(2012) 03 DEL CK 0141

In the Delhi High Court

Case No : Criminal M.C. 380 of 2011 and Criminal M.A. No. 1504 of 2011

Subhodh Kumar and Others APPELLANT

Vs

Regitrar of Companies RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Companies Act, 1956 — Section 628, 63
Criminal Procedure Code, 1973 (CrPC) — Section 468, 473

Citation : (2012) 108 CLA 206 : (2012) 172 CompCas 463

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Subodh Kumar, for the Appellant; Anuj Aggarwal and Mr. Gaurav Khanna, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—By the present petition, the Petitioner seeks setting aside of the order dated 17th August, 2010 passed by the learned Addl. Chief Metropolitan Magistrate in Complaint Case No. 456/2002 titled as "Subodh Kumar vs. ROC under Sections 63 and 628 of the Companies Act and the order dated 16th November, 2010 passed by the learned Addl. Sessions Judge in Revision Petition No. 65/2010 and allow the application of the Petitioner filed u/s 468 Cr.P.C. seeking quashing of the complaint of the Respondent being barred by limitation. Learned counsel for the Petitioner contends that the complaint was filed on 7th May, 2002 whereas as per Section 468 Cr.P.C. cognizance on the complaint of the Respondent could have been taken latest by 10th April, 2000 as allegedly the wrong statement was signed on 11th April, 1997. The reasons for delay given in the complaint for condonation are frivolous and deserve no merit. Reliance is placed on Rajiv Kumar vs. Registrar of Companies NCT of Delhi, 2009 (2) LRC 379 (Del) and Dr. L.B. Singh vs. Registrar of Companies NCT of Delhi, 2009 (III) DRJ 204.

2. Learned counsel for the Respondent contends that the allegations in the

complaint relate not only to the prospectus signed on 11th April, 1997 but also of filing balance-sheet as on 31st March, 2000 and 31st March, 2001 showing diversion of funds to the tune of Rs. 29,04,41,130/- and Rs. 31,70,90,079 respectively being advances recoverable without any explanation in the balance-sheet. Thus there is no delay in filing the complaint. Reliance is placed on Ajay Jain Vs. Registrar of Companies NCT of Delhi and Haryana, .

3. I have heard learned counsels for the parties. Briefly the fact giving rise to the filing of the present petition are that on 7th May, 2002 the Respondents filed a Complaint Case bearing No. 456/2002(now bearing No. 539/03) under Sections 63 and 628 of the Companies Act (hereinafter referred to as the "Act") before the learned Addl. Chief Metropolitan Magistrate against the Petitioners and co-accused. In the complaint, the Respondent alleged that the Petitioners along with other persons are signatory to the prospectus dated 7th July, 1996 and there was mis-statement/false statement in the prospectus with willful intention to induce the investors to invest into the equity capital of the Company and put the investors to loss. The complaint further alleged that in terms of the said prospectus, the company came out with the public issue of 18 lacs equity shares of Rs. 10 each aggregating to Rs. 1.80 lacs. The Company failed to utilize the funds received from the public issue for the objects mentioned in the prospectus. The prospectus envisaged commercial operation latest by 1997-1998. The balance-sheet for the year ending 1997-1998 reveals that the company had deployed funds to the tune of Rs. 95.99 lacs as "Investment". As per the balance-sheet of the year 1998-1999 investments have been made to the tune of Rs. 70 crores in quoted shares and optionally convertible preference shares. There is unexplained credit of Rs. 56,00,06,400 in the balance-sheet as on 31st March, 1991 under the head "Capital Reserves". The unexplained capital reserves have been utilized for purchase of shares to the tune of Rs. 70,22,58,000. The proposed operations and utilization as per the promises made in the prospectus never materialized and the company has done a very negligible trading in shares and stock in the trade of shares remained at the same level as in the previous years. Further the company changed its objects and proposed to enter in entertainment and film industry contrary to the objects of the issue in prospectus. As per the balance-sheet as on 31st March, 2000 and 31st March, 2001 there is diversion of funds to the tune of Rs. 29,04,41,130 and Rs. 31,70,90,079/- respectively being advances recoverable without any explanation in the balance-sheet and no reasons have been given for grant of such loans.

5. In view of the mis-statement as well as false statement, the department of company affairs vide order dated 13th March, 2002 accorded its permission to lodge the complaint resulting in the filing of the complaint.

6. A perusal of the complaint thus shows that the allegations of mis-statement of facts are till the financial year 2001. In Rajiv Kumar (supra) this Court held:

6. In the present case, the respondents have submitted that it is only when a balance sheet was filed by the petitioners for the year ending 31.03.2001 that

they came to know that the statement made in the prospectus was not correct and accordingly they gave a show cause notice which was given on 21.05.2002 and then they have filed a complaint dated 14.01.2004. It is submitted that the delay had been caused because of obtaining sanction etc. from the department concerned.

7. Even if one takes the case of the respondents at the highest and apply the provision of Section 473 of the Cr.P.C. to the facts of this case, then also once the respondents having come to know about the violation, i.e, on filing of the balance sheet, no where it is stated as to when the said balance sheet was filed, it is also not stated as to whether prior to 31.03.2001 any balance sheet was filed by the petitioner or not and in case such balance sheet was filed then what was the status shown in that balance sheet. It is hard to believe that the petitioner had not filed any balance sheet prior thereto though balance sheet as per the petitioners were filed on year to year basis. Moreover, it is nowhere stated in the complaint as to from which date the limitation starts so as to bring the complaint within limitation. As a matter of fact, the averments made in the response by the respondents are not even forming part of the complaint.

8. Thus, even the averments made in the complaint are per se false to the knowledge of the respondents and therefore the plea taken by the respondents that this is a case where neither there was any continuing wrong and that the limitation period was continuing till the respondents filed the complaint cannot be sustained. Even otherwise the law has been already discussed by this Court in the judgment quoted above. No contrary judgment has been cited.

It would be thus seen that the Court came to the conclusion that the averment in the complaint were per se false. However, in the present case the complaint clearly stated all the mis-statements made in each financial year. Since the date of knowledge is upto the financial year 31st March, 2000 and 31st March, 2001 regarding diversion of funds and the complaint was filed on 7th May, 2002 the complaint was not barred by limitation. It is well-settled that the limitation arises from the date of knowledge of the offence committed. For a balance-sheet on 31st March, 2001 no knowledge can be attributed prior thereto. Thus, I find no merit in the petition. Petition and application are dismissed.

