IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2023

CORAM:

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

Crl.O.P.Nos.3391 to 3395 of 2018
and Crl.M.P.Nos.1484 to 1493 of 2018

1. M/s.Shapre Infotech India Limited (Company)
G6, Mandra Apartments,
23C North Boag Road,
T.Nagar,
Chennai – 600 017.

2. Dev Jaya Thanga Thambi,
Director of M/s.Shapre Infotech (India) Limited,
#1, Kannu Garden, New Washermenpet,
Arunasala Eswarar Koil St.,
Chennai – 600 081.

3. Masthanaiah Kosur Chinna,
Flat No.4, New No.26, Old No.17,
Achari Street,
T.Nagar, Chennai – 600 017.

4 Nagaraja Sharma Rajagopalan
Director of M/s.Shapre Infotech (India) Limited,
Kalyani, 40B, Railway Station Road,
Kodambakkam, Chennai – 600 024. ...Petitioners in Crl.O.P.Nos.3391 to 3394 of 2018

1.Nagaraja Sharma Rajagopalan
Director of M/s.Shapre Infotech (India) Limited,
Kalyani, 40B, Railway Station Road,
Kodambakkam, Chennai – 600 024.

2. Dev Jaya Thanga Thambi,
Director of M/s.Shapre Infotech (India) Limited,
#1, Kannu Garden, New Washermenpet,
Arunasala Eswarar Koil St.,
Chennai – 600 081.

3. Masthanaiah Kosur Chinna,
Flat No.4, New No.26, Old No.17,
Achari Street,
T.Nagar, Chennai – 600 017. ...Petitioners in Crl.O.P.No.3395 of 2018

-Vs-

The Deputy Registrar of Companies,
Tamilnadu,
Shastri Bhavan II Floor,
Block V & VI,
26, Haddows Road,
Nungambakkam,
Chennai – 600 006. ... Respondent in all Crl.O.Ps.

PRAYER in Crl.O.P.No.3391 of 2018 : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the complaint in EOCC. 383 of 2017, under Section 129 of the Companies Act, 2013, on the file of the Additional Chief Metropolitan Magistrate (Economic Offence-I), Egmore, Chennai and quash the same as unjust, unlawful and unsustainable.

PRAYER in Crl.O.P.No.3392 of 2018 : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the complaint in EOCC. 380 of 2017, under Section 92 of the Companies

Act, 2013, on the file of the Additional Chief Metropolitan Magistrate (Economic Offence-I), Egmore, Chennai and quash the same as unjust, unlawful and unsustainable.

PRAYER in Crl.O.P.No.3393 of 2018 : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the complaint in EOCC. 382 of 2017, under Section 137 of the Companies Act, 2013, on the file of the Additional Chief Metropolitan Magistrate (Economic Offence-I), Egmore, Chennai and quash the same as unjust, unlawful and unsustainable.

PRAYER in Crl.O.P.No.3394 of 2018 : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the complaint in EOCC. 381 of 2017, under Section 96(1) read with 99 of the Companies Act, 2013, on the file of the Additional Chief Metropolitan Magistrate (Economic Offence-I), Egmore, Chennai and quash the same as unjust, unlawful and unsustainable.

PRAYER in Crl.O.P.No.3395 of 2018 : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the complaint in EOCC. 194 of 2017, under Section 240 of the Companies Act, 1956, on the file of the Additional Chief Metropolitan Magistrate (Economic Offence-I), Egmore, Chennai and quash the same as unjust, unlawful and unsustainable.

In all Crl.O.Ps.

For Petitioners : Mr.M.Himavanth

For Respondent : Mr.K.Ramamoorthy
Central Government Counsel

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in EOCC.Nos.380 to 383 & 194 of 2017 on the file of the learned Additional Chief Metropolitan Magistrate (Economic Offence-I), Egmore, Chennai, thereby taken cognizance for the offence under the Companies Act, 2013 as against the petitioners.

2. The respondent initiated prosecution as against the petitioners in all the petitions for the contravention of the provisions of Companies Act, 2013 as follows :-

Sl. No	Crl.O.P. No.	EOCC No.	Compliant under Section	Punishment
1	3391 of 2018	383 of 2017	Financial statement Section 129(2) r/w Section 129(7) of the Companies Act, 2013	All the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both

Sl. No	Crl.O.P. No.	EOCC No.	Compliant under Section	Punishment
2	3392 of 2018	380 of 2017	Annual Return – Section 92(4) r/w Section 95(5) of the Companies Act, 2013	The company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or whith both.
3	3393 of 2018	382 of 2017	Copy of financial statement to be filed with Registrar – Section 137(1) read with Section 137(3) of the Companies Act, 2013	The company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees. All the directors of the company, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.
4	3394 of 2018	381 of 2017	AGM – Section 96(1) read with Section 99 of the Companies Act, 2013	Section 99 – the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

Sl. No	Crl.O.P. No.	EOCC No.	Compliant under Section	Punishment
5	3395 of 2018	194 of 2017	Production of documents and evidence – Section 240(1)(a) of the Companies Act, 1956.	Section 240 – He shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to twenty thousand rupees, or with both and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure of refusal continues.

