(2013) 10 MAD CK 0227

In the Madras High Court

Case No : Comp. A. No. 1072 of 2013 in C.P. No. 297 of 2013

Visram Financial Services (P) Limited APPELLANT

Vs

V. Rajendran and Satish Raj RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2013) 117 CLA 351 : (2013) 6 CTC 183

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : Prakash Goklaney, for the Appellant; Karthik Seshadri for M/s. Iyer and Thomas, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—The main company petition C.P. No. 297 of 2013 is filed by two persons by name V. Rajendran and Satish Raj, who are respectively the Managing Director and the Director of a company by name Meta Films (India) Ltd. u/s 633 of the Companies Act, 1956, praying for relieving them wholly from the alleged acts of default and liability complained by a company by name Visram Financial Services Private Ltd., who is the first respondent in the C.P. and at whose instance a criminal complaint in C.C. No. 107 of 2013 is taken on file by the Additional Chief Metropolitan Magistrate (EO-I), Egmore, Chennai. On 19.9.2013, the aforesaid C.P. No. 297 of 2013 came up before me along with another petition in C.P. No. 296 of 2013 filed by the very same petitioners containing a similar prayer, with the only difference that the prayer in C.P. No. 296 of 2013 was for relieving the petitioners from the acts of default alleged by the third respondent Registrar of Companies in their letter dated 31.7.2013.

2. Both the main company petitions, C.P. Nos. 296 and 297 of 2013 came up for hearing, along with miscellaneous applications in Comp. A. Nos. 995 and 996 of 2013 for interim stay of criminal prosecution.

3. On 19.9.2013, I ordered notice in the main petitions and granted an interim

stay of further proceedings before the criminal court.

4. After service of notice, the first respondent in the main company petition, namely, Vis-ram Financial Services, has come up with the above application in Comp. A. No. 1072 of 2013, seeking the dismissal of the main company petition, on the short ground that while Section 633(1) of the Companies Act empowers only the criminal Court which has taken cognizance of a complaint, to relieve the officers of a company, Section 633(2) empowers the High Court to relieve the officers of the company only in cases of apprehension of proceedings and not where a complaint had already been filed and taken cognizance. In other words, the limited ground on which the first respondent in the main company petition seeks the dismissal of the company petition is that Section 633(2) can be invoked only at a stage prior to the date of institution of the criminal prosecution and not thereafter.

5. In view of the limited ground on which the above application is filed, it is not necessary for me to get into the factual details, at least at this stage. It is enough for the present to decide only the sole legal issue as to whether the power u/s 633(2) can be invoked after the initiation of prosecution or not.

6. I have heard Mr. Prakash Goklaney, learned counsel for the applicant herein (first respondent in the main company petition) and Mr. Karthik Seshadri, learned counsel for the respondents (petitioners in the main C.P.).

7. Section 633 of the Companies Act, 1956, reads as follows:

Power of Court to grant relief in certain cases:

(1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the Court herein the case that he is or may be liable in respect of negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought to fairly be excused, the Court may relieve him, either wholly or partly, from his liability on such terms as it may think fit:

Provided that in a criminal proceeding under this sub-section, the Court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

(2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a Court before which a proceeding against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1).

(3) No Court shall grant relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

8. From a plain reading of sub-section (1) and the proviso thereunder, sub-section (2) and sub-section (3) of Section 633, the following emerge:

(i) The Court hearing a case of negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, can relieve such officer from criminal liability, if such officer is found to have acted honestly and reasonably, though he is liable in respect of such negligence, default and breach of duty, misfeasance or breach of trust.

(ii) The relief granted by the Court can only be from criminal liability and not from civil liability.

(iii) The High Court has the same power to relieve an officer of a company, on an application filed by him, if such officer has reason to apprehend that any proceeding will or might be brought against him in respondent of any negligence, default and breach of duty, misfeasance or breach of trust. For the said purpose, the High Court will be deemed to be a Court before which a proceeding against such officer had been brought.

(iv) The power u/s 633 cannot be exercised except after serving a notice, upon the Registrar and such other person calling upon them to show cause as to why such relief should not be granted.

9. Two expressions, one found in sub-section (1) and another found in sub-section (2) create a distinction between the power under sub-section (1) and the power under sub-section (2). These expressions are (A) "the Court hearing the case" found in sub-section (1) and (B) "reason to apprehend" as found in sub-section (2).

10. Since sub-section (1) empowers a Court (not the High Court) hearing the case, and sub-section (2) empowers only the High Court when there is an apprehension, to relieve an officer, many Courts appear to have taken the view that the power available to the High Court under sub-section (2) cannot be exercised after the apprehension had actually crystallised into an actual prosecution. As a matter of fact, Mr. Prakash Goklaney cited any number of authorities in support of his contention that the High Court can relieve an officer under sub-section (2) only at the stage of apprehension and not after the apprehension had crystallised into the actual prosecution. I shall now refer to some of the authorities cited by him.

11. In Re: Tolaram Jalan and Others, , a learned Judge of the Bombay High Court held that Section 633 of the Companies Act, 1956, is identical to Section 372 of the English Companies Act of 1929 and that while sub-section (1) refers to proceedings already commenced, sub-section (2) contemplates a claim which is

anticipated to take place in future. The learned Judge also pointed out that the words "the Court hearing the case" appearing in sub-section (1) signifies the Court before which a proceeding is pending and that sub-section (2), per contra, creates a fiction in respect of an apprehended claim.

12. In Thakur Dan Singh Bist and Others Vs. Registrar of Companies, , a learned Judge of the Allahabad High Court held that if proceedings of the nature contemplated by sub-section (1) have been initiated, the Court in which they are pending will be the only Court which will have jurisdiction to give relief for the acts and omissions complained of. The argument that sub-section (2) is wide enough to enable the Court to relieve the officers not only against an apprehended claim, but also against a possible prosecution, was rejected by the learned Judge. In the operative portion of the judgment, the learned Judge held that if proceedings have already been initiated, whether for enforcement of criminal or civil liability, relief can be granted only by the Court in which the proceedings are pending.

13. In Re: Muktsar Electric Supply Co. Ltd. in Liquidation v. State (High Court of Punjab & Haryana); 1965 a learned Judge of the Punjab and Haryana High Court expressed a similar view.

14. In Auto Link Finance Pvt. Ltd. Vs. The Registrar of Companies, , a learned Judge of the Delhi High Court also held that the High Court is not possessed of jurisdiction to grant relief under sub-section (2), after the institution of criminal proceedings.

