

In the Court of the Judge, 2nd Special Court, Calcutta
Complaint Case No.07/2020 (Computer Registration No.07/2020)
CNR No. WBCS01-000133-2020
Present :- Ananta Kumar Singha Mahapatra (J.O Code-WB00902).

Order No.56
29.07.2025

1. Today is fixed for passing order in respect of the application dated 10.09.2024 under Section 227 of the CrPC filed by A-13 to A-15, herein after referred to as the said application, in short.
2. The learned prosecutor for the SFIO is present.
3. A-13 to A-15 are absent by filing an application praying for representation by their learned advocate under Section 317 of the CrPC. Heard. The said application is allowed.
4. I have carefully heard learned advocates for both sides and have perused the said application, the written objection and the case record. Considered.
5. By filing the said application A-13 to A-15 have prayed for discharging them from this case. It has been contended on behalf of these accused persons that they were not the directors or the officers of the main accused company, that is the A-1 company namely MPS Greenery Developers Limited. That they were appointed as non executive/ nominee directors in certain associate companies of MPS Group namely MPS Food Products Limited, MPS Resorts and Hotels Limited, MPS Aqua Marine Products Limited, MPS Industries and Agro Research Limited, MPS Ayurvedic and Herbal Products Private Limited, MPS Real Estate and Infrastructure Private Limited and MPS Retails and Fast Food Private Limited for a limited period of time. That all these associate companies were professionally managed companies having management team and the accused persons were neither responsible for any day to day business affairs nor they had ever participated in decision making processes of these companies. That no public funds were involved in the business of these companies. That at the time of their resignation, there was no allegation against those companies. That they were neither managing directors of those companies nor authorised signatories of the bank accounts of those companies nor any of them ever signed any balance sheet or profit and loss accounts or other financial statements of these companies. That no specific role has been attributed against the accused persons in relation to the running of the affairs of those associate

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companies.

6. The learned advocate for the accused persons argued that the prosecution has miserably failed to collect any material to show that the accused persons had filed any balance sheet or profit and loss account or annual report or financial statement in respect of the companies in which they were nominee/ non executive directors. That none of the witnesses examined by the investigating officer have made any allegation against the accused persons. That the accused persons are not the officer in default of the companies and all the companies were managed by their respective managing director. He further argued that a managing director is prima facie in charge of and responsible for the company's business and affairs and can be prosecuted for offences by the company. That the other directors can be prosecuted only if they were in charge of and responsible for the conduct of company's business. That the accused persons were never part of the board of directors and had no role in the preparation, approval or signing of the board's report. That the sanction for prosecution accorded against the accused persons is not a valid sanction and Sri Alope Kumar Bardhan had no authority to file the complaint on behalf of the SFIO. That the present complaint is barred by limitation so far as the allegations against the present accused persons are concerned. He further submitted that all the allegations against the accused persons are punishable under the Companies Act, 1956 and after promulgation of section 465 of the Companies Act, 2013, no prosecution can be instituted under the provisions of the Companies Act, 1956.

7. The learned advocate for the accused persons thus, argued that there is no sufficient ground for proceeding and prayed for discharging the accused persons from this case.

8. The complainant has contested the said application by filing a written objection. It has been contended by the complainant that investigation reveals that A-1 company had collected Rs.2172.44 crore upto the year 2012-13. That the total outstanding liability out of funds collected from public as per the financial statement as on 31.03.2013 was Rs.1754.90

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crore. That during investigation it was found that A-13 to A-15 were the directors and key managerial persons of MPS Group of Companies. That they along with A-9 were the majority share holder of A-1 company and hold more than 30% share in all group companies of MPS Group. That investigation also revealed that A-1, A-2, A-3 and A-4 companies had revalued its properties many times and the revaluation was not done as per the established procedure of law and as such, the dishonest intention of the directors of the companies in which revaluation was carried out to defraud the investors, was there since early days of commencement of business by creating false image and false financial strength of the companies.

9. The learned prosecutor for the SFIO argued that A-9 was managing director of only A-1 and A-2 companies and he was never the managing director of A-3 to A-8 companies as can be seen from the balance sheet of the companies as filed by them. According to him, on such score A-13 to A-15 cannot absolve themselves from their responsibilities as directors of the companies. The learned prosecutor further submitted that the complaint is not barred by limitation as they have filed the same after obtaining sanction from the competent authority of the Central Government within the period of limitation. According to him, the period of limitation will commence after obtaining sanction for prosecution. He further submitted that having regard to the provisions of section 465(3) of the Companies Act, 2013, the provisions of section 6 of the General Clauses Act, 1897 will be applicable and the complaint is not non-maintainable because of the promulgation of section 465 of the Companies Act, 2013. He also submitted that the complaint was initially filed before the learned Chief Metropolitan Magistrate, Calcutta on 31.08.2018 and at that time section 465 of the Companies Act, 2013 was not in force. He thus prayed for rejection of the said application.

