

## Ajay Jain Vs Registrar of Companies NCT of Delhi and Haryana

**Court:** Delhi High Court

**Date of Decision:** Sept. 22, 2010

**Acts Referred:** Companies Act, 1956 â€” Section 628, 63  
Criminal Procedure Code, 1973 (CrPC) â€” Section 482  
Penal Code, 1860 (IPC) â€” 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.