15. In Om Prakash Khaitan Vs. Shree Keshariya Investment Ltd and Others, , another learned Judge of the Delhi High Court held that the High Court has no jurisdiction with regard to the criminal liability arising out of defaults and breaches which have already become the subject matter of prosecution.

16. In Sri Krishna Parshad and Others Vs. Registrar of Companies, , a learned Judge of the Delhi High Court held that undoubtedly the power of the High Court is the same as that of the Magistrate. But, the High Court can grant only anticipatory relief and that once a prosecution is initiated, the Court before which the complaint or trial is taking place, alone can grant relief.

17. In P.S. Bedi and others Vs. Registrar of Companies, Delhi, and Haryana, , the Delhi High Court again held that once prosecution is launched, the only Court competent to entertain any objection to the propriety thereof, is the Court hearing the case.

18. In S.S. Sahni and Others Vs. Registrar of Companies and Others, , the Punjab and Haryana High Court took a similar view and held that Section 633(2) does not empower the High Court to grant any relief to any officer, in a case where the proceedings have already been initiated and pending.

19. In Ashok Bhatia and Others Vs. Registrar of Co., , the Delhi High Court reiterated the decision following the earlier decision in Sri Krishna Parshad.

20. In Jyotindra Manharlal Vakil and Another Vs. Registrar of Companies, Maharashtra, Bombay, , the Bombay High Court followed the view expressed by the Delhi High Court in Sri Krishna Prashad and the view expressed by the Punjab and Haryana High Court in S.S. Sahnii.

21. Despite such a series of decisions supporting the contention of the learned counsel for the applicant, Mr. Karthik Seshadri, learned counsel appearing for the respondents (original petitioners) was brave enough to contend (i) that it will be anomalous to think that what a subordinate Court would do, the High Court is not competent to do, and (ii) that while sub-section (1) uses the expression "the Court", sub-section (2) uses the expression "the High Court". Therefore, the learned counsel contended that sub-section (2) is wide enough to confer a power upon the Court to relieve an officer of the company both in respect of an anticipatory claim and in respect of an actual claim. He also relied upon the decision of the Delhi High Court in Sh. R.K. Narayan and Ors., Sh. K.K. v. Registrar of Companies (decided on 17.12.2004), where a learned Judge held as follows in paragraph 13 of its decision:

13. What follows from the conjoint reading of sub sections (1) and (2) of Section 633 is:

(a) In any proceedings for negligence/default/breach of duty, misfeasance or breach of trust against an officer of the company, it would be a valid defence that he as acted honestly and reasonably and that having regard to all the circumstances of the case he should be excused from the liability.

(b) Such exercise can be done even by this Court and person need not be relegated to the Court where the proceedings are filed.

22. The said decision of the Delhi High Court may not go to the rescue of the respondents, in view of the fact that the Court followed its earlier decision in P.S. Bedi. What actually happened in that case was that the application u/s 633 was filed even before the complaint was lodged by the Registrar of Companies, but it came up for hearing later. Therefore, the learned Judge did not go into the question as to whether a petition u/s 633 is maintainable, at the instance of an officer who had already received summons from the criminal Court or not.

23. Mr. Karthik Seshadri, learned counsel for the respondents also relied upon a decision of the Calcutta High Court in Srikumar Menon and Others Vs. Registrar of Companies, . Though the facts of the above case are not very clear from the report, some of the passages in the report suggest that the Calcutta High Court discharged the accused in that case, from criminal liability, on the ground that the prosecution was launched beyond the period of limitation prescribed u/s 468 of the Code of Criminal Procedure. To come to the said conclusion, the learned Judge reasoned that in other criminal proceedings, a criminal Court is obliged to take cognizance u/s 190 and that while doing so, the court is duty bound to see whether the complaint was lodged only within the period of limitation in terms of Section 468 or not. This power, according to the learned Judge, is available to

the High Court also.

24. But, as stated earlier, there is no indication in this decision as to whether prosecution had been launched even before the date of filing of the company petition. Therefore, I am not sure whether the above decision of the Calcutta High Court runs contrary to the decisions of the Delhi, Bombay, Punjab and Haryana High Courts or not. However, there is no authoritative pronouncement either of the Supreme Court or of this Court on the point. Hence I would go to the root of the matter and examine the scheme of the Act, to find out the possible interpretation to be given to sub-section (2) of section 633.

25. But at the outset I should point out that a reference to the English (U.K.) Companies Act, is of no avail, since the English Act does not make a distinction between "Court" and "High court" in the analogous provision contained therein. I do not know why In Re: Tolaram Jalan the Bombay High Court made a reference to section 372 of the English Companies Act, 1929. In England, the 1929 Act was replaced by the 1948 Act, which contained a provision in Section 448 which is identical to Section 633 of the Indian Act, 1956. The 1948 Act was then replaced by the 1985 Act, which contained a provision in Section 727. Now, the 1985 Act has been replaced by Companies Act (2006), which came into force on 1 October 2008 in U.K. Under this Act, the court has a power to grant relief in terms of Section 1157. Section 1157 reads as follows:

(1) If in proceedings for negligence, default, breach of duty or breach of trust against

(a) an officer of a company, or

(b) a person employed by a company as auditor (whether he is or is not an officer of the company), it appears to the court hearing the case that the officer or person is or may be liable but that he acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused, the court may relieve him, either wholly or in part, from his liability on such terms as it thinks fit.

(2) If any such officer or person has reason to apprehend that a claim will or might be made against him in respect of negligence, default, breach of duty or breach of trust

(a) he may apply to the court for relief, and

(b) the court has the same power to relieve him as it would have had if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

(3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant (in Scotland, the defender) ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced

against him, withdraw the case from the jury and forthwith direct judgment to be entered for the defendant (in Scotland, grant decree of absolvitor) on such terms as to costs (in Scotland, expenses) or otherwise as the judge may think proper." It may be seen from the above provision that all the 3 sub-sections use only the same expression namely "the court". In other words, the English Act does not distinguish between "the court" and the "High court" as found in sub sections (1) and (2) of section 633. Hence no useful purpose will be served in making a reference to the English Act.

26. The expression "the Court" is defined Section 2(11) of the Companies Act, 1956, to mean two sets of Courts. They are (i) the Court having jurisdiction with respect to the matters provided in Section 10, and (ii) the Court of a Magistrate of First Class having jurisdiction to try any offences against the act. The definition reads as follows:

Section 2(11): "the Court" means-

(a) with respect to any matter relating to a company (other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that company, as provided in section 10;

(b) with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence.

27. Section 10 recognises the jurisdiction of (i) the High Court if the registered office of the company is situate within its local limits, and (ii) the District Court upon which a similar jurisdiction is conferred by the Central Government under sub-section (2).

