

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.JUSTICE B.A. PATIL

CRIMINAL PETITION NO.6628/2019, DATED 24-01-2020

IBC Knowledge Park Pvt. Ltd and Others vs. Union of India The Ministry of Corporate Affairs, New Delhi and Another

ORDER

This petition has been filed by the petitioners/accused Nos. 1 to 6 under Section 482 of Cr.P.C. praying to quash the proceedings initiated upon the complaint in C.C. No. 134/2019 for the offence punishable under Section 182 (3) of the Companies Act, 2013 (hereinafter referred as ' the Act ' for short) and amended with effect from 31.03.2017 pending on the file of the Court of Special Economic Offences, Bengaluru.

2. I have heard Sri. G. Krishnamurthy, learned senior counsel for petitioners and learned counsel for respondent No.2 and also learned ASG for respondent No.1.

3. Though this case is listed for admission, with the consent of learned counsel appearing for the parties, the same is taken up for final disposal.

4. The brief facts of the case are that IBC Knowledge Park Private Limited is a company incorporated under the Companies Act, 2013, which is carrying the business of Engineering Developers.It is alleged in the complaint that in the declaration given by the company, it has not disclosed the contribution made to the political parties during the year 2016-2017.On the basis of the complaint, a case has been registered under Section 182 (1) of the Act.

5. It is the submission of the learned senior counsel that the proceedings initiated against the petitioner-company and its directors is without application of mind.Neither the company nor the directors have committed any offence much less the one under Section 182 (3) of the Act. It is his further submission that when a declaration has been made for the year 2016-2017, there is a specific mention about the declaration of CSR expenses and donations to the extent of Rs.1,51,39,924/-.It is his further submission that subsequently, a show cause notice was came to be issued as per Annexure- J dated 27.02.2019 and to the said show cause notice, he has given a reply dated 06.03.2019 wherein, he has made it clear that the company has contributed an amount of Rs. 15,00,000/towards the political party namely ' Aam Adami party ' vide cheque bearing No.148371 dated 31.12.2016 drawn on J & K Bank and the copy of the cheque has also been made available along with the said reply notice.

Even all these materials, which are made available, none of them have been taken note of and a false complaint has been registered.It is his further contention that as per Section 135 of the Act, in a prescribed format he has clearly disclosed the CSR donations to the tune of Rs.1,36,39,924/-and in the reply it has been

clearly stated that an amount of Rs. 15,00,000/-has been contributed towards the political party fund.Even on combined reading of the balance statement filed as prescribed and the reply, it indicates that the said declaration is in accordance with law.It is his further submission that an amendment has been brought on 31.03.2017 to the provisions of Section 182 (3) of the Act and in view of the amended provision, it does not mandate that the declaration should disclose in its profit and loss account any amount contributed by it to the political party.It is his further submission that the return should be filed for the financial year by the end of succeeding year of September and when the amendment has been brought effect from 01.04.2017 and if the declaration of the political party has not been mentioned, then under such circumstance, there is no violation as contemplated under Section 182 of the Act. It is his further submission that if at all, any error has been committed, then it is not having any intention and it is not a suppression of the donation given by petitioner/accused No.1.It is his further submission that the object of the law and other purposes while enacting the law has to be kept into view so as to punish the company and its directors.Further it is submitted that it is a reputed company and under the CSR donations, it has contributed huge amount to the educational institutions and other allied institutions and there is no suppression of any accounts so as to hamper the economy of the country.It is only a sheer error and not an intentional mistake. On these grounds, he prayed to allow the petition and to quash the proceedings.

6. Per contra, learned counsel for the respondents vehemently argued and submitted that by combined reading of Section 182 of the Act, earlier to 01.04.2017 and subsequently, they go to show that the disclosure of the donation is mandatory and even after the amendment, if the declaration does not disclose separately, it is not considered to be a legal declaration as contemplated under Section 182 of the Act. It is his further submission that the balance sheet filed is composite declaration under Section 135 of the Act as well as the donation under Section 182 of the Act, under such circumstances, it is not going to fulfill the mandate of provisions of Section 182 of the Act. It is further submitted that the word used in Section 182 of the Act is " shall ".In that light, the mandate prescribes the petitioners/accused to separately declare whatever the donations which have been contributed to the political party.

It is his further submission that to the show cause notice dated 27.02.2019, a reply has been given dated 06.03.2019 and the petitioners/accused in their reply, have clearly admitted the fact that during the preparation of the financial statements, the company has inadvertently missed the separate disclosure requirement as per Section 182 (3) of the Act. That itself makes it clear that the mandate of Section 182 of the Act has not been followed by the petitioners/accused.It is his further submission that when once, it has been specifically contended in the reply that there is an inadvertence or there is a mistake, then it is a question of fact, which has to be decided by the trial Court while deciding the case.

