

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE
Misc. Criminal Case No.2630 of 2025**

Shashikant Patel

Vs.

Registrar of Companies

APPEARANCE

Shri Praveen Surange - Advocate for the petitioner.

Shri Praveen Kumar Newaskar - Dy. SGI for the respondent.

Reserved on : *19/03/2025*

Delivered on : *17/6/2025*

*This petition having been heard and reserved for orders, coming on for pronouncement this day, the **Hon'ble Shri Justice Milind Ramesh Phadke** pronounced/passed the following:*

ORDER

The present petition, under Section 482/528 of the Code of Criminal Procedure, 1973/B.N.S.S., has been preferred by the petitioner for quashment of criminal proceedings as well as the order of taking cognizance against the petitioner for the offence under the provisions of Section 92 and 99 of the Companies Act, 2013 ("**Act of 2013**") registered as Criminal Case No.1487 of 2015 before the Court of Chief Judicial Magistrate, Gwalior.

2. Short facts necessary for adjudication of the present controversy are that on 04.12.1991, M/s. Plethico Pharmaceuticals Private Limited was incorporated as private limited company under the Act of 1956

having its Corporate Identification No.L-24232-MP-1991-PLC-006801 and was having registered Office at A.B. Road, Manglia, Indore (M.P.) and later on, it was converted into a Limited Company. The respondent/Complainant had filed a complaint dated 27.02.2015 before the Court of learned Chief Judicial Magistrate, Gwalior against the present petitioner, who was Managing Director at the relevant of point of time, alleging that the petitioner alongwith other accused persons had failed to hold its Annual General Meeting (AGM) and prepare its Annual Return with the respondent/complainant's Office for the financial year ending December, 2013, for which according to the provisions of Section 92 and 95 of the Act of 2013, the present complaint 27.02.2015 has been filed. Aggrieved by the aforesaid complaint, the present petition has been filed.

3. Learned counsel for the petitioner had submitted before this Court that the learned Court below, without due application of judicial mind, had taken cognizance upon the impugned criminal complaint filed by the present respondent against the petitioner, which deserves to be quashed on the ground that company had to file the Annual Return within 60 days from the date of Annual General Meeting (AGM) or in case, no AGM is held, the due date on which the said meeting should have been held in such manner and prescribed as per Section 403 of the Act of 2013, so also the company has to hold its AGM for each financial year within six months from the closure of the financial year under Section 96(1) of the Act of 2013 and if company files Annual Return before the expiry of the period specified under Section 403 of the Act of 2013 (i.e. 380 days after expiry of 60 days)

then the company and the Officers in default shall be liable for imprisonment upto 06 month or fine of Rs.50,000/- to Rs.5,00,000/- or both under Section 92(5) of the Act of 2013, but herein case, the actual date for conducting the annual general meeting was 26.12.2013 and the due date for filing the Annual Return thus was 23.02.2015 (i.e. 26.12.2014 + 60 days) and with additional fee under the provisions of Section 403 of the Act of 2013, it was 20.11.2015 (i.e. 23.02.2015 + 270 days) and a complaint alleging non-compliance could have been filed only after 20.11.2015 but the present complaint has been filed on 27.02.2015 which as per Section 403 of the Act of 2023 being premature deserves to be quashed. It was thus prayed that the present petition be allowed by quashing the criminal proceedings as well as the order of taking cognizance against the petitioner by the Court of Chief Judicial Magistrate, Gwalior.

4. On the other hand, Shri Praveen Kumar Newaskar – Dy. SGI for the respondent has opposed the prayer so made by counsel for the petitioner and has prayed for dismissal of the petition alleging that no illegality or infirmity has been committed by the Court below in taking the cognizance against the petitioner.

5. Heard counsel for the parties and perused the record.

6. Looking to the facts and circumstances of the case as well as the arguments as advanced by the counsel for the parties, this Court deems it expedient to go through the provisions of Section 403, 92, 96 and 99 of the Act of 2013 which read thus:-

Section 403 of the Act of 2013 reads thus;

“403. Fee for filing, etc.-- (1) Any document,

required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

Provided that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of two hundred and seventy days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed:

Provided further that any such document, fact or information may, without prejudice to any other legal action or liability under the Act, be also submitted, filed, registered or recorded, after the first time specified in first proviso on payment of fee and additional fee specified under this section.

(2) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the first proviso to that subsection with additional fee, the company and the officers of the company who are in default, shall,

without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

Section 92 of the Act of 2013 reads thus;

(1) 92. Annual return.— (1) Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

(a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;

(b) its shares, debentures and other securities and shareholding pattern;

(c) ****;

(d) its members and debenture-holders along with changes therein since the close of the previous financial year;

(e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;

(f) meetings of members or a class thereof, Board and its various committees along with attendance details;

(g) remuneration of directors and key managerial

personnel;

(h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;

(i) matters relating to certification of compliances, disclosures as may be prescribed;

(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors; and

(k) such other matters as may be prescribed:

Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

Provided further that the Central Government may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed.

(2) The annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

(3) An extract of the annual return in such form as may be prescribed shall form part of the Board's report.

(4) Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403.

(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default."

(6) If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made

thereunder, he shall be liable to a penalty of two lakh rupees.”

Section 96 of the Act of 2013 reads thus;

96. Annual general meeting.— (1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:

Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:

Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

(2) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:

Provided that annual general meeting of an unlisted may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance:

Provided that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

Explanation.— For the purposes of this sub-section, “National Holiday” means and includes a day declared as National Holiday by the Central Government.

Section 99 of the Act of 2013 reads thus;

“99. Punishment for default in complying with provisions of sections 96 to 98.— If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with

fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.”

7. A perusal of the aforesaid provisions of the Act of 2013 makes it evident that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording within a period of two hundred and seventy days from the date by which it should have been submitted, filed, registered or recorded on payment of prescribed additional fee. If the company fails or commits any default to submit, file, register or record any document, fact or information under sub-Section (1) before the expiry of the period specified in the first proviso to that subsection with additional fee, the company and the officers of the company who are in default, shall be liable for the penalty or punishment provided under this Act.

8. Herein case, the actual date for conducting the annual general meeting was 26.12.2013 and the due date for filing the Annual Return was 23.02.2015 (i.e. 26.12.2014 + 60 days) and with additional fee under the provisions of Section 403 of the Act of 2013 was 20.11.2015 (i.e. 23.02.2015 + 270 days), but the present complaint has been filed on 27.02.2015 by the respondent/Registrar of the Companies which was before the prescribed period provided under Section 403 of the Act of 2013. If it is so, it can very well be said that taking cognizance before the lapse of specified period as per the aforesaid Section was pre-mature, the learned Magistrate ought not to have taken cognizance

of the offence of the present case. Accordingly, there is no hesitation in concluding that the present complaint was premature.

9. This Court, in the light of the aforesaid discussion, finds that the present complaint filed against the petitioner and thereafter, the criminal proceedings as well as the order of taking cognizance against him for the offence under Section 92 and Section 99 of the Companies Act, 2013 vide Criminal Case No.1487 of 2015 before the Court of Chief Judicial Magistrate, Gwalior cannot be sustained, therefore, are hereby **quashed**.

10. As a result, the present petitioner is **allowed**.

(Milind Ramesh Phadke)
Judge