28. Therefore, a combined reading of Section 2(11) with Section 10 shows that the expression "the Court" wherever it appears, would indicate (i) only a Court of a Magistrate of First Class or the Presidency Magistrate, if the expression is used in connection with any offences against the Act, and (ii) only the High Court or the District Court on which the power is conferred by the Central Government, in respect of matters other than offences against the Act.

29. If the Act had not contained a deeming fiction in the second part of section 633(2), treating the High court also as a court before which a prosecution is launched, there would have been no difficulty in simply following section 2(11) and section 10. But unfortunately, the second part of section 633(2) creates a deeming fiction, making the High court also a court before which a proceeding for negligence, breach of trust etc are brought. This is why, the scope of jurisdiction of the High court has come up again and again for consideration before various courts.

30. Having seen the definitions of the important expressions, let us now take a look at the penal provisions and the remedial provisions. The Act contains several penal provisions, which can be tabulated as follows for easy reference:

Sl. No Section

Subject matter

1

59(1)

Fine upto Rs. 50,000/- for issuing prospectus in contravention of Section 57 or 58.

2

62(1)

Civil liability for payment of compensation to a person who suffers loss or damage due to an untrue statement contained in the prospectus.

3

63(1)

Criminal liability for imprisonment upto 2 years or fine upto Rs. 50,000/- or both, for a person who authorised the issue of a prospectus containing an untrue statement.

4

68

punishment with imprisonment extending upto 5 years or fine upto Rs. 1 lakh, or both, for fraudulently inducing persons to invest money.

5

68A(1)

punishment upto 5 years for applying for acquisition of shares of a company in a fictitious name or for inducing a company to allot shares in a fictitious name. 6

69(4)

punishment with fine upto Rs. 50,000/- for making allotment in contravention of Section 69.

7

70(4)

punishment with fine upto Rs. 10,000/-, for making allotment without filing a statement in lieu of prospectus.

8

71(3)

civil liability for compensating the company and allottee for any loss, damage or cause sustained by them, for making an allotment in contravention of Sections 69 & amp; 70.

9

72(3)

punishment with fine extending upto Rs. 50,000/-, for making an allotment in contravention of Section 72(1) & (2).

10

73(2)

civil liability to repay money to the applicants of shares, together with interest, when permission of the Stock Exchange is not sought or could not be obtained. This liability is joint and several for the company and its Directors.

11

73(2A)

civil liability to repay money to the applicants of shares, together with interest, for not repaying the money in excess of the value of allotment. This liability is joint and several for the company and its Directors.

12

73(2B)

criminal liability for violation of 73(2A) with imprisonment upto 1 year and fine upto Rs. 50,000/.

13

73(3)

criminal liability with fine upto Rs. 50,000/- for not keeping the application monies in a separate account and not repaying within the time.

14

75 (4)

criminal liability with fine upto Rs. 5,000/- per day for failure to file a return of allotments with the Registrar.

15

76(5)

criminal liability with fine upto Rs. 5,000/-, for paying commissions in a manner prohibited by Section 76.

16

77(4)

criminal liability with fine extending upto Rs. 10,000/-, for violating the restrictions imposed by Section 77 on the purchase of its own shares by a company.

17

79(4)

criminal liability with fine upto Rs. 500/- for failure to include in the prospectus, the particulars of discount.

18

80(6)

criminal liability with fine extending upto Rs. 10,000/-, for issuing redeemable preference shares otherwise than in accordance with Section 80.

19

80A(3)

criminal liability with fine extending upto Rs. 10,000/- per day for the company and with the imprisonment upto 3 years, for violation of the prescription in Section 80A regarding redemption of irredeemable preference shares.

20

89(3)

criminal liability with fine extending upto Rs. 10,000/-, for failure to apply to Court for appropriate directions for termination of disproportionately excessive voting rights.

21

97(3)

criminal liability with fine extending upto Rs. 500/- per day, for not filing with the Registrar, notice of increased capital or notice of increase of members.

22

105

criminal liability with imprisonment upto one year or fine, for concealing the name of any creditor entitled to object to the reduction of share capital or for misrepresenting the nature of the debt.

23

107(5)

criminal liability with fine extending upto Rs. 500/- for failure to forward to the Registrar, the decision of the Court on an application by dissentient shareholders.

24

108 I

criminal liability with imprisonment upto 3 years or with fine extending upto Rs. 50,000/- for acquisition or transfer of shares in contravention of Sections 108A to 108D.

25

111(9)

criminal liability with fine extending up to Rs. 10,000/-, with a further fine of Rs. 1,000/- per day for the period of default, for violating the orders of the Court relating to refusal of the company to register any transfer or transmission of shares.

26

113(2)

criminal liability with fine extending upto Rs. 5,000/- per day, for failure to issue share certificates or debenture certificates.

27

115(6)

criminal liability with fine extending upto Rs. 5,000/- per day, for failure to strike out of its register of members, the person to whom share warrant is issued.

28

116

criminal liability with imprisonment upto 3 years as well as fine for impersonating as the owner of a share.

29

117 C (5)

criminal liability with imprisonment upto 3 years and fine of not less than Rs. 500/- per day, for failure to comply with the order of the Court in relation to redemption of debentures.

30

127(2)

criminal liability with fine extending upto Rs. 5,000/- for failure to get the charges on properties acquired subject to charge, registered u/s 127.

31

133(2)

criminal liability with fine extending upto Rs. 10,000/- for issuing any debenture or certificate of debenture stock, without the endorsement.

32

137(3)

criminal liability with fine extending upto Rs. 500/- per day, for failure to give notice to the Registrar, of the appointment of a Receiver.

33

142

criminal liability with fine extending upto Rs. 5,000/- per day or Rs. 10,000/- per day, for failure to file with the Registrar, the particulars of any charge created by a company or the issue of debentures of a series.

34

143(2)

criminal liability with fine extending upto Rs. 5,000/-, for failure to keep a register of charges in the Registered Office.

35

144(3)

criminal liability with fine extending upto Rs. 500/-, with a further fine of Rs. 200/- per day for the refusal period, for refusing an inspection of the register of charges and the copies of instruments creating charges.

36

146(4)

criminal liability with fine extending upto Rs. 500/- per day, for failure to have a Registered Office and to give a notice of the situation of the Registered Office and of every change thereof.

37

147(3)

criminal liability with fine extending upto Rs. 5,000/-, for not displaying the name of the company and not displaying the name and address of Registered Office in all letter heads.

38

148(2)

criminal liability with fine extending upto Rs. 10,000/-, for failure to mention the subscribed and paid up capital, wherever authorised capital is mentioned in a statement.

