* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 2nd June, 2022**

\+ **CRL.M.C. 82/2020, CRL.M.A. 370/2020**

RAMESH CHANDRA SHARMA & ANR. ..... Petitioners

Through: Mr. Rachit Batra and Mr. Sushil Shukla, Advocates

versus

REGISTRAR OF COMPANIES, NCT OF DELHI AND HARYANA ..... Respondent

Through: Mr. Bhagvan Swarup Shukla, CGSC with Mr. Kamaldeep, Advocate

\+ **CRL.M.C. 782/2020, CRL.M.A. 3188/2020**

SANGITA BHUTORIA & ANR ..... Petitioners

Through: Mr. Rachit Batra, Advocate

versus

REGISTRAR OF COMPANIES, NCT OF DELHI & HARYANA ..... Respondent

Through: Mr. Ripudaman Bhardwaj, CGSC with Mr. Kushagra Kumar, Advocate.

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

JUDGMENT

1. Though the facts are different in both the petitions, since the issue involved is common, the two petitions are disposed of vide this common order.

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2. In both the cases, the petitioners have been summoned to face trial in complaint case Nos.2114/2019 and 2113/2019 respectively filed under Section 211(7) of the Companies Act, 1956.

3. The ground for filing the complaint by the respondent before the ACMM, Special Court, Central, Tis Hazari, New Delhi was that they had not strictly complied with the provisions of Section 211 of the Companies Act, 1956 as there were discrepancies in their disclosures.

4. In CRL.M.C. 82/2020, the allegation was that the fixed assets were improperly shown in the Balance Sheet for the year ending 31st March, 2008 without factoring the previous year's fixed assets of Rs.1,36,308/- and nil inventory had been declared against the previous year's inventory worth Rs.6,00,000/-. The process of scrutiny took time and it was on 4th September, 2015 that a notice under Section 206(1) read with Section 4 of Companies Act 2013 (sic) was sent. The reply sent by the petitioner dated 26th October, 2015, that the fixed assets could not be shown on account of a scanning error, was found to be not satisfactory. Thereafter, the sanction from the Regional Director for the prosecution was obtained on 27th December, 2017, whereafter, a show cause notice dated 24th August, 2018 was sent to the petitioner. Since the response was not satisfactory, the complaint was filed.

5. In CRL.M.C. 782/2020, the complaint was filed when on scrutiny it was found that the Balance Sheet, Profit and Loss Account for the year ending 31st March, 2013 and 31st March, 2014 had shown Rs.7,500/- and Rs.20,000/- as income from operations, improperly, respectively, without

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proper disclosures having been made. Scrutiny took time and the order under Section 206(1) read with Section 4 of Companies Act, 2013, calling upon the Company for the explanation was issued on 4th September, 2015. This was replied by the Company on 26th October, 2015. Sanction for prosecution from the Regional Director was obtained on 27th December, 2017. Show cause notice was issued by the respondent on 24th August, 2018, whereafter, the complaint was filed.

6. It is the contention of the learned counsel for the petitioners that the offence under Section 211(7) of the Companies Act, 1956 was punishable with imprisonment for a term which could extend to six months or with fine which could extend to Rs.1,000/- or with both. Therefore, under the provisions of Section 467 Cr.P.C., the period of limitation prescribed was one year, and as such, the learned Trial Court could not have taken cognizance of the offences vide the impugned order dated 12th July, 2019 to summon the petitioners. Reliance has been placed on the judgment of the High Court of Madras in ***C.K. Ranganathan Vs. Registrar of Companies,*** 2001 SCC OnLine Mad 914 where the court held that the offence under Section 211(7) of the Companies Act, 1956 for a default had commenced on 1st April, 1997 and the complaint filed in the year 2000 was barred by time. Hence, it was prayed that the present complaints be dismissed.

7. Both the learned counsel for the respondent, Mr. Bhagvan Swarup Shukla (in CRL.M.C. 82/2020) and, Mr. Ripudaman Bhardwaj (in CRL.M.C. 782/2020), have argued that the offence under Section 211(7) of the Companies Act, 1956 was a continuing offence and, therefore, there

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was no question of limitation. Reliance has been placed on the judgment of the High Court of Madras in ***Teledata Technology Solutions Ltd. (A1) and others Vs. Deputy Registrar of Companies***, 2022 SCC OnLine Mad 102 in support of this contention. Learned counsel submitted that both the complaints were filed with applications for condonation of delay and when the learned ACMM took cognizance, clearly delay had been condoned, even if the offence was to be treated as not being of a continuing nature.

8. I have heard learned counsel for the petitioners, as also learned counsel for the respondent, and have also perused the record. It is noticed that in CRL.M.C. 82/2020, the learned Trial Court while taking cognizance and issuing summons observed that the *"complaint was within limitation"*. However, in CRL.M.C. 782/2020, the impugned order does not even refer to the question of limitation. Significantly in both the complaints, the respondents have filed applications for condonation of delay. The observation of the learned ACMM in the order dated 12th July, 2019 in complaint case No.2114/2019 that the complaint was within limitation is against the record. Similarly, in CRL.M.C. 782/2020, complaint case No.2113/2019, the question of limitation was not even addressed by the learned Trial Court.

9. It would have been quite simple for this Court to have considered the question of limitation, but for the fact that both the complaints were accompanied with applications for condonation of delay. While taking cognizance, the learned Trial Court has to apply its mind as to whether the complaint presented was within the period of limitation or not. The learned Trial Court must also consider whether there were sufficient grounds to

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condone the delay that may have occurred in the presentation of the complaint. But in the two cases at hand, clearly, the learned Trial Court overlooked the filing of the application for condonation of delay. The mind has not been applied to the question of condonation of delay and the complaint being within the period of limitation.

10. Thus, this Court is left with no choice but to set aside the impugned orders dated 12th July, 2019 and remand the matters back to the learned Trial Court to consider the applications for condonation of delay. This Court also restraints itself from discussing the question whether the offence complained of, is a continuing offence or not as these questions would be urged before the learned Trial Court for its consideration. The petitions are accordingly allowed.

11. The pending applications stand disposed of.

12. The copy of this judgment be sent to the learned Trial Court through electronic mode.

13. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JUNE 02, 2022
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