

(2010) 09 DEL CK 0413

Delhi High Court

Case No: Criminal M.C. No. 4007 of 2009

Ajay Jain

APPELLANT

Vs

Registrar of Companies NCT of
Delhi and Haryana

RESPONDENT

Date of Decision: Sept. 22, 2010

Acts Referred:

- Companies Act, 1956 - Section 628, 63
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 406

Citation: (2012) 107 CLA 450 : (2012) 170 CompCas 164 : (2010) 119 DRJ 545

Hon'ble Judges: S.N. Dhingra, J

Bench: Single Bench

Advocate: Abhay K. Das and S. Shalini, for the Appellant; Anuj Aggarwal, for the Respondent

Final Decision: Dismissed

Judgement

Shiv Narayan Dhingra, J.

This petition u/s 482 Cr.P.C. has been preferred by the petitioner for quashing the proceedings initiated in Complaint No. 477 of 2002 filed by Registrar of Companies under Sections 63 and 628 of the Companies Act, 1956 for making false statement in the prospectus in 1995.

2. It is submitted by counsel for the petitioner that the complaint does not show that a false statement was made by the petitioner. It only shows that the petitioner has utilized the funds for different purposes than what was stated in the prospectus and at the most an offence u/s 406 IPC was made out and not an offence under Sections 63 and 628 of the Companies Act. The other ground taken by the petitioner is that the period of limitation in filing the complaint had expired. The cognizance could be taken within three years from the date of knowledge of the offence and the period

of limitation shall start from the date of filing of prospectus and the complaint was therefore beyond the period of limitation. The third ground taken by the petitioner is that the directors of the company of petitioner had resigned from the company during the year 2000 and the company was taken over by other management and there was no complaint from any of the investors.

3. A perusal of complaint filed by the complainant would show that the petitioner had issued prospectus being a public limited company and the prospectus informed the shareholders that the petitioner would undertake business of leasing activities and shall do business of hire purchase of the properties. However, the balance sheet for the year 1999-2000 showed that 70% of the shareholders funds amounting to Rs. 2.05 crore was deployed by the petitioner as advance deposits to the firms and companies pertaining to the directors and others and the leasing activities was almost NIL and not carried out by the company and if it was there it was much below the projections. The company in the year 2000-01 indulged into sale and purchase of shares of more than Rs. 5 crore which was neither the object and business of the company as per public issue and the majority of valuable funds of the company have been diverted or siphoned off for objects other than the projected objects. It is submitted that the petitioner made untrue and misleading statement to the investors.

4. A false statement is a statement which has been made purposely so that people may believe existence of a fact which does not exist. In case of prospectus of a company, a statement of objects, which the directors had no intention to carry, amounts to false statement. The intention of making a false statement is to mislead or deceive the person to whom the statement is made. In this present case, the petitioner's company while issuing prospectus made a statement to intending investors that it would undertake the business of leasing and wanted people to subscribe to the shares for this purpose. It gave projections of profits and business of the company of only in the field of leasing. One can understand that the surplus funds of the company are deployed by the company in a businesslike and wise manner but one cannot understand that the business of the company is not even undertaken and the entire funds of the company are either invested in shares or in the firms and companies of the directors. It is thus prima facie apparent that from the very beginning, the directors had no intention to do business as set out in the prospectus and their intention was to mop up the funds from public and then to utilize the same for their own companies and firms in which they were directors or to invest in shares. It is thus obvious that the statement made in the prospectus was prima facie a false statement deliberately made knowing fully well that the funds were not going to be utilized for the purpose they were collected. I consider that the plea taken by the petitioner that the case falls u/s 406 IPC was not tenable and it was prima facie a case of deliberately making a false statement.

5. As far as limitation aspect is concerned, limitation of offences under Sections 63 and 628 of the Companies Act, 1956 starts from the date of knowledge of making a false statement. The Registrar of Companies learnt about making of false statement after filing of balance sheet in the year 1999-2000, therefore, limitation would start only after the date of filing of balance sheet and not from the date of issuing prospectus and this plea, therefore, is not tenable. Whether the directors had resigned or not which is a question of fact which cannot be gone into by this Court and only the trial court, during trial can decide whether the directors had resigned or they continued to be the directors. I find no force in this petition. The petition is hereby dismissed with no orders to costs.