39

149(6)

criminal liability with fine extending upto Rs. 5,000/- per day, whenever a company commences business or exercises borrowing powers in violation of Section 149.

40

150(2)

criminal liability with fine extending upto Rs. 500/- per day, for not keeping a register of members and not entering therein, the relevant particulars.

41

151(4)

criminal liability with fine extending upto Rs. 500/-, for not keeping an index of members.

42

152(3)

criminal liability with fine extending upto Rs. 500/-, for not maintaining a register of debenture holders and not entering therein, the relevant particulars.

43

153B(3)

criminal liability with fine extending upto Rs. 5,000/-, with further fine of Rs. 100/- per day during which failure continues, for failure to make a declaration about the shares held in trust and criminal liability for the trustee with imprisonment for a false declaration.

44

154(2)

criminal liability with fine extending upto Rs. 5,000/- per day, for closing the register of members without giving notice.

45

157(3)

criminal liability with fine extending upto Rs. 500/- per day, for failure to keep foreign register of members.

46

158(9)

criminal liability with fine extending upto Rs. 500/-, for failure to transmit to the Registered Office in India, of a copy of every entry made in the Foreign Register.

47

162

criminal liability with fine extending upto Rs. 500/- per day, for failure to file with the Registrar, an annual return and the certificates to be annexed thereto.

48

163(5)

criminal liability with fine extending upto Rs. 500/- per day, for refusal to allow an inspection of registers, indexes, returns and copies of certificates and documents.

49

165(9)

criminal liability with fine extending upto Rs. 5,000/-, for not holding a statutory meeting and not filing the statutory report with the Registrar.

50

168

criminal liability with fine extending upto Rs. 5,000/- and further liability fine of Rs. 2,500/- per day for continuing with default, in holding a meeting of the company in accordance with Section 166 or in complying with the directions issued u/s 167.

51

176(2)

criminal liability with fine extending upto Rs. 5,000/-, for failure to include a statement in the notice of meeting that proxies are allowed.

52

176(4)

criminal liability with fine extending upto Rs. 10,000/-, for extending an invitation to appoint someone as a proxy.

53

188(8)

criminal liability with fine extending upto Rs. 50,000/-, for failure to send notice of resolutions by circulation.

54

192 (5)

criminal liability with fine extending upto Rs. 200/- per day, for failure to print and file with the Registrar, certain resolutions and agreements.

55

192(6)

criminal liability with fine extending upto Rs. 100/- per day, for failure to issue copy of resolutions and agreements to its members.

56

192A (6)

criminal liability with fine extending upto Rs. 50,000/-, for not complying with sub-sections (1) to (4) of Section 192 in respect of default made by the company and the Officers of the company.

57

193 (6)

criminal liability with fine extending upto Rs. 500/- for failure to cause the minutes of proceedings of general meeting and of Board and other meetings, to be recorded in the books.

58

197(2)

criminal liability with fine extending upto Rs. 5,000/- for circulating or advertising any report of the proceedings of general meetings, if it does not include the matters required by Section 193 to be contained in the minutes.

59

202

criminal liability with imprisonment for a term up to 2 years, or fine extending upto Rs. 50,000/-, or both, if an undischarged insolvent discharges any function as director or manager of any company or directly or indirectly takes part in the promotion, formation or management of any company.

60

203(7)

criminal liability with imprisonment for a term up to 2 years, or fine extending upto Rs. 50,000/-, or both, if any person restrained from managing company acts in contravention as director or directly or indirectly takes part in the promotion, formation or management of any company.

61

205A(8)

criminal liability with fine extending upto Rs. 5,000/- per day, for failure to pay dividend or to transfer the amount to the special dividend account.

62

207

criminal liability with imprisonment for a term up to 3 years, and with fine extending upto Rs. 1,000/- per day, for failure of the Director to distribute dividends within 30 days to the shareholders.

63

209(5)

criminal liability with imprisonment for a term up to 6 months, or with fine extending upto Rs. 10,000/-, or with both, for failure by the company to keep at its registered office proper books of account.

64

209A(8)

criminal liability with fine extending upto Rs. 50,000/-, and with imprisonment for a term up to 1 year, for failure of every Director, other officer or employee to produce books of account, other books and papers of the company for inspection.

65

210(5) & amp; (6)

criminal liability with imprisonment for a term up to 6 months, or with fine extending upto Rs. 10,000/-, or both for failure of the Director, or any person charged with such duty, to lay the balance sheet and profit of loss account before the company.

66

211(7) & amp; (8)

criminal liability with imprisonment for a term up to 6 months, or with fine extending upto Rs. 10,000/-, or both, if managing director or manager or officer or employee of the company, or any person having been charged with duty, fails to give a true and fair view of the state of affairs of the company in the balance sheet.

67

212(9) & amp; (10)

criminal liability with imprisonment for a term up to 6 months, or with fine extending upto Rs. 10,000/-, or both, if managing director or manager or officer or employee of the company or any person having been charged with duty, fails to include particulars as to its subsidiaries in the balance sheet.

68

217(5) & amp; (6)

criminal liability with imprisonment for a term up to 6 months, or with fine extending upto Rs. 20,000/-, or both, for failure of the Director, or any person having been charged with duty, to attach the report of its Board of Directors, and for signing the report which is not in conformity with the provisions by the Chairman.

69

218

criminal liability with fine extending upto Rs. 5,000/-, for issuing, circulating or publishing the copy of unsigned balance sheet and profit and loss account and for issuing, circulating or publishing balance sheet without annexures.

70

219(3) & amp; (4)

criminal liability with fine extending upto Rs. 5,000/-, for failure of every officer of the company to send copy of the balance sheet and auditors report to every member of the company or persons so entitled and for failure of non furnishing of a copy on demand to a person entitled to it.

71

220(3)

criminal liability with fine extending upto Rs. 500/- per day, for failure to file with the Registrar, copies of balance sheet and profit and loss account.

72

221(4)

criminal liability with imprisonment for a term up to 6 months, or with fine extending upto Rs. 50,000/-, or both, for failure to furnish particulars or information in the balance sheet or profit and loss account, to the company and the company auditor.

73

223(4)

criminal liability with fine extending upto Rs. 500/- per day, for failure to publish statement in the Form in Table F.

74

224(4)

criminal liability with fine extending upto Rs. 5,000/-, for failure to give notice to the Central Government of the fact no auditors are appointed or re-appointed.

75

232

criminal liability with fine extending upto Rs. 5,000/-, for non-compliance of the provisions contained in Sections 225 to 231 such as passing resolutions in appointment or removal, qualifications, powers and duties of the auditors, auditing of accounts of branch office, signing auditor''s report, etc

76

233

criminal liability with fine extending upto Rs. 10,000/-, if any person other than the auditor signs the report or authenticates the document which is not in conformity with the requirements u/s 227 and 229.

