IN THE HIGH COURT AT CALCUTTA
Original Jurisdiction
ORIGINAL SIDE

CP/916/2016
IA NO: CA/1/2016(Old No:CA/702/2016)

RE: PRICEWATERHOUSECOOPERS
PVT LTD
-AND-
ANAND SRIVASTAVA & ORS
-VS-
THE REGISTRAR & COMPANIES

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 20th June, 2023

Appearance:
Ms. Manju Bhutoria, Adv.
Mr. Debargha Basu, Adv.
Ms. Arundhati Barman, Adv.
…for the petitioners

Mr. Tarunjyoti Tewari, Adv.
…for ROC

The Court:-This is an application under Section 633(2) of the Companies Act, 1956 (the Act).

The petitioner assails a show cause notice dated 1 September, 2016 bearing No.ROC/21-30693 (the impugned notice) alleging violation of Section 628 of the Act read with Accounting Standard (AS)-9.

It is contended that the petitioners be excused from liability and released from the alleged default complained of by the respondent. The only complaint in the impugned notice is as follows:

> *"It is noticed that the revenue has not been properly recognized with regard to the grant (support) of US $39,30,000/- (INR 17,42,95,500/-) and US $ 1,80,00,000 (INR 79,88,60,000/-) received during the financial year 31st March, 2011 and 31st March, 2012 but have been shown in the financial year 31st March, 2010 and 31st March, 2011 on accrual basis. The said amounts have not been earned*

> *by the company but recognized as earned and hence contravened Section 628 of the Act read with Accounting Standard-9."*

By a letter dated 3 April, 2012, the petitioner had received an inspection notice under section 209A of the Act. The petitioner duly replied to the same and forwarded all necessary documents in terms thereof. Thereafter, on 31 October, 2012 the company also received another notice from the Office of the Regional Director alleging several violations and irregularities and seeking clarifications including the violation under section 211 read with Schedule-VI of the Act pertaining to the complaint in the impugned notice. By a letter dated 30 November, 2012 the petitioners duly replied to the aforesaid notice and addressed all the queries and furnished all the necessary information. On 23 January, 2013 a show cause notice was issued by the respondent alleging contravention of Section 211(3A) read with Accounting Standard (AS)-9 of the Act in respect of the very same charges raised in the impugned notice. The same was duly replied to by the petitioners.

On 21 June, 2013, the petitioner nos.1, 2, 3 and 13 also received summons issued by the respondent. By a letter dated 5 July, 2013 the petitioner nos.2, 3 and 13 duly replied to the letter dated 21 June, 2013 and furnished the respondent with all necessary information. Thereafter, by a letter dated 1 August, 2013 the petitioners forwarded the Statements on Oath of their respective officers to the respondent. Pursuant thereto, there was no communication by the respondent and the petitioners treated the matter as closed. In or around April, 2013 the petitioners made an application for compounding of offences in terms of the show cause notice dated 23 January, 2013. By an order dated 16 October, 2014, the Company Law Board allowed the compounding applications filed by the petitioners and imposed fines in respect thereof which were duly paid by the respective petitioners.

In this background, the petitioner assails the impugned notice primarily on the ground that there is inordinate delay in issuing the same and the charge levelled is stale and outdated. It is also contended that in view of the order passed by the Company Law Board dated 16 October, 2014, the allegation raised by the respondent in an earlier notice stood compounded and necessary fines have been paid. It is also contended that there is no allegation of dishonest intent in the impugned notice and thus no action should be taken in terms thereof. In any event, in view of inordinate delay and re-agitation of the same grievance raised in the impugned notice, the time for filing a complaint as prescribed under section 468 of the Code of Civil Procedure, 1973 has become time barred.

On behalf of the respondent, it is contended that there are no grounds to interfere with the impugned notice and the same has been issued in view of the violation of section 628 of the Act read with AS-9.

On merits, the petitioner company had received the grants for the years in question and had spent the same in accordance with the signed grant agreements. AS-9 does not provide for any method for recognition of such grants. Grants accounted for in the books of the company were based on invoices raised in a situation “when the ultimate collection was reasonable to expect” in conformity with the main criterion as laid down under AS-9. In view of the fact that the said grant was disbursed prior to the finalization of the balance sheet, it was necessary to account for the same on accrual basis since the same accrued forthwith upon Pricewaterhousescoopers Services BV which had entered into a binding agreement in respect of the same. Hence, there has been compliance with AS-9 read with section 211(3A) of the Act.

A perusal of the impugned notice would demonstrate that there is no allegation of dishonest intent. In *Bhagwati Foods P. Ltd. vs. Registrar of Companies, West Bengal [2008] 143 Comp Cas 531 (Cal)*, it was held that the absence of any specific allegation of dishonest intent in a show cause notice would give rise to presumption of innocence. It is an admitted position that the particular charge contained in the impugned notice had been raised as far back as on 3 April, 2012 and there was also an earlier show cause notice in respect of the self-same charge. Significantly, by an order dated 16 October, 2014 the Company Law Board had allowed the application filed by the petitioners by imposing a fine in respect of the same. There is no other complaint raised in the notice. The time for filing a complaint for an offence as prescribed under section 468 of the Code of Criminal Procedure, 1973 has lapsed. In such circumstances, I find merit in the submission that there is undue delay in proceeding with the impugned notice.

Section 633(2) of the Companies Act, 1956 permits a person to apply to the High Court on his apprehension that a proceeding might be brought against him. The jurisdiction of the High Court in such a case is not limited to excusing the defaulter upon default being admitted or being found. The High Court in such a case may acquit or exonerate the petitioner upon arriving at a conclusion that there was no offence committed.

In the absence of any allegation of dishonest intent and in view of the undue and inordinate delay in raising a claim which was also the subject matter of an earlier show cause notice and ultimately culminated in the order dated 16 October, 2014 being passed by the Company Law Board, the impugned notice is not liable to be proceeded with. The charge has been satisfactorily explained. There is also no complaint of dishonesty. The petitioners have acted reasonably and in good faith.

In such circumstances, CP/916/2016 stands allowed. The petitioners are held not to be guilty of any violation under the provisions of section 628 read with AS-9 of the Companies Act, 1956 and stand excused.

There shall be no order as to costs.

With the aforesaid directions, CP/916/2016 stands disposed of.

(Ravi Krishan Kapur, J.)

T.O./S.Bag
A.R.(C.R.)