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

\+ **Crl.MC No. 3579/2009**

Date of Decision: 01.03.2012

JIYUAN LI **…… Petitioner**

Through: Mr. Sushil Bajaj and Mr. D.K. Mathur, Advocates

Versus

REGISTRAR OF COMPANIES **…… Respondent**

Through: Mr. Baldev Malik with Mr. Arjun Malik, Advocates

And

Crl.MC No. 3811/2009

TIANJIN TIANSHI INDIA P. LTD. **…… Petitioner**

Through: Ms. Indu Malhotra, Sr. Adv. with Mr. Abdul, Mr. Vivek Jain, Advocates

Versus

REGISTRAR OF COMPANIES **…… Respondent**

Through: Mr. Baldev Malik with Mr. Arjun Malik, Advocates

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The present petitions assail the order dated 11.09.2007 passed by the Ld. Addl. Metropolitan Magistrate (ACMM) summoning the petitioners in CC No. 939/07.

2. The brief facts are that the Respondent/ Complainant i.e. Registrar of Companies (ROC) received a complaint regarding the affairs of M/s. Tianjin Tianshi India Pvt. Ltd. (the Company) being irregular and illegal. A letter dated 24.02.2004 was issued by the ROC to the company to inquire about its affairs. This was duly replied vide letter dated 15.04.2004. The reply was examined and thereafter an order dated 19.04.2004 under section 234(1) of the Companies Act (hereinafter referred to the "Act") was issued to the company which remained unresponded. Thereafter another order dated 16.06.2004 u/s 234 (3A) of the Act was issued by ROC requesting the Company to furnish the desired information, but no response was received. As no response was received qua the aforesaid two orders, a show cause notice dated 26.07.2005 was issued to the company u/s 234 (4)(a) of the Act which also did not evoke any response. Thereafter a report was sent by ROC to the Central Government in terms of section 234 (6) of the Act seeking advice for prosecution of company u/s 234 of the Act. It was thereafter that the Complaint (CC No. 939/2007) was filed in the Court of ACMM by the ROC against the Company and its functionaries including the petitioners. The ACMM passed the impugned order of summoning of all the accused including the petitioners.

3. The impugned order is assailed mainly on the ground that the same has been passed in a mechanical manner without ensuring that mandatory and statutory notice under Section 234 of the Act was issued to the petitioners. In this regard learned counsel for the petitioners relied

upon the judgments of HDFC Bank Ltd. v. Amit Kumar Singh 160 (2009) DLT 478 and Harman Electronics & Anr v. National Panasonic India Pvt. Ltd (2009) 1 SCC 720.

4. The cognizance taken by the ACMM was also assailed on the ground of limitation. It was submitted that the alleged offences being punishable with fine only, the limitation of taking cognizance under Section 468(2) Cr.PC was six months. It was submitted that in absence of there being any order of condonation of delay, the cognizance taken by learned ACMM was bad being beyond the period of limitation. Reliance was placed on ***Webcity Infosys Ltd. vs. Registrar of Companies*** [2007(98) DRJ 710].

5. Per contra, learned counsel for the respondent ROC submitted that this Court need not interfere in exercise of its powers under Section 482 Cr.PC at the stage of summoning. It was submitted that the letter dated 24.2.2004 of ROC would amount to intimation to the Company and their response thereto vide letter dated 15.4.2004 would indicate that they had the knowledge about the alleged offence. With regard to the plea regarding limitation, it was submitted by learned counsel for ROC that the offence being continuous, the bar of limitation was not applicable under Section 469 Cr.PC. It was submitted that in any case, the complaint was filed within six months of the approval of Central Government and so there was no delay on the part of Department. The learned counsel relied upon Bhagirath kanoria & Ors v. State of M.P.

AIR 1984 SC 1688 Srinivas Gopal v. Union Territory of Arunachal Pradesh (1988) 4 SCC 36, H.C. Bhasin & Anr v. Registrar of Companies {2008} 142 Comp Cas 518 (Delhi), Ajit Singh Thakur & Anr. v. State of Gujrat AIR 1981 SC 733, Sri Ramdas Motor Transport Ltd. v. Tadi Adhinarayana Reddy & Ors JT 1997 (10) SC 667, Anil Metre v. Registrar of Companies 107 (2003) DLT 113.