77

233A(5)

criminal liability with fine extending upto Rs. 5,000/-, for failure to furnish to the special auditor the information required for special audit.

78

233B

(11)

criminal liability with fine extending upto Rs. 50,000/-, in case of company and criminal liability with imprisonment for a term up to 3 years, or with fine extending up to Rs. 50,000/-, in case of officer of the company, for failure to comply with the requirements for audit of cost accounts of the company.

79

234(4)

criminal liability with fine extending up to Rs. 5,000/- and in case of continuing offence, additional fine of Rs. 500/- per day, for refusing or neglecting to furnish information or explanation or to produce books and papers called for by the Registrar.

80

240(3)

criminal liability with imprisonment for a term up to 6 months, or with fine extending upto Rs. 20,000/-, or both, for failure to furnish information or to produce books and papers or to appear before the inspector or to sign the notes of any examination.

81

244

civil liability for damages for fraud, misfeasance or other misconduct in connection with the promotion of a company, instituted by Central Government after an inspection u/s 239

82

250(10)

criminal liability with fine extending upto Rs. 50,000/-, if a person exercises any right in respect of any shares or appoints proxy or transfers shares in contravention of any order, when he is not entitled to do so.

83

266(G)

criminal liability with fine extending up to Rs. 5,000/- and in case of continuing offence, with further fine of Rs. 500/- every day for violation of provisions of Sections 266A or 266C or 266D or 266E.

84

269(11)

criminal liability with imprisonment for a term up to 3 years, and with fine extending upto Rs. 500/- per day, for failure of the company to pay the fine or of the default officer to pay the fine or to refund the entire amount paid to the managing or whole time director or manager whose appointment was made in contravention of the requirements of Schedule XIII.

85

272

criminal liability with fine extending upto Rs. 500/- per day, if any person acts as a director even after the expiry of two months of share qualification.

86

279

criminal liability with fine extending upto Rs. 50,000/- in respect of each company, for acting as a director of more than fifteen companies.

87

283

criminal liability with fine extending up to Rs. 5,000/- per day, if a person functions as a director when such office has become vacant on account of disqualifications.

88

286(2)

criminal liability with fine extending upto Rs. 1,000/-, for failure to give notice of meeting of the Board of Directors to every director.

89

292A

(11)

criminal liability with imprisonment for a term up to 1 year, or with fine extending upto Rs. 50,000/-, or with both, for failure to comply with constitution of audit committee or to disclose the composition of committee in the annual report or to record the reasons for not accepting the recommendations of the audit committee.

90

293A(5)

criminal liability with imprisonment upto 3 years and fine in case of officer and fine of three times of the amount in case of company, for making contribution without authorisation by resolution of the Board of Directors.

91

294(8)

criminal liability with fine extending upto Rs. 50,000/-, with further fine of Rs. 500/- per day, for failure to produce books and papers or to assist the person appointed to investigate and report on the terms and conditions of the appointment of sole selling agent.

92

295(4)

criminal liability with fine extending upto Rs. 50,000/- or with simple imprisonment up to six months, if a person is a party to make any loan or to give guarantee or to provide any security in connection with loan made by any other person, without the approval of the central Government.

93

300(4)

criminal liability with fine extending upto Rs. 50,000/-, if a director knowingly participates or votes in Board''s proceedings knowingly, when he has an interest in the contract or arrangement.

94

301(4)

criminal liability with fine extending upto Rs. 5,000/-, for failure to keep registers separately for contracts or arrangements or to place before the Board meeting and for signature of all the directors present at the meeting.

95

302(5)

criminal liability with fine extending upto Rs. 10,000/-, for failure to disclose to members of the interest of the director in contract or variation within 21 days.

96

303(3)

criminal liability with fine extending upto Rs. 500/- per day, for failure to keep a register containing the particulars of its directors, managing director, manager and secretary or to send to the Registrar in the prescribed form about any change of directors, managing directors, managers or secretaries.

97

304(2)

criminal liability with fine extending upto Rs. 500/, for refusal of inspection by any member of the company or any other person, of the register of directors.

99

305(1)

criminal liability with fine extending upto Rs. 5,000/-, for failure of the director, managing director, manager or secretary, who is appointed or relinquished the office, to disclose the particulars relating to relinquishment of the office in the other body corporate within 21 days.

99

307 (7) & amp; (8)

criminal liability with fine extending upto Rs. 5,000/- in case of failure to produce the register at the commencement of annual general meeting and Rs. 50,000/- with further fine of Rs. 200/- per day in case of failure to keep register of directors shareholdings and debentures or for refusing inspection of the register.

100

308(3)

criminal liability with imprisonment up to two years or with fine extending upto Rs. 50,000/-, for failure to give notice in writing to the company about the disclosure of shareholdings or to read the notice at the meeting of the Board, if it is not given at a meeting.

101

314(2C)

civil liability for holding an office of profit in contravention of 314 (1B), to refund the remuneration received

320(3)

criminal liability with fine up to Rs. 2,000/-, for failure of the Director or any person to take reasonable steps to secure particulars of the payment proposed to be made by transferees or other person regarding shares.

102

322(3)

criminal liability with fine extending upto Rs. 10,000/- and also damages, for failure to add statement that the liability of the director is unlimited or to give notice in writing before he accepts office that his liability is unlimited.

103

370(IE)

criminal liability with fine extending upto Rs. 500/- and with further fine of Rs. 50/- per day, for failure to keep a register containing the names of all bodies corporate, loan made, guarantee given or security provided, within 3 days before the commencement of Act, 1960 or within 3 months after the commencement of the Act, 1960.

104

371

criminal liability with fine extending upto Rs. 50,000/- or with simple imprisonment for 6 months, if a person is a party to making of any loan or to give guarantee or provide any security, without the authorisation by a special resolution of the lending company.

105

372(8)

criminal liability with fine extending upto Rs. 500/- and with further fine of Rs. 50/- per day, for failure to keep a register of all investments in shares of any other body corporate or to enter in the register within 7 days before the commencement of the Act, 1960 or within 6 months after the commencement of the Act, 1960.

106

372A(9)

criminal liability with imprisonment up to two years or with fine extending upto Rs. 50,000/-, if a company make any loan to any other body corporate or give any guarantee or provide security in connection with a loan made by any other person, acquire, purchase the securities exceeding sixty percent of its paid up share capital, without the resolution of the meeting or fixing the rate of interest lower than the prevailing bank rate.

