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

+ CRL.M.C. 112/2005, CRL.M.C. 115/2005

April 30, 2007

1. CRL.M.C. 112/2005

M/S INTERCORP INDUSTRIES LTD. Petitioner
Through Mr. V. Shrivastava, Mr. P. Mohanty,
Advocates

versus

STATE OF DELHI & ORS Respondents
Through Mr. Dincur Bajaj, Advocate for R-2.
Mr. Baldev Malik, Advocate for the State.

2. CRL.M.C. 115/2005

M/S INTERCORP INDUSTRIES LTD. Petitioner
Through Mr. V. Shrivastava, Mr. P. Mohanty,
Advocates

versus

STATE OF DELHI & ORS. Respondents
Through Mr. Dincur Bajaj, Advocate for R-2.
Mr. Baldev Malik, Advocate for the State.

CORAM:

Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be
allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported
in the Digest? yes

Mr. Justice S. Ravindra Bhat (Open Court)

1. The petitioner claims to be aggrieved by criminal proceedings initiated on a complaint filed by Registrar of Companies for alleged contravention of Section 255 of the

Companies Act for which allegedly Section 629A enacts offence punishable with fine. The principal allegations of the complainant Registrar in CRL.M.C. 115/2005 were that the petitioner company did not follow the mandatory procedure of indicating, which of its 1/3rd Directors were to retire on rotation. In CRL.M.C. 112/2005 the allegation likewise is that the petitioner was guilty of contravening Section 268 in so far as it relates to appointment of Managing Director.

2. The ground urged is that Section 629-A does not prescribe an offence. Counsel relied upon the judgment of the Calcutta High Court reported as *Registrar of Companies vs. Bharat Produce Co. Ltd.*, 1980 Comp. Cas. 106. 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 “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 18th October, 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.

3. 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 10th August, 2000 and 25th August, 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 show cause notice on 28th May, 2001 and thereafter proceeded to file the complaint.

4. The judgment in *Bharat Produce Co. Ltd.* (Supra) of the Calcutta High Court considered the previous judgments of other High Courts as well as of that Court, particularly, in *Raghunath Swaroop Mathur vs. Har Swaroop Mathur*, 1968 CrL.L.J. 670 by the Allahabad High Court and a judgment of Court of Appeal 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 628-A, contravention or violation of Section 269 did not amount 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/-.

5. Though the judgment of the Calcutta High Court deals with Section 629-A, 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 269-A 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 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 Section 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. Therefore, 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) Cr.P.C. 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 directors and managing directors 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 no-where 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 concluded, I am of the opinion that the petitions are entitled to succeed. They are accordingly allowed. Criminal Complaints 680/2001 and 678/2001 pending before the ACMM, Tis Hazari, are hereby quashed.

S.RAVINDRA BHAT, J

APRIL 30, 2007

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