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

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\+ CRL.M.C. 4535/2022 & CRL.M.A. 18394/2022

CTM INDIA LTD & ANR. .....Petitioners

Through: Mr. Sanjeev Puri, Sr. Adv., Mr. Kamal Shankar, Adv. Tanmay Sharma, Adv. Mr. Kshitiz Rao, Adv. Mr. Arjun Narang, Adv., Ms. Puneet Dhanoa, Adv.

versus

REGISTRAR OF COMPANIES DELHI AND HARAYANA .....Respondent

Through: Mr. Piyush Beriwal, Mr. Sandip Munian and Ms. Jyotsna Vyas, Advocate for R-1.

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\+ CRL.M.C. 4927/2022 & CRL.M.A. 19759/2022

BIMAL DHAR .....Petitioner

Through: Mr. Sanjeev Puri, Sr. Adv., Mr. Kamal Shankar, Adv. Tanmay Sharma, Adv. Mr. Kshitiz Rao, Adv. Mr. Arjun Narang, Adv., Ms. Puneet Dhanoa, Adv.

versus

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

Through: Mr. Satya Ranjan Swain, SPC with Mr. Ankush Kapoor and Mr. Kautilya Birat, Advocate.

**CORAM:**
**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

# **ORDER**

%                                        **10.01.2025**

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereafter *'Cr.P.C'*) has been filed on behalf of the petitioners seeking quashing of the complaint i.e. CC No. 620 of 2019, and setting aside of the impugned order dated 05.02.2020, passed by the learned ASJ, South-West District, Dwarka Courts, Delhi, taking cognizance of the offences in the said complaint case.

2. Briefly stated, the impugned complaint was filed by the respondent against petitioner no. 1 CTM India Limited along with its Directors/former Directors, including the petitioner no. 2, alleging the contravention of Section 134(3)(o) and Section 135 of the Companies Act, 2013 (hereafter *'Companies Act'*) pertaining to Corporate Social Responsibility (CSR). It has been alleged by the respondent that the petitioner company has been in default of its CSR obligations for the financial year 2014-15.

3. The relevant portion of the impugned order is set out below:

> "The present complaint has been instituted through Deputy Registrar of Companies, within the meaning of Section 2(75) of the 3 Companies Act, which empowers him to act and perform various functions as provided under the Companies Act.
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> Considering the documentary evidence placed on record, this Court is satisfied that prima facie the aforesaid offences under the Companies Act, 2013 have been committed by the accused persons. Thus, *cognizance of said offences is taken*.
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> Since the present complaint has been made by a public servant in his official capacity, the pre-summoning evidence is required to be dispensed with in view of proviso of Section 200 CrPC. The material on record is sufficient to show prima facie involvement of all the accused persons in the alleged offences. Accordingly, all the accused persons be summoned for facing prosecution for

> violation of Section 134(3)(o) and Section 135 of the Companies Act, which are made punishable u/s 134(8) and Section 450 of the same Act. They be summoned on filing of PF/RC/courier within 7 days, for next date."

4. The learned counsel appearing for the petitioners states that the present case pertains to Section 134(8) of the Companies Act and the said offence has been decriminalized *vide* Companies (Amendment) Act, 2020 [hereafter *'Amendment* Act'] by the Parliament and the punishment in the said provision has been reduced to fine. It is therefore prayed that the benefit of ex-post facto reduction in punishment should be given to the petitioners herein. In support of these arguments, the learned counsel has placed reliance on various judgments of the Hon'ble Supreme Court and High Courts.

5. The learned counsel appearing for the respondent ROC fairly submits that the position of law has changed after the Amendment Act, inasmuch as the offence in question has been decriminalized, and the benefit of ex-post facto can be granted to the petitioners as per decision of Hon'ble Supreme Court in ***T. Barai v. Henry Ah Hoe and Anr.:*** *(1983) 1 SCC 177.*

6. *The learned counsel appearing for both the parties*concede that the complaint pending before the concerned Cour can be quashed and the matter can be sent to the Adjudicating Authority.

7. This Court has heard arguments addressed on behalf of both the parties and perused the material available on record.

8. This Court's attention has been drawn to the decision of the Hon'ble Supreme Court in case of ***T. Barai v. Henry Ah Hoe and Anr.****(supra)* wherein it has been held that in case the punishment prescribed is reduced

by the Amendment Act, then the benefit is given to the accused. The relevant paras are reproduced hereunder:

> "22. It is only retroactive criminal legislation that is prohibited under *Art.* 20(1). The prohibition contained in Art. 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such *ex post facto* law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence. punishable under s. I6(l)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even *ex post facto* law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common- sense. This finds support in the following passage from Craies on Statute Law, 7th edn. at pp. 387-88 :
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>> "A retrospective statute is different from an *e x post facto* statute. "Every *ex post facto* law ......... " said Chase J. in the American case of *Calder* v. *Bull(')* "must necessarily be retrospective, but every retrospective law is not an *ex post facto* law. Every law that takes away or impairs rights vested agreeably to existing Jaws is retrospective, and is generally unjust and may be oppressive ; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement : as statutes. of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But *I do not consider any law ex post' facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction* ...There is a great and apparent. difference between making ai: unlawful act lawful and the making an innocent action criminal and punishing it as a crime."