107

372A

(10)

criminal liability with fine extending upto Rs. 5,000/- and with further fine of Rs. 500/- per day, for failure to keep a register with particulars relating to investment or loan made, guarantee given or security provided to any body corporate.

108

374

criminal liability with fine extending upto Rs. 50,000/-, for failure to comply with the requirements of inter-corporate loans and investments or to maintain a register with particulars of such loans and investments.

109

383A

(1A)

criminal liability with fine extending upto Rs. 500/- per day, for failure to have a whole-time secretary.

110

391(5)

criminal liability with fine extending upto Rs. 100/- per copy, for failure to annexe a copy of the order sanctioning any compromise or arrangement with every copy of the memorandum of company or with every copy of the instrument or defining the constitution of the company.

111

393(4)

criminal liability with fine extending upto Rs. 50,000/-, for failure to send statement setting forth the terms of the compromise or arrangement along with the notice to creditors calling for the meeting.

112

394(3)

criminal liability with fine extending upto Rs. 500/-, for failure to cause a certified copy of the order for filing with the Registrar for registration within 30 days of the order.

113

395(4A)

criminal liability with fine extending upto Rs. 5,000/-, for issuing a circular containing or recommending acceptance of offer, until it is registered.

114

404(4)

criminal liability with fine extending upto Rs. 50,000/-, for failure to file with the Registrar the certified copy of every order altering or giving leave to alter memorandum of articles within 30 days.

115

407(2)

(c)

criminal liability with imprisonment for a term up to one year and with fine extending upto Rs. 50,000/-, if any person acts as a managing or other director or manager, whose agreement is terminated or set aside, without the leave of the court.

116

416(3)

(b)

criminal liability with fine extending upto Rs. 2,000/-, for failure of the person who enters into a contract, to make memorandum in writing of the terms of the contract or to deliver the memorandum to the company and copies to all directors or to file the memorandum before the Board of directors in the meeting.

117

420

criminal liability with imprisonment for term up to six months or with fine extending upto Rs. 10,000/-, for failure to deposit the money of any employee or to deposit provident fund contributed by the employees or to refuse to show the bank receipt to the employee for deposit of provident fund or securities.

118

423

criminal liability with fine extending upto Rs. 2,000/-, for failure to file an abstract of receipts and payments with the Registrar or to mention about the appointment of receiver in the voices or business letter of the company.

119

426

civil liability of contributories in the event of winding up

120

427

civil liability of managers and directors with unlimited liability in case of winding up

121

454(5)

criminal liability with imprisonment for a term up to two years or with fine up to Rs. 1,000/- per day, for failure to furnish statement to the Official Liquidator, in the prescribed form containing the particulars of the assets of the company, debts and liabilities, details of creditors or to submit within 21 days from the relevant date.

122

481(3)

criminal liability with fine extending upto Rs. 500/- per day, for failure of the Liquidator to forward the order of dissolution to the Registrar within 30 days of the order.

123

485(2)

criminal liability with fine up to Rs. 500/- per day, for failure to publish in the Official Gazette and in some newspapers, the resolution of voluntary winding up, within 14 days of the resolution.

124

488(3)

criminal liability with imprisonment for a term up to 6 months or with fine extending upto Rs. 50,000/- or with both, if a director makes a declaration that the company will be able to pay its debts in full within the period specified therein, without having reasonable grounds for such opinion.

125

493(3)

criminal liability with fine extending upto Rs. 1,000/- per day, for failure to give notice to the Registrar of the appointment of the liquidator, vacancy in the office of the liquidator and the names of liquidators within ten days.

126

495(2)

criminal liability with fine extending upto Rs. 5,000/-, for failure of the liquidator to summon meeting of the creditors and to lay before meeting a statement of assets and liabilities of the company.

127

496(2)

criminal liability with fine extending upto Rs. 1,000/-, for failure of the liquidator to call for general meeting of the company at the end of each year after winding up and to lay before meeting an account of his acts and dealings and of the conducting of winding up, with statement in prescribed form containing particulars of the proceedings in, and position of, the liquidation.

128

497(3)

criminal liability with fine extending upto Rs. 500/- per day, for failure of the liquidator to send copy of the account of the winding up to the Registrar and the

Official Liquidator and to make a return of the holding of the meeting and of the date thereof, within one week after the meeting.

129

500(6)

criminal liability with fine extending upto Rs. 10,000/-, for failure of the company to cause meeting of the creditors or to publish notice of meeting of creditors in the Official Gazette and in two newspapers, or failure of the Board of directors to cause a statement of the company''s affairs with list of creditors or for failure of the director appointed to preside at the meeting of creditors to attend and preside.

130

501(1)

criminal liability with fine extending upto Rs. 500/- per day, for failure to give to the Registrar the notice of resolution passed at creditors meeting within ten days.

131

508(2)

criminal liability with fine extending upto Rs. 1,000/-, for failure of the liquidator to call general meeting of the company and meeting of the creditors every year after winding up or to lay before meeting an account of his acts and dealings, with a statement in the prescribed form with particulars of the proceedings in, and position of, the winding up.

132

509(7)

criminal liability with fine extending upto Rs. 5,000/-, for failure of the liquidator to call a general meeting of the company or meeting of the creditors, after the dissolution of the company.

133

513(2)

criminal liability with fine extending upto Rs. 10,000/-, if any body corporate acts as liquidator of a company in a voluntary winding up.

134

514(b)

criminal liability with fine extending upto Rs. 10,000/-, if a person secures appointment as the liquidator or prevents others from securing appointment as liquidator, by giving or agreeing to give any gratification.

135

516(2)

criminal liability with fine extending upto Rs. 500/- per day, for failure of the liquidator to publish in the Official Gazette and to deliver to the Registrar for registration, of his appointment, within thirty days.

136

533

civil liability to the extent of mortgage or charge for any fraudulent preference made u/s. 531

137

538(1) & amp; (2)

criminal liability with imprisonment for a term up to 5 years or with fine or with both for not delivering to the liquidator all the properties, movable or immovable, books and papers, etc. criminal liability with imprisonment for term up to 3 years or with fine or with both, if any person who takes in pawn or pledges or otherwise receives any property obtained on credit, knowing it to be pawned, pledged or disposed of.

138

539

criminal liability with imprisonment for a term upto 7 years and with fine, if any officer or contributory of a company, destroys, alters or is privy to destruction or falsification of books, papers or securities with intent to deceive any person.

139

540

criminal liability with imprisonment for a term up to 2 years and with fine, if any person induces any person to give credit to the company by false pretences or made or cause to be made any gift or transfer of or charge on the property of the company or concealed or removed any part of the property to defraud creditors.