It is further submitted that looking from any angle, the provisions of Section 182 of the Act have not been properly and legally complied by the petitioners/accused and even the show cause notice and the complaint clearly disclose that there was an intention in suppressing the said fact and thereby, the petitioners/accused

are liable to be punished as contemplated under Section 182 (4) of the Act. On these grounds, he prayed to dismiss the petition.

7. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for the parties and perused the records.

8. For the purpose of brevity, I quote Section 182 of the Act before the amendment Act of 2017 and after the amendment brought by virtue of amendment dated 31.03.2017.Both read as under:

Section 182 of Companies Act, 2013 (Before Finance Act, 2017 No.7 of 2017)

"182. Prohibitions and restrictions regarding political contributions.

(1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent.of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

(2) Without prejudice to the generality of the provisions of sub-section (1), —

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,

(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

(3) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.

(4) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

Explanation. For the purposes of this section, " political party " means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).

Section 182 of Companies Act, 2013 (After Finance Act, No.7 of 2017)

"182. Prohibitions and Restrictions Regarding Political Contributions.

(1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it.

(2) Without prejudice to the generality of the provisions of sub-section (1), —

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,

(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

(3) Every company shall disclose in its profit and loss account the total amount contributed by it under this section during the financial year to which the account relates.

(3A) Notwithstanding anything contained in sub-section (1), the contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account:

Provided that a company may make contribution through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

(4) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

Explanation.

For the purposes of this section, " political party " means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951). "

9. On going through the earlier Act, it makes clear that every company should disclose its profit and loss account, in which the amount contributed to any political party during the financial year has to be declared. But by amendment to Section 182 (3) of the Act has been substituted and now the only disclosure has to be made about the total contribution made during the financial year. In that light, it makes clear that now after the amendment, the mentioning of declaration with regard to any political party is not necessary. But as rightly contended by the learned counsel for the respondent, the disclosure is mandatory. The word used is " shall ". In that regard if the entire i.e., letter and spirit of the Section is taken into consideration, no exemption has been given to any company to not to disclose any contribution made in this behalf.

However, the only question, which remains for the consideration is that whether a CSR declaration in composite with the other declaration made is considered to be not a declaration as contemplated under Section 182 of the Act. For the purpose of brevity, I quote Section 135 of the Act, which reads as under:

"135. Corporate Social Responsibility.

(1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

(2) The Board's report under sub-section (3) of Section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,

- a. Formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- b. Recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
- c. Monitor the Corporate Social Responsibility Policy of the company from time to time.

(4).The Board of every company referred to in sub-section (1) shall,

- a. after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and
- b. ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5).The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent.of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided further that if the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub section (3) of Section 134, specify the reasons for not spending the amount.

Explanation.For the purposes of this section " average net profit " shall be calculated in accordance with the provisions of section 198. "

10. On close reading of Section 135 of the Act, it makes very clear that the CSR declaration has to be made as stated therein, in a prescribed form.During the course of argument, the learned counsel for the petitioners brought to the notice of this Court that the declaration has been made in a prescribed form disclosing that an amount of Rs. 1,36,39,924/-has been declared as CSR amount.It is the contention of the learned senior counsel that the remaining amount of Rs. 15,00,000/-, which has been declared in the balance sheet is nothing but a political declaration and even, it has been given in the reply dated 06.03.2019 that the said amount is towards political party i.e., Aam Adami party and the said amount has also been paid through cheque bearing No. 148371 dated 31.12.2016.

11. By considering the material facts and circumstances, it indicates that though under the law, the declaration has to be made separately but as rightly pointed out by the learned counsel for the respondents in the reply also, it has been specifically mentioned that in the financial statement, the company has inadvertently missed the separate disclosure as per Section 182 (3) of the Act. But on factual matrix, if it is taken into consideration, the said amount of Rs. 15,00,000/-has been paid to Aam Adami party through cheque that too, account payee for which, the declaration has also been made.

12. Taking into consideration of the object and spirit of law, it indicates that the main object of law is that such donations, which are going to be given in larger quantity, it will not affect the economy of the country and thereafter the amendment, which has been made also disclose the fact that the payment has to be made through cheque.

In the light of letter and spirit, if it is taken into account, it is only an irregularity not an illegality. Even the amendment was given effect from 01.04.2017 therein, it is not necessary to declare the name of political party to which the amount has been paid. In that light also, there is no intentional violation of Section 182 of the Act. However, the petitioners/accused being a reputed company, they should have taken care of the said aspect while making a declaration but it is not an intentional act. Whenever the accused has to be punished for any offence, then the intention and mens rea has to be seen. In that light, I am of the considered opinion that the initiation of the proceedings is not present as contemplated under law and the said proceedings if they are quashed by allowing the petition, it is going to meet the ends of justice.

13. In that light, petition is allowed and the proceedings initiated in C.C. No.134/2019 for the offence punishable under Section 182 (3) of the Act pending on the file of the Court of Special Economy Offence are hereby quashed.

I.A. No.1/2019 does not survive for consideration. Accordingly, the same is disposed off.