6. There is no dispute with regard to the proposition of law that the powers of this Court under Section 482 Cr.PC were to be exercised sparingly and in exceptional circumstances where there appeared to be glaring injustice or manifest error committed by the trial court. The question was raised as regards to the powers of this Court under Section 482 Cr.PC at the stage of summoning. In this regard, it may be stated that the law in this regard is trite that the powers under Section 482 Cr.PC of this Court is very wide and the very plenitude of the powers requires great caution in its exercise. Though this Court normally refrains from giving any prima facie decision in a case where the entire facts are incomplete and hazy and more so when the evidence has not been collected and produced before the Court and the factual and legal issues involved are of magnitude, but where it appears that there is apparent injustice or manifest error committed by the Court or even otherwise the ends of justice so required, this Court does exercise inherent powers to interfere. This will all depend on the facts of each case.

7. On the question raised regarding non-issuance of notice under Section 234 of the Act to the petitioners, it is seen that ROC issued a letter dated 24.2.2004 to the company to enquire about its affairs. The same was replied by the company vide letter dated 15.4.2004.

8. It is submitted that three orders dated 19.04.2004, 16.06.2004 and 26.07.2005 under Section 234 (1), 234 (3A) and 234 (4) (a) of the Act respectively were issued by the ROC to the petitioner company, but these evoked no response. However, from the perusal of the record, it can be seen that there is no evidence which was brought by the respondent to prima facie prove the service of such orders on the petitioner company. The receipt of such statutory orders is a sine-qua-non for alleging non-compliance of the orders of the respondent. Reply to the letter by the petitioner company cannot be equated to acknowledgement of a statutory notice as per the requirement of law. In the present case, absence of any documentary proof of service of such orders of ROC on the petitioner company indicates that the prosecution was initiated without giving any opportunity to the petitioner company to advance its reply. The respondent/complainant has made an averment regarding the issue of statutory orders, however, they are silent as regard to the factum of delivery or mode of proof of delivery of the said statutory orders. Thus, prima facie it is seen that the statutory orders under section 234 of the Act was not delivered to the petitioner and that being so the complaint was not maintainable.

9. Coming to the contention of the petitioner that cognizance by the Trial Court was barred by the limitation, the Trial Court record must be perused. The show cause notice to the petitioner was issued on 26.7.2005, whereas the cognizance of the offence by the learned Trial Court was taken on 11.9.2007. The contention of the counsel for the respondent that the complaint was filed within the period of limitation as the limitation period commenced from the date the Central Government gave its approval for prosecution, cannot be accepted as there is no embargo under Section 234 of the Act for the respondent to seek approval from the Central Government before initiating the prosecution against the petitioner. The period of limitation for taking cognizance of the offences commences when the knowledge of the commission of offence is gained by the prosecuting agency. Furthermore, there was no application on record advanced by the respondent for the condonation of delay in the Trial Court.

10. A distinction has been drawn between offences which take place when an act or omission is committed once for all and a continuing offence in the decision of the Supreme Court in *State of Bihar v. Deokaran Nenshi and Anr reported 1973 Cri L J 1347* In para 5 of the judgment it was opined as under:

> *"5. Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or*

complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and Therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when act or omission is committed once and for all."

11. The present offence arises out of a failure to comply with the statutory rule and such liability will continue until the requirement is complied with. It is not a case where the offence was repeated or committed on a daily basis after the initial default. Thus, the present offence is not a continuing offence and the complaint prima facie, is time barred.

12. In view of the above discussion, this seems to be a fit case for the exercise of the inherent powers possessed by this court under Section 482 CrPC to meet the ends of justice. Accordingly, the petition is allowed and the summoning order is quashed qua the present petitioners.

M.L. MEHTA, J.

March 01, 2012
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