140

541

criminal liability with imprisonment for a term up to one year, for failure to show that proper books of account were kept.

141

542 (3)

criminal liability with imprisonment for a term up to two years or with fine extending upto Rs. 50,000/- or with both, if the business of the company has been carried on with intent to defraud creditors or others.

142

545

power of company court to order the prosecution of officers and members of the company, who are found, in the course of winding up, to have carried on the business of the company with intent to defraud the creditors

143

547(2)

criminal liability with fine extending upto Rs. 5,000/-, if the invoice or order for goods or business letter does not contain a statement that the company is being wound up.

144

550(4)

criminal liability with imprisonment for a term up to 6 months or with fine extending upto Rs. 50,000/- or both, if any person destructs books and papers of wound up company within five years of dissolution.

145

551

criminal liability with fine extending upto Rs. 5,000/- per day, for failure of liquidator to file a statement or to forward a copy of such statement to Central Government or State Government if they are members or refusing the creditor to inspect the statement and to receive a copy or extract therefrom.

146

559(2)

criminal liability with fine extending upto Rs. 500/- per day, for failure of any person, on whose application the dissolution was declared void, to file certified copy of the order with the Registrar.

147

598

criminal liability with fine extending upto Rs. 10,000/- and in case of continuing offence, with an additional fine up to Rs. 1,000/- per day, for failure of any foreign company to comply with the provisions relating to documents, return, balance sheet and profit and loss account to be delivered to Registrar, etc.

148

606

criminal liability with imprisonment for a term up to 6 months or with fine up to Rs. 50,000/- or with both, if any person issues, circulates or distributes in India any prospectus or form for subscription of shares or debentures of a company outside India.

149

607

civil liability for mis statement in prospectus relating to shares in company incorporated outside India

150

614A(2)

criminal liability with imprisonment for a term up to 6 months, or with fine, or with both, for failure of an officer or employee to register with the Registrar return, account or other document within the time stipulated by Court.

151

615(6)

criminal liability with imprisonment for a term up to 6 months, or with fine up to Rs. 10,000/-, or with both, for failure of a company to furnish information or statistics with regard to its constitution or to produce records or documents for inspection or for furnishing incorrect or incomplete information or statistics.

152

628

criminal liability with imprisonment for a term up to 2 years and with fine, if any person makes a false statement in material particulars or omits any material particulars, in any return, report, certificate, balance sheet, prospectus or statement.

153

629

criminal liability with imprisonment for a term up to 7 years and with fine, if any person gives false evidence upon oath or in any affidavit about the winding up of a company.

154

629A

criminal liability with fine extending upto Rs. 5,000/- and in case of continuing one, further fine of Rs. 500/- per day, if any person contravenes any provision of this Act or direction or exemption in relation to any matter given or granted.

155

630

criminal liability with fine extending upto Rs. 10,000/-, if any officer or employee of the company wrongfully obtains possession of or withholds the property of the company;

criminal liability with imprisonment for a term up to 2 years in default to deliver the property wrongfully obtained or withheld.

156

631

criminal liability with fine extending upto Rs. 500/-, if a person carry on business under the title including the word Limited or Private Limited, unless duly incorporated with limited liability or as private company.

157

642

criminal liability with fine up to Rs. 5,000/- and in case of continuing one, with further fine of Rs. 500/- per day, for contravention of any rule made by the Central Government by notification in the Official Gazette, in addition to the powers u/s 641.

31. A careful perusal of all the penal provisions contained in the Companies Act, 1956 listed in the table contained in the preceding paragraph would show that there are different categories of offences, dealt with by the Act. These offences would broadly fall under the following categories, namely (a) failure to comply with the statutory requirements such as holding of meetings, maintenance of books, filing of returns, etc; (b) failure to discharge the obligations to the members (shareholders); (c) failure to discharge the obligations towards outsiders such as applicants for allotment of shares, debentures, etc; and (d) failure to comply with the obligations to the creditors.

32. Persons, who could be prosecuted for the above categories of offences are (i) the company, (ii) the promoters, (iii) the contributories, (iv) the directors or (v) managers or (vi) persons, who subscribed to certain statements or reports. Apart from these persons, who could be prosecuted under the above categories of cases, there are also other persons, who could be prosecuted under different other categories. The Act makes even the Official Liquidator liable for punishment in respect of certain acts of omission and commission. Persons, who make false claims with the Official Liquidator are also made liable for punishment.

33. Keeping in mind the broad scheme of the penal provisions of the Act, let us now take a look at the courts, which can take cognizance of the above offences and prosecute any of the above categories of persons:

(i) u/s 454(5A), the court, which makes the winding up order, is itself entitled to take cognizance of an offence under Sub-Section (5) of Section 454 and try the offence in accordance with the procedure laid down in the Code of Criminal Procedure for the trial of summons cases by Magistrates;

(ii) If, in the course of winding up of a company, the court finds that the business of the company was carried on with intent to defraud the creditors, the winding up court can declare any person u/s 542(1) to be a person responsible, without any limitation of liability, for all or any of the debts or liabilities of the company. But, what is provided by Section 542(1) is only a civil liability and by Section 542(4), the criminal liability of persons concerned is reserved intact. But, what is important to note is that the declaration of liability u/s 542 is to be made by the winding up court. u/s 545, the court before which proceedings for winding up are pending, can direct the prosecution of an offender.

(iii) u/s 614A, "any court trying an offence" for a default in compliance with any provisions of this Act, can give direction to the person concerned to file such return or other document along with an additional fee. This Section uses the expression "any court trying an offence";

(iv) u/s 621(1), no court can take cognizance of any offence under the Act allegedly committed by any company or any officer thereof, except on a complaint by the Registrar or a shareholder or a person authorised by the Central Government in that behalf. If the offence relates to the issue and transfer of securities and non payment of dividend, the court can take cognizance of a complaint in writing by a person authorised by SEBI. But, the provisions of Section 621(1) would not apply to any action taken by the Official Liquidator in respect of any offence relating to matters included in Part VII and in respect of matters relating to winding up;

(v) u/s 622, no court inferior to that of a Presidency Magistrate or the Magistrate of a First Class shall try any offence against the Act;

(vi) u/s 623, an offence committed by a person within a presidency town and which is punishable only with fine, can be tried summarily by a Presidency Magistrate;

(vii) Section 624 makes every offence against the Act non cognizable, irrespective of anything contained in the Code of Criminal Procedure. The Companies Act, 1956 contains a special provision u/s 625, for award of compensation in cases of frivolous or vexatious prosecution. This section supersedes the provisions of Section 250 of the Code of Criminal Procedure.

