HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

*****

Criminal Petition No.1360 OF 2018

M/s. Nusun Genetic Research Ltd &Other ...Petitioners/A1 & A2

And

Registrar of Companies,
(for Andhra Pradesh and Telangana)
II floor, Corporate Bhavan,
Bandlaguda, Nagole, Hyderabad-5000068 Respondent/Complainant

Criminal Petition No.1412 OF 2018

M/s. Vibha Agro Tech Ltd & Other ...Petitioners/Accused

And

Registrar of Companies,
(for Andhra Pradesh and Telangana)
II floor, Corporate Bhavan,
Bandlaguda, Nagole, Hyderabad-5000068 ...Respondent/Complainant

Criminal Appeal No.1414 OF 2018

M/s. Seed Innovations Private Ltd & 2 Others ...Petitioners/A 1,2,3

And

Registrar of Companies,
(for Andhra Pradesh and Telangana)
II floor, Corporate Bhavan,
Bandlaguda, Nagole, Hyderabad-5000068 ...Respondent/Complainant

DATE OF JUDGMENT PRONOUNCEMENT :17.10.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

1	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2	Whether the copies of judgment may be marked to Law Reporters/Journals	Yes/No
3	Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment?	Yes/No

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K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.P. No. 1360 of 2018

% Dated: 17.10.2023

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! Counsel for the Petitioners: Sri T. Surya Satish

^ Counsel for the Respondents: Sri Gadi Praveen Kumar (Dy. Solicitor Gen. of India)

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NOS.1360, 1412 & 1414 OF 2018

COMMON ORDER:

1. Criminal Petition No.1360 of 2018 is filed questioning continuance of proceedings in CC No.185 of 2017, on the file of Special Judge for Economic Offences at Hyderabad, for violation of Section 148(8) of Companies Act, 2013 (for short 'the Act of 2013') punishable under Section 147 of the Act of 2013. According to the allegation, the company failed to get its cost accounting records to be audited by a Cost Auditor and failed to file Cost Audit Report to the Central Government within 30 days from the date of receipt of a copy of the cost audit report furnished by the Cost Auditor, as such, liable. The non-filing of the cost audit report was for the financial year ending 31.03.2014.

2. Criminal Petition No.1412 of 2018 is filed questioning continuance of proceedings in CC No.196 of 2017 on the file of Special Judge for Economic Offences at Hyderabad for violation of Section 148(8) of Companies Act, 2013 (for short 'the Act of 2013') punishable under Section 147 of the Act of 2013. According to the allegation, the company failed to get its cost accounting records to be audited by a Cost Auditor and failed to file Cost Audit Report to the Central Government within 30 days from the date of receipt of a copy of the cost audit report furnished by the Cost Auditor, as such, liable. The non-filing of the cost audit report was for the financial year ending 31.03.2014.

3. Criminal Petition No.1414 of 2018 is filed questioning continuance of proceedings in CC No.186 of 2017 on the file of Special Judge for Economic Offences at Hyderabad for violation of Section 148(8) of Companies Act, 2013 (for short 'the Act of 2013') punishable under Section 147 of the Act of 2013. According to the allegation, the company failed to get its cost accounting records to be audited by a Cost Auditor and failed to file Cost Audit Report to the Central Government within 30 days from the date of receipt of a copy of the cost audit report furnished by the Cost Auditor, as such, liable. The non-filing of the cost audit report was for the financial year ending 31.03.2014.

4. The proceedings are mainly questioned on the ground of the complaint being filed beyond limitation.

5. Learned counsel appearing for the petitioners would submit that the limitation runs from 01.10.2014 or 01.11.2014, which is the default date. The complaints were filed on 31.05.2017. Further, the notice dated 14.06.2016 was issued under Section 233B (11) of the Companies Act, 1956 r/w sub section 8 of Section 148 of the Act of 2013, but the provisions under Section 233B(11) of the Companies Act, 1956 was repealed, as such, notice is illegal. The period of limitation for filing of complaint cannot be calculated from the date of granting of sanction which is 03.10.2016.

6. On the other hand, learned counsel appearing for the respondent/complainant would submit that complaint filed is well within

time and it is for the trial Court to decide whether an offence is made out or not, after adducing evidence.

7. As seen from the record, notice which was sent is dated 14.06.2016. According to the said notice sent by the Registrar of Companies, it was observed from the records of the accused company that the cost audit report was not filed with the Central Government for the financial year ending 31.03.2014 within the stipulated time.

8. The period of limitation is dealt under Code of Criminal Procedure under Section 468 to 473. Admittedly, punishment prescribed under the Section 147 of the Companies Act is one year in the present facts of the case. Accordingly, under Section 468 of Cr.P.C, the period of limitation for an offence punishable is one year under Section 468(2)(b) of Cr.P.C. Under Section 469 of Cr.P.C, the commencement of period of limitation is prescribed. For the sake of convenience, the same is extracted hereunder:

> *"**Section 469 Commencement of the period of limitation:***
> *(1) The period of limitation, in relation to an offender, shall commence,-*
> *(a) on the date of the offence; or*
> *(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or*
> *(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.*
>
> *(2) In computing the said period, the day from which such period is to be computed shall be excluded. "*

9. In view of Section 469 of Cr.P.C, the commencement of period of limitation would be from the date of knowledge to the Registrar of Companies. The said date can be taken as 14.06.2016 on which date the show-cause notice was sent to the accused company.

10. As claimed by the complainant, the date of knowledge of the offences cannot be 03.10.2016, on which date, sanction was obtained. The date of obtaining sanction cannot be the date of knowledge of offence, but the date on which the notice was sent or the date or any other previous date on which the knowledge of the offence had come to the notice of the Registrar of Companies.

11. Since complaint was filed on 30.05.2017, complaint is well within time. The date of filing the complaint would be criteria and not the date on which the Court takes cognizance of the offences in the said complaint. For the said reason, the ground of complaint being barred by limitation cannot be accepted.

12. Learned counsel for the petitioners argued that under Rule 3 of the Companies (Cost Records and Audit) Rules 2014, the company that falls under Section 148 of the Act of 2013 are mentioned. However, the seed manufacturing companies do not figure therein. The companies are admittedly seed manufacturing units and since there was no provision with the ROC regarding

seed manufacturing companies, the company has mentioned that the cost audit order relates to “Edible Oil Seeds and Oils (including vanaspati)”.

13. It is admitted in the counter by the learned counsel for the respondent that the seed manufacturing companies do not fall within Rule 3 of the Companies (Cost Records and Audit) Rules 2014. However, since the company is mentioned in the column for the name of industry as “Edible Oil Seeds and Oils (including vanaspati)”, the prosecution was launched.

14. Since the company itself had mentioned that the industry is “Edible Oil Seeds and Oils (including vanaspati) industry, the same cannot be determined in the proceedings for quashing the complaint. If the ROC has no provision of seed manufacturing companies and for which reason, the company had entered the name as “Edible Oil Seeds and Oils (including vanaspati)”, to enable themselves to upload the relevant documents into the ROC, the said ground can be agitated only before the trial Court.

15. In the said circumstances, all Criminal Petitions fail and accordingly dismissed. Needless to say the grounds raised in the present applications, shall be considered by the trial Court since no finding is given as to under what circumstances, the company had

mentioned as “Edible Oil Seeds and Oils (including vanaspati)”. Consequently, miscellaneous applications, if any, shall stand closed.

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K.SURENDER, J

Date: 17 .10.2023
Note: LR copy to be marked.
B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NOS.1360, 1412 & 1414 OF 2018

Dt.17.10.2023

kvs