



Crl.O.P.No.23220 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.23220 of 2015

and

M.P.No.1 of 2015

1. A.R.Madhavan

2. N.K.Vanan

3. Subramanniam Palani

...Petitioners

-Vs-

The Deputy Registrar of Companies,
Tamil Nadu,
Having office at Shastri Bhavan II Floor,
Block V & VI,
26, Haddows Road,
Chennai – 600 006.

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records and to quash the proceedings in E.O.C.C.No.154 of 2015 on the file of the Learned Additional Chief Metropolitan Magistrate, EO-I, Egmore, Chennai as against the petitioners.

For Petitioners : Mr.A.Nagarajan

For Respondent : Mr.K.Ramanamoorthy, CGC



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ORDER

WEB COPY This Criminal Original Petition has been filed to quash the proceedings in E.O.C.C.No.154 of 2015 on the file of the Learned Additional Chief Metropolitan Magistrate, EO-I, Egmore, Chennai.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The respondent lodged a private complaint as against 8 accused alleging that they have not complied with the provisions of Section 205C of the Companies Act. It requires that there shall be credited to the funds as follows:-

“(a) Amounts in the unpaid dividend accounts of companies,

(b) The application moneys received by companies for allotment of any securities and due for refund;

(c) Matured deposits with companies,

(d) Matured debentures with companies,

(e) the interest accrued on the amounts referred to in clauses (a) to (d);



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(f) grants and donations given to the Fund by the Central Government. State Governments, Companies or any other institutions for the purposes of the Fund and

(g) the interests or other income received out of the investments made from the Fund;

Provided that no such amounts referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they become due for payment.

5. That whereas Investors Education and Protection Fund (uploading of information regarding unpaid and unclaimed amounts lying with the companies) Rules 2012 mandates every company (including Non-banking Financial Companies and Residuary Non-banking Companies) shall, within 90 days after the holding of Annual General Meeting or the date on which it should have been held as per the provisions of section 166 of the Act and every year thereafter till completion of seven years period, identify the unclaimed amounts as referred to in sub-section (2) of section 205C of the Act, separately furnish and upload on its own website as also on the Ministry's website or any other website as may be specified by the government, a statement or information through E Form 5 INV, separately for each year containing following information, namely:-

(a) Name and last known address of the person entitled to receive the sum

(b) The nature of amount

(c) The amount to which each person is entitled

(d) The due date for transfer into investor Educations and Protection Fund and

(e) Such other information as considered relevant for the purpose

Provided that for the financial year ended March 31, 2011 the information shall be filed latest by July 31 2012."



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4. Therefore, the first accused company failed to file a Form 5 INV as required under the Rule and violated the provisions. Therefore, all the accused were issued show cause notice on 28.08.2014. After receipt of the same, they did not send any reply.

5. The learned counsel for the petitioners would submit that the petitioners are arrayed as A6 to A8. All the accused were issued show cause notice on 28.08.2014 for the period ending 31.03.2011 for non compliance of the provisions. Thereafter, the respondent lodged a complaint for the period ending 31.03.2013. The petitioners were not the Directors during that period and they were inducted as Director only thereafter. Therefore, the complaint itself is not maintainable as against the petitioners.

6. A perusal of Form 32 filed herewith revealed that the first petitioner was inducted as a Director on 01.06.2013. The second petitioner was inducted as a Director on 09.10.2013 and the third petitioner was inducted as a Director on 26.04.2014. The complaint has



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been filed for the contravention during the period ending 31.03.2011.

Whereas, the show cause notice dated 28.08.2014 was issued to the Directors of the first accused. That apart, the concept of filing Form 5 INV was introduced by the Ministry of Corporate affairs by the notification dated 10.05.2012. Earlier to the notification, the concept of filing Form 1 was in force. Thereafter, subsequent notification was introduced on 10.05.2012. As per the notification, the Form 5 INV for the year 2010-2011 should be filed before 31.07.2012 or 90 days from the date of Annual General Meeting of the first accused which ever is later. The Annual General Meeting of the first accused was conducted only on 22.09.2011. Even if the 90 days time limit is taken into account, it was well before the notification. As per Form 1, no amount had been withheld by the first accused. Therefore, the subsequent notification would not apply in the present case. That apart, the petitioners were not the Directors of the first accused company for the contravention period ending 31.03.2011.

7. Therefore, the complaint cannot be sustained as against the petitioners and it is liable to be quashed. Accordingly, the proceedings in



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E.O.C.C.No.154 of 2015 on the file of the Learned Additional Chief Metropolitan Magistrate, EO-I, Egmore, Chennai is hereby quashed.

8. In the result, this Criminal Original Petition stands allowed.

Consequently, connected Miscellaneous petition is closed.

10.10.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
mn

To

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G.K.ILANTHIRAIYAN. J.

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