34. Apart from the above provisions, there are two interesting and important provisions in the Act. They are Sections 626 and 627. u/s 626, the court

imposing any fine under the Act can direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings or in or towards the rewarding of the person, on whose information, the fine is recovered. Along with the words "the court", the words "or tribunal" were inserted by the Companies (Second Amendment) Act, 2002. This gives a clue that the expression "the court" found in Section 626 indicates only the High Court. The expression "the court" appearing in Section 626, if taken to mean only the Court of a Magistrate of First Class, then the words "or tribunal" could not have been inserted by the 2002 Act.

35. Section 627 is of more importance and hence, it is extracted as follows:

627. Production and inspection of books where offence suspected-

(1) If, on an application made to a Judge of a High Court in Chambers or Tribunal as the case may be, by the Public Prosecutor of the State or by the Central Government or by a company prosecutor appointed u/s 624A it is shown that there is reasonable cause to believe that any person has, while he was an officer of a company, committed an offence in connection with the management of the company''s affairs, and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made-

(i) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating, and obtaining evidence of the commission of, the offence; or

(ii) requiring the manager of the company or such other officer thereof as may be named in the order, to produce the said books or papers or any of them to a person, and at a place and time, named in the order.

(2) Sub-Section (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company''s affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in clause (ii) thereof shall be made by virtue of this Sub-Section.

(3) No appeal shall lie from the decision of a Judge of the High Court or Tribunal, as the case may be under this section.

36. Section 627 appears to be a special provision conferring a special power upon the Company Court. Under this section, an application can be filed before the High court for a direction to produce the books of a company or to have those books inspected, if the Court has reason to believe that an officer has committed an offence in connection with the management of the company''s affairs and that evidence of the commission of the offence is to be found in any books. If the power to prosecute any company or officer of the company had been vested only in the Court of a Magistrate of First Class, the power to inspect the books or to obtain evidence of the commission of the offence need not have

been conferred upon the High Court. The Court of a Magistrate of First Class would have such powers under the Code of Criminal Procedure itself.

37. Yet another interesting provision in the Companies Act, 1956, is in section 621-A. This section confers power upon the Company Law Board and even the Regional Director, to compound any offence punishable under this Act, provided that the offence is not punishable with imprisonment only or with imprisonment and fine. This power can be exercised, both before and after the institution of prosecution in the court. This is notwithstanding anything contained in the Code of Criminal Procedure. Therefore, to say that a Regional Director or the Company Law Board is competent to compound an offence against the Act, even after the institution of prosecution, but the High Court, despite being a Special court, would not have the power to relieve a person u/s 633(2) after such institution, is antithetic to the scheme of the Act.

38. Keeping the above provisions in mind, if we now get back to Section 633, the plain language of Section 633(1) would indicate the following:

(i) the power to grant relief under Sub-Section (1) of Section 633 is conferred only upon "the court" hearing the case in relation to any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company;

(ii) the relief given under the said provision is only to an officer of the company and not to the company itself; and

(iii) the relief granted under the provision is only from criminal liability and not civil liability.

39. There can be no doubt about the fact that Sub-Section (1) of Section 633 may also apply, at times, to companies, which are in the process of being wound up. Therefore, by virtue of Section 621(2), the restrictions contained in section 621(1), for taking cognizance of offences against the Act, will not apply to such proceedings. This is why the jurisdiction u/s 633(1) is obviously concurrent as seen from the use of the expression "the court" and not the expression "the High Court".

40. In so far as Sub-Section (2) of Section 633 is concerned, the language employed therein is distinct and different from Sub-Section (1) only in respect of two things, namely (a) that the power to grant relief is conferred only upon the High Court; and (b) that such a power is conferred even in cases of apprehension of any proceedings for negligence, default, breach of duty, misfeasance or breach of trust.

41. There can be no doubt about the fact that "a proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company" can be brought either against a company in liquidation or against other companies. In respect of companies in liquidation, the proceedings for negligence, default, etc., are brought before the Company Court itself. Therefore,

in such cases, the question as to whether proceedings are actually pending or proceedings are merely apprehended, loses significance.

42. Similarly, the companies, which are not in winding up, but which file petitions under Sections 391 to 394 for sanctioning some kind of a scheme, also do come up with applications for relieving the officers from criminal liability, either actually pending or merely apprehended. This is despite the fact that no proceeding for negligence, default, etc., as contemplated by Section 633(1) is actually pending before the High Court.

43. It is only on account of the above factors that Section 633 makes a distinction between (i) cases where proceedings for negligence, default, etc., have already been initiated; and (ii) cases in which such proceedings are merely apprehended. The Courts before which, such proceedings are pending, could either be the Courts of Magistrates or the District Court/High Court, as the case may be. Therefore, Sub-Section (1) of Section 633 confers jurisdiction upon all these three courts in respect of matters that are actually pending. But, in respect of matters, which are apprehended, the intention behind Sub-Section (2) is to confer an exclusive jurisdiction upon the High Court.

44. Consequently, a proper reading of Section 633(1) and (2) would be to say that the distinction between these two sub-sections is not court-centric, but only status-centric. In other words, the sub-sections maintain a distinction only with respect to the stage of the proceeding, whether it be at the stage of contemplation or at the stage of actual pendency. The distinction has nothing to do with court, especially the High Court.

45. To put it differently, the jurisdiction of a Magistrate of First Class or the jurisdiction of a District Court, to grant relief, is confined only to cases, which are actually pending before them. These courts do not have the jurisdiction to grant relief in respect of the apprehended proceedings. But, the High Court is conferred with an additional power u/s 633(2) even to take care of the contemplated proceedings also. The power u/s 633(2) is in addition to the power already available to the High Court u/s 633(1) and also under several other provisions of the Code. Such an additional power cannot be taken to mean the imposition of a restraint or limitation on the jurisdiction of the High Court to grant relief in pending proceedings. In other words, the conferment of an additional power under sub-section (2), to grant relief even in respect of anticipated proceedings, cannot be taken to mean that the power vested in sub-section (1) is taken away. Therefore, with great respect to the learned Judges of several High Courts, I am of the considered view that Section 633(2) does not limit the jurisdiction and powers of the High Court only to "apprehended proceedings". This is an additional power available to the High Court in view of the larger jurisdiction exercised by the High Court in respect of several matters prescribed under the Companies Act. In view of the above, I am unable to sustain the preliminary objection raised by the applicant herein with regard to the maintainability of the main proceedings. Therefore, this application is dismissed. However, it will be

open to the applicant herein to file a counter to the main petition on merits and show that the petitioners in the main petition are not entitled on merits, to be relieved of the criminal liability.