10. On perusing the complaint and the annexed documents, it appears that the investigation was completed and the investigation report was filed on 30.03.2018. That the complainant obtained sanction for prosecution

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against the accused persons from the Central Government as per the provisions of section 212(14) of the Companies Act, 2013 on 25.05.2018.

11. On perusing order dated 18.02.2020 of the learned Chief Metropolitan Magistrate, Calcutta in connection with CS 78737/2018 it appears that the case was registered in his establishment on 31.08.2018, but till 18.02.2020 the same was never placed before the Presiding Officer for passing formal orders. He has further observed that the complainant has also not taken any step so far to prosecute the complaint. **Fact remains, the complaint was registered before the learned Chief Metropolitan Magistrate, Calcutta on 31.08.2018.** It was the duty of the concerned staff of the learned Chief Metropolitan Magistrate, Calcutta to place the complaint before the learned Chief Metropolitan Magistrate, Calcutta. Merely because no order was passed on the complaint which was registered within the period of limitation from obtaining sanction, it cannot be said that the complaint is barred by limitation. Also, I have carefully perused the ROC report dated 03.09.2013 (referred to in paragraph no.5 of the written complaint and the date has been mentioned as 13.09.2013). The perusal of the same reveals that in his report the ROC West Bengal has not made any observation regarding contravention of any specific provision of the Companies Act, 1956. So, the said report cannot be considered as starting point of limitation.

12. The notification no. S.O. 560(E) dated 30.01.2019 of the MCA specifically states that in exercise of powers conferred by sub section (3) of section 1 of the Companies Act, 2013, the Central Government hereby appoints the 30th January, 2019 as the date on which the provisions of section 465 of the said Act in so far as they relate to the repeal of the Companies Act, 1956 shall come into force.

13. Thus, it appears that section 465 of the Companies Act, 2013 came into force on 30.01.2019. The present complaint was registered on 31.08.2018, that is prior to promulgation of section 465 of the Companies Act, 2013. So, in my considered opinion, the present complaint is quite maintainable inspite of promulgation of section 465 of the Companies Act,

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2013.

14. A-13 and A-14 were the directors of A-2 to A-8 companies. A-15 was one of the director of A-4 and A-5 companies. On perusing the balance sheet filed on behalf of the accused companies it appears that A-9 was the managing director of only A-1 and A-2 companies. No document has been filed on behalf of the accused persons to show that A-9 or any other person was the managing director of A-3 to A-8 companies. They have miserably failed to produce any document to show that they were the non executive directors of A-2 to A-8 companies.

15. The allegations against the companies of which the present accused persons are directors are that :-

i) a number of instances in respect of balance sheets and profit and loss account of the CUI, not depicting true and fair view of the state of affairs of the company,

ii) the financial statements did not reflect the true and fair state of affairs of the CUIs and also did not reflect the assets and liabilities of these companies correctly, which is in contravention of the provisions of section 211 of the Companies Act, 1956.

iii) that a number of instances of falsification of accounts and financial statements, mismanagement and violations of statutory regulations by the CUI have been enumerated in the report for which the directors of the companies are liable for prosecution. That the board report of the directors given with the balance sheets did not reflect the true state of affairs of the companies which is in contravention of the provision of section 217 of the Companies Act, 1956.

iv) that the financial statements did not reflect all sums of money received and expended by them and the matters in respect of which the receipt and expenditure took place violating the provisions of section 209(1) of the Companies Act, 1956.

16. A-13 and A-14 were the directors of A-2 to A-8 companies and A-15 was one of the director of A-4 and A-5 companies at the relevant time. What was their role in those companies is a question of fact and the same

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cannot be decided without trial. At this stage it cannot be decided that the accused persons were never part of the board of directors as has been contended by them.

17. The mere fact that the accused persons have subsequently resigned as director of the accused companies will not absolve them from their liability for the act done by the company during the period in which they were director of those companies.

18. The authority of Alope Kumar Bardhan to file the present complaint has been made an annexure of the investigation report and there is no basis of the submission of the accused persons that he has no valid authority to file the instant complaint.

19. Considering all aspect, I find no merit in the application praying for discharge filed by A-13 to A-15 and the said application is liable to be rejected. Hence, it is ordered, that the application dated 10.09.2024 under Section 227 of the CrPC filed by A-13 to A-15 **is rejected on contest.**

20. To date, that is 18.08.2025.

Dictated and corrected by me

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