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

\+ CRL.M.C. 5082/2024 & CRL.M.A. 19429/2024 (stay)

ACG HOSPITALITY PRIVATE LIMITED & ORS......Petitioner

Through: Mr. Amit Goel, Advocate

versus

THE REGISTRAR OF COMPANIES .....Respondent

Through: Mr. Rohan Jaitley, CGSC with Mr. Dev Pratap Shahi, Advocate

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

O R D E R

% **08.07.2024**

CRL.M.A. 19430/2024

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.C. 5082/2024

1. This petition is filed for setting aside order dated 28th March 2024, passed by the ACMM (Special Act), Central District, Tis Hazari, Delhi in CC No.2643/2021. The application allowed the condonation of delay filed by the complainant. A complaint was filed by the Registrar of Companies under Section 99 of the Companies Act, 2013 ["***the Act***"] in contravention of Section 96 of the Act on the ground that the Annual General Meeting ["***AGM***"] of petitioner company was not held for Financial Year 2016-17; the last due date for conducting the AGM was 30th September 2017.

2. Notice was issued by the Office of the Director General Corporate Affairs ["***DGCA***"] on 29th November 2019 for violation of said provision;

reply was received from petitioner company. An application was filed for condonation of delay under Section 473 Cr.P.C. which has accordingly been disposed of by way of the impugned order.

3. The impugned judgment takes note of the fact that notice was issued on 29th November 2019 by the DGCA whereas petitioner stated that limitation ought to have been calculated from 2018 when E-forms had been filed. The impugned judgment rightly notes that the limitation was expiring during the time prescribed by the Supreme Court in ***Suo Motu Writ Petition (C) no. 3/2020*** during the COVID-19 pandemic and as complaint was filed on 28th May 2022, therefore, fell within the time period of 15th March 2020 to 28th February 2022 (the extended period of limitation as directed the Court during Covid pandemic).

4. As regards the starting point of limitation being 2018 and 2019, reliance has been placed by the respondent on decision of a Coordinate Bench of this Court in ***Sanjay Suri & Ors. v. State & Anr.*** Crl.M.C. 531/2009 [*Neutral Citation: 2010:DHC:552*], decision dated 29th January 2010 where aspects of the knowledge of offences and limitation have been taken into account. Para 19 and 21 of the said judgment have been relied upon wherein it has been stated that it cannot be assumed that the Registrar came to know of all offences which were revealed from filing of a defective balance sheet. Period of limitation therefore cannot run from such a late time. Instead, it ought to run from when commission of the offence is known to the person aggrieved and matter comes to notice of proper person authorised to file complaint. Relevant portions of the said decision are extracted hereunder for ease of reference:

> *19. As against this, the learned counsel for the respondent has referred to decision of Kerala High Court in Thomas Philip and Ors. Vs. Assistant of Registrar of Companies & Anr. 2006*

(133) Company Cases, 842. In the case before Kerala High Court, a complaint was filed on October, 24, 2001 under Section 628 of Companies Act, 1956 alleging fictitious entries in the books of accounts and Balance Sheet of a company for the period 1995-1996. The petitioners, directors of the Company, filed a petition under Section 482 of the Code of Criminal Procedure, contending that the complaint was barred by limitation since the Balance Sheet was filed on December 24, 1996. The High Court considered the decision of Madras High Court in the case of H.C. Kothari (supra), but did not agree with the view taken in that case and preferred to go by the view taken by Andhra Pradesh High Court in Mishra Dhathu Nigam Ltd. vs. State, 1998 (92) Company Cases, 730. During the course of judgment, the High Court observed that <u>there may be patent as well as latent offences revealed from the Balance Sheet and that at least regarding latent offences, merely because a Balance Sheet comes into the hands of the Registrar, it cannot be assumed that the Registrar had come to know of all the offences revealed on a vetting of the Balance Sheet</u>. The learned counsel for the petitioners, before the High Court, relied upon Regulation 17 of Companies Act to contend that Registrar, on receipt of a document like Balance Sheet, is required to examine the document or cause it to be examined and which further stipulates that if there be any defect or incompleteness in the document, it has to be returned within a period of 15 days. <u>The High Court, however, felt that an offence like the one before it cannot be said to have come to the notice of the Registrar, actually or constructively, on the date when the Balance Sheet was delivered at his office, so as to hold that the period of limitation starts running from that date. It was noticed that Balance Sheets and Annexures thereto are usually voluminous documents and receipt of Balance Sheet or even a cursory perusal cannot and may not bring to the knowledge of the Registrar and his officials, information about the commission of the offence. The learned Judge of the High Court felt that detailed consideration and application of mind would be necessary and this was taken note of by law when it provided that limitation would start running only when commission of the offence is known to the person aggrieved</u>. The apprehension of the petitioner that giving such an

interpretation may enable the Registrar to file complaint at any time and claim that it had come to its knowledge only at a later date, the learned Judge of the High Court, inter alia, observed as under:

> *"The contention that if such an interpretation were placed on Section 469(1) (b) the complainants will be able to assert that the offence came to their knowledge only on a later point of time that suits them is disturbing. But the contra interpretation may result in graver injustice and prejudice. In an appropriate case the indictee will be able to contend and establish that the complainant did have actual knowledge or at least constructive knowledge about the offence and the period of limitation had started running from that day. That option will secure the interests of prevention of misuse of the provisions of Section 469(1) (b). The Legislature advisedly has chosen to stipulate that in a case where the person aggrieved did not have knowledge of the commission of offence, not the date of offence but the date of knowledge of the offence alone must be reckoned as the date of commencement of limitation."*

…

21. Though the complaints, subject matter of these petitions, were filed within one year from the date inspection was concluded, even the date on which the contraventions came to the knowledge of the Inspecting Report, cannot be said to be the date when the offence came to the knowledge of the complainant. It was only on receipt of Inspecting Officer, in its office that the complainant came to know of these offences. In taking this view, I find support from the decision of a Division Bench of this Court in Oriental Bank of Commerce & Anr. vs. DDA & Anr. 23 1983 Delhi Law Times (SN) 46 where this Court held that the knowledge of Inspecting Officer cannot be imputed to DDA because until *the matter comes to the notice of the proper person, who is authorized to file a complaint, it cannot be said that the knowledge of the Inspecting Officer is the knowledge of DDA."*

(emphasis added)

5. In light of the averments made, this Court does not find any infirmity in the impugned order.

6. Accordingly, the petition stands dismissed.

7. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JULY 8, 2024/sm/sc