3. The petitioners were served with show cause notice on various dates for the contravention of various provisions as stated above. On receipt of the same, the petitioners submitted their explanation. On perusal of the explanation revealed that the company itself was not in operation for the past 11 years and they had resolved to dissolve the company and as such they had taken steps to dissolve the company itself before this Court. It was duly informed in accordance with law and the proceedings before the Company Tribunal are being taken for formal dissolution.

4. After receipt of the said communication, the respondent had initiated complaint under Section 448 of the Companies Act, alleging

that the petitioners did not file the return and not furnished the statement. It was challenged before this Court in Crl.O.P.No.24814 of 2017. This Court quashed the proceedings initiated for the offence under Section 448 of the Companies Act, on the ground that the 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 defacto 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.

5. Therefore, the non filing of returns and non production of ledgers invoices, statements etc., did not arise, since the company itself already dissolved and dissolution proceeding has been commenced. It was categorically explained by the petitioners for the show cause notice issued by the respondent. Therefore, the company itself is not functioning and there is no revenue. That apart, the petitioners filed petition before this Court for winding up on 30.11.2016 and the same was returned to file it before the Company Tribunal. Accordingly, it was filed and winding up was ordered.

6. The learned counsel appearing for the petitioners also vehemently contended that all the complaints are barred by limitation under Section 468 of Cr.P.C. The complaint filed for the offence punishable under Section 129(2) r/w 129 of the Companies Act, on the failure of filing final statement in the Annual General Body Meeting on or before 30.09.2015 has been filed in EOCC.No.381 of 2017 on 01.06.2017. The said offence is punishable for the term which may extended upto one year. Therefore, it is barred by limitation.

7. The complaint in EOCC.No.380 of 2017 filed for the offence punishable under Section 92(4) r/w 92(5) of the Companies Act, on the allegations that the petitioners failed to file Annual returns for the year 2014-15 within a period of 60 days from the date of Annual General Body Meeting. The said offence is punishable for term which may extended upto six months. It was filed on 01.06.2017. The complaint in EOCC.No.382 of 2017 for the offence under Section 137(1) r/w 137(3) of the Companies Act, 2013, alleging that the petitioners failed to file a copy of financial statement including consolidated financial statement for the year 2014-15 within a period of 30 days from the date of Annual General Body Meeting which is punishable for the said offence term which may extended to six months. It has been filed on 01.06.2017.

8. The complaint in EOCC.No.381 of 2017 has been filed for the offence under Section 96(1) r/w 99 of the Companies Act, alleging that the petitioners failed to hold Annual General Body Meeting on or before 30.09.2015 which is punishable with fine. It has been filed on 01.06.2017. Next complaint in EOCC.No.194 of 2017 has been filed on 21.03.2017 for the offence punishable under Section 240(1)(a) of the companies Act, 1956 on the allegations that the petitioners failed to

produce details before the Inspector regarding the balance sheet for the year 31.03.2010, 31.03.2011, 31.03.2012, 31.03.2013, 31.03.2014 which may extended upto six months. Therefore, all the complaints are filed beyond the limitation period as contemplated under Section 468 of Cr.P.C. Therefore, the complaints barred by limitation and all the complaints cannot be sustained as against the petitioners.

9. In view of the above discussions, the proceedings in EOCC.194, 380 to 383 of 2017 on the file of the learned Additional Chief Metropolitan Magistrate (Economic Offence-I), Egmore, Chennai, are hereby quashed as against the petitioners and all the Criminal Original Petitions stand allowed. Consequently, connected miscellaneous petitions are also closed.

05.10.2023
(½)

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

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To

1. The Additional Chief Metropolitan
   Magistrate (Economic Offence-I),
   Egmore, Chennai

2. The Deputy Registrar of Companies,
   Tamilnadu,
   Shastri Bhavan II Floor,
   Block V & VI,
   26, Haddows Road,
   Nungambakkam,
   Chennai – 600 006.

3. The Public Prosecutor,
   Madras High Court,
   Chennai.

G.K.ILANTHIRAIYAN. J,

rts

Crl.O.P.Nos.3391 to 3395 of 2018
and Crl.M.P.Nos.1484 to 1493 of 2018

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