> 23. To illustrate, if Parliament were to re-enact s. 302 of the Indian Penal Code, 1860 and provide that the punishment for an offence of murder shall be sentence for imprisonment for life, instead of the present sentence death or imprisonment for life, then it cannot be that the Courts would still award a sentence of death even in pending cases.

9. Reliance was also placed on the decision of Madras High Court in case of ***B. Kannan v. The Deputy Registrar of Companies, Tamil Nadu:****Crl. O.P. No. 2735/2017*, which was rendered in context of Section 454 of the Companies Act after the Amendment Act. The relevant observations are set out below:

> "14. Therefore, we are of the view that the intention of the Parliament is very clear and the since of the Amendment Act 2020 mollifies the rigour of punishment the beneficial construction has to be applied in favour of the accused in pending prosecutions and all the prosecution has to be withdrawn and transferred to the adjudicating authority appointed under Section 454 of the Companies Act for further proceedings in terms of the said provision."

10. Similarly, Madras High Court reiterated the above view in another case i.e., *M/s Shine* ***School of Excellence Pvt. Ltd. and Ors v. Registrar of Companies, Tamil Nadu:****Crl. M.P. No. 16451/2019*. The relevant paragraphs are reproduced hereunder:

> "6. This Court finds that when the alleged offence took place, the penal provisions viz., Sections 92 (5) and 137 (3) of the Act provided for imposition of fine. By virtue of the Companies Amendment Act, 2019 which came into force on 02.11.2018, the punishments provided for not filing the annual returns and balance sheets was changed from 'punishable with fine' to 'liable to a penalty'. The statement of objects and reasons for bringing about this amendment is provided in the Companies (Amendment) Bill,

> 2018 which was not passed and subsequently passed by the Companies (Amendment) 2019. However, the Statement of objects and reasons made it clear that the Act wasintroduced to reduce the rigour of punishments for certain lapses which are technical and procedural nature for the purpose of promoting the ease of doing business and for better corporate compliance.
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> 7. This Court had occasion to consider a similar provision under Section 167 (5) of the Act, where also by virtue of the amendment, the punishment prescribed was changed from fine to penalty, thereby decriminalising the said violation. This court had considered the statements of objects and reasons of the Amending Act and the Judgment of the Hon'ble Supreme Court in *T. Barai Vs Henry Ah Hoe and Anr reported in (1983) 1 Supreme Court Cases 177* in *B. Kannan Vs. The Deputy Registrar of Companies in W.P.No.2735 of 2017 dated12.12.2022* and held as follows:
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> 8. The above observations are squarely applicable to the facts of the instant case. It is to be noted here that subsequent to modifying the sentence from fine to penalty in the year 2019, the Companies Amendment Act 2020 also brought about change in the quantum of penalty that can be levied. Therefore, the petitioners are entitled to the benefit of the Companies Amendment Act, 2019 and the Companies Amendment Act, 2020 which further changes or mollifies the rigour of punishment for the lapses. Since the petitioner's case is similar to the case that is extracted above, the prosecution against the petitioners is transferred to the adjudicating authority appointed under the Act to adjudicate the contravention committed by the petitioners in terms of Section 454 read with 92 (5) and 137 (3) of the Act."

11. Therefore, considering the ratio of the aforesaid judgments and the position of law, it is evident that the benefit of decriminalization of punishment should go the petitioner as the Central Government through the Amendment Act of 2020 had decriminalized the punishment in cases pertaining to CSR, and there is no reason as to why the petitioner should not

be granted the same benefit. The learned counsel appearing for both the parties also concede to the said proposition

12. Thus, this Court is of the view that the complaint before the learned Trial Court cannot proceed, and the matter has to be referred to the concerned Adjudicating Authority, as per the provisions of Companies Act, for adjudication of the penalty in accordance with law. Accordingly, the impugned complaint and the impugned order are quashed. It is directed that the present complaint shall stand transferred to the concerned Adjudicating Authority.

13. The parties will be at liberty to raise all the issues/contentions before the Adjudicating Authority.

14. It is clarified that this Court has not expressed any opinion on the merits of the case.

15. The present petition stands disposed of. Pending applications also stand disposed of.

16. The order be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**JANUARY 10, 2025**
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