

intercorp Industries Ltd. Vs. State of Delhi and ors.

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Court : Delhi

Decided On : Apr-30-2007

Reported in : [2008]143CompCas241(Delhi); 2007(96)DRJ378;
[2008]87SCL212(Delhi)

Judge : S. Ravindra Bhat, J.

Acts : [Companies Act, 1956](#) - Sections 255, 256, 268, 269 and 629A; Code of Criminal Procedure (CrPC) - Sections 468(2)

Appeal No. : Crl. M.C. Nos. 112 and 115 of 2005

Appellant : intercorp Industries Ltd.

Respondent : State of Delhi and ors.

Advocate for Def. : Baldev Malik and ; Dincur Bajaj, Advs. for respondent No. 2

Advocate for Pet/Ap. : V. Shrivastava and; P. Mohanty, Advs

Disposition : Petition allowed

Judgement :

S. Ravindra Bhat, J.

1. The petitioner claims to be aggrieved by criminal proceedings initiated on a complaint filed by the Registrar of Companies for alleged contravention of Section

255 of the [Companies Act, 1956](#), for which allegedly Section 629A enacts offence punishable with fine.

2. The principal allegations of the complainant registrar in Crl. M. C. No. 115 of 2005, were that the petitioner-company did not follow the mandatory procedure of indicating, which of its one-third directors were to retire on rotation. In Crl. M. C. No. 112 of 2005, the allegation likewise is that the petitioner was guilty of contravening Section 268 in so far as it relates to appointment of the managing director.

3. The ground urged is that Section 629A does not prescribe an offence. Counsel relied upon the judgment of the Calcutta High Court reported as Registrar of Companies v. Bharat Produce Co. Ltd. [1980] 50 Comp Case 250. It was urged that the complaint was not maintainable since it was filed far beyond the time prescribed. Learned Counsel urged that the time prescribed in such a case would be within six months being in terms of Section 468(2)(a) of the Criminal Procedure Code (hereafter 'the Code'). It was urged that the relevant years, according to allegations of the Registrar of Companies, when the offences are said to have occurred, were 1996-97, 1997-98 and 1998-99. The complaint was filed on October 18, 2001, i.e., beyond the six months limitation period. Lastly, it was urged that the trial court proceeded mindlessly and issued a blanket order on the basis of a cyclostyled format without considering the materials. Learned Counsel submits that there was no material in support of the complaint by way of an inspection report, etc., as averred by the registrar, on the record of the court.

4. Learned Counsel for the respondent opposed these proceedings for quashing and urged that the offences, namely, Sections 255 and 268 were continuing offence and, therefore, the court did not commit any error in law in issuing process. It was urged that inspection of the books of account and the affairs of the company for the purpose was carried out between August 10, 2000 and August 25, 2000, intermittently and the complaint was premised on the inspection report which revealed contravention of the various provisions. It was argued that the registrar had issued a show-cause notice on May 28, 2001 and thereafter proceeded to file the complaint.

5. The judgment in Registrar of Companies v. Bharat Produce Co. Ltd. [1980] 50 CompCase 250, of the Calcutta High Court considered the previous judgments of other High Courts as well as of that court, particularly, in Raghunath Swamp Mathur v. Har Swamp Mathur [1967] 37 Comp Case 802 : , by the Allahabad High Court and a judgment of the Queen's Bench in Sales-Matic Ltd. v. Hinchcliffe [1959] 1 WLR 1005 as well. It formed the opinion that Section 269 as it then stood was declaratory in nature and that having regard to the phraseology applied in Section 629A, contravention or violation of Section 269 did not amount to an offence. The petitioner has sought parity of reasoning with that decision to say that alleged violation of Section 268 does not amount to a punishable offence and they at best indicate an irregularity for which penalty can be imposed. At the relevant time, the penalty, was Rs. 500.

Though the judgment of the Calcutta High Court deals with Section 629A, in my opinion, the reasoning cannot be universally applied because the fact situations of the contravention alleged have to be seen on a case by case basis. Section 629A is a residuary provision, in the sense that it creates an offence for contravention of statutory obligations, wherever no specific offence is enacted. The court was in that case called upon to decide contravention of the pre-amended Section 269. However, that provision has undergone a complete overhaul after the amending Act of 1988.

6. As far as the issue of limitation is concerned, the facts show that the alleged contravention/offences took place in 1996-97, 1997-98 and 1998-99. The complaints also disclosed that copies of the annual reports were available as of August, 1998. The only reason for approaching the court in October, 2001, was that inspection took place in August, 2000, and a report was made available thereafter.

7. The phraseology of Sections 255, 256 and 268 are indicative of the legislative intention that contravention of these provisions constitute separate offences having regard to the circumstances. The company admittedly filed its annual returns ; they were available as in August, 1998, with the Registrar. The complaint pertains to years prior to that. thereforee, the year-wise position, as existing in the

annual report were well known to the Registrar. Such being the case, the Registrar was within his rights to approach the court with complaints having regard to the mandate of Section 468(2) of the Code of Criminal Procedure, within the time, i.e., six months, as he was possessed of all information. The Explanation about a report being supplied later, leading to discovery of facts, wears thin, because the offences relating to the directors and the managing director do not need 'discovery'-they are technical violations which can be gathered upon immediate publication of, or filing of balance-sheet or annual report by the company. The law of limitation is precisely meant to shut out stale claims, and its operation cannot be suspended to await 'discovery' of known facts by the person or body empowered to take action.

8. The complaints nowhere indicate that copies of the inspection report were filed in court ; there is no disclosure even about the date of those reports. Further, the impugned order issuing process shows that the trial court mechanically and in a cyclostyled format summoned the petitioner. These clearly betray a casual approach by the court.

9. In view of the above and having conclusions, I am of the opinion that the petitions are entitled to succeed. They are accordingly allowed. Criminal Complaints Nos. 680 of 2001 and 678 of 2001 pending before the ACMM, Tis Hazari, are hereby quashed.