression of material facts to attract the offence either under Section 447 or 448 of the Companies Act. It is his further contention that the bad debts was shown in the accounts right from the year 2003, which was not even taken note of by the respondent. It is his further contention that the Registrar of Companies is also aware of the fact that the accounts of the company from the year 2003 reflected as the bad debts. Therefore, the contention of the respondent that as if such bad debts was shown only in the year 2011 is not proper. At any event, it is his contention that the entire complaint is bereft of details, false statements or materials facts and hence submitted that the entire complaint even taken as a proof, will not constitute any offence against the petitioner. Hence, the petitioner prayed for quashment of the proceedings.

5. The learned counsel appearing for the respondent filed a counter indicating that reply to the show case notice issued by the petitioner, is not satisfied. Therefore, the complaint has been filed. The Inspecting Officer has observed that in the profit and loss account for the year ended 31.03.2011, a sum of Rs.27,85,20,027/- (Rupees Twenty Seven Crore Eighty Five Lakh Twenty Thousand and Twenty Seven Only) shown as bad debts, was written off. They were asked to give a reply to the following points:

> i. Details of all legal cases undertaken against the parties whose amount were written off is more than Rs.10 Lakhs.
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> ii. A full list of case with name and full addresses where amount written off is more than Rs.10 Lakhs.

iii. Copies of their ledger accounts since 01.04.2003 of all such cases where amount written off is more than Rs.10 Lakhs. Why the director of the company did not take action and how the directors of the company has taken proper action for such huge amount of Rs.27.85 Crores before writing off them as bad debts. Full details of each case where directors have taken action where amount written off is more than Rs.10 Lakhs to be provided. Why should we not treat this as mis-management by the directors of the company? Due to their various activities, the debt amounting to Rs.27.85 Crores had been written off where the public was too much interested in the share capital of the company.

iv. Comments of the company as to how the directors of the company have kept their trust with the shareholders of the company and not cheated the shareholders in writing off the amount of Rs.27.856 Crores when the public was too much interested in the share capital of the company and financial assets of the company.

6. As the reply notice was not satisfactory to the Inspecting authority, prosecution has been lodged. Hence, it is his contention that whether they are false statement or not, is a matter of evidence and the same cannot be quashed.

7. Heard the learned counsel appearing on both sides and perused the entire materials available on record.

8. The private complaint has been filed for the offence under Section 448 of the Companies Act. It is relevant to extract the provision of Section 448.

> 448. Punishment for false statement.— Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,— (a) which is false in any material particulars, knowing it to be false; or (b) which omits any material fact, knowing it to be material, he shall be liable under section 447.

9. From the reading of the above section makes it clear that, to initiate the prosecution, it must be shown by the

prosecution that the false statement of any material particulars made by the petitioner in respect of any return, report, certificate or a statement etc. Similarly, any omission of material facts is liable under Section 447 of the Act. The punishment for giving a false statements and any material particulars or omission to make a material fact which is provided under Section 447. Section 447 of the Act provides for punishment for any person who is found to be guilty of fraud and shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud: provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years under Section 448 of the Companies Act.

10. A combined reading of Sections 447 and 448 makes it very clear that there must be some material evidence to proceed against the person either by way of finding that there has been a fraud committed by a person or there was suppression of material facts with intention to suppress the same. To initiate the prosecution either under Section 448 or to attract the punishment under Section 447, there must be a clear finding on record as to the fraud or suppression or omission of the material facts. Only, on such facts unearthed during investigation as contemplated under the Companies Act, the prosecution will normally lie.

11. The present prosecution has been filed mainly on the ground that reply notice given by the petitioner was not satisfactory to the de-facto complainant. Otherwise, it is not the case of the de facto complainant that there are material facts which have been suppressed and there is no clear cut findings recorded by the de facto complainant as to the nature of the omissions or suppression of material facts. Therefore, this Court is of the view that unless and until, there is a finding as to the suppression of the material facts, the prosecution cannot be launched, as a matter of right. The only allegation against the petitioner is that in the financial year ended on 31.03.2011, a sum of Rs.27,85,20,027/- (Rupees Twenty Seven Crore Eighty Five Lakh Twenty Thousand and Twenty Seven Only) shown as bad debts, written off, therefore, it attracts the offence under Section 447 of the Companies Act.

12. It is to be noted that the materials placed before this Court, which is not in dispute also indicate that the above

amount was shown in the accounts from the year 2003, which also appears to have been noticed by the Registrar of Companies, in the earlier occasion also. Therefore, projecting a complaint as if such amount has been shown for the first time only in the year 2011, is not proper. At any event, no findings are recorded to show the nature of suppression of material facts or omission to state material facts in order to attract the offence under Sections 448 or 447 of the Companies Act. Therefore, merely because the de facto complainant was not satisfied with the reply to the show case notice, one cannot be presumed that the offence either under Section 447 or 448, has been committed and the same are attracted. Therefore, in the absence of any materials to show that there was any material suppression or omission of material facts, the prosecution for the false statements will not be maintained and such attempt is nothing but a futile exercise and an abuse of process of law.

13. Accordingly, this Criminal Original Petition is allowed. The proceedings in E.O.C.C.No.197 of 2017, on the file of the learned Additional Chief Metropolitan Magistrate [Economic Offence I], Egmore, Chennai is quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

psa/asr

To

1.The Additional Chief Metropolitan Magistrate
[Economic Offence I],
Egmore, Chennai.

2.The Deputy Registrar of Companies,
Tamil Nadu,
Shastri Bhavan II Floor, Block V & VI,
26, Haddows Road, Nungambakkam,
Chennai-600006

+1 CC to Mr.P.Srinivasan, Advocate sr 900.

Crl. O.P. No. 24814 of 2017

AJS(CO)
SP(27/01/2022)