IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE THIRTY FIRST DAY OF OCTOBER
TWO THOUSAND AND SIX

PRESENT
THE HON'BLE SRI JUSTICE BILAL NAZKI

CRIMINAL REVISION CASE NO : 1356 of 2002

CRIMINAL REVISION PETITION NO 1353 OF 2002

(Criminal Revision case Under Sec.397 (1)& 401 Crl.P.C against the Judgment in CC.No. 177/2001 dated 13.6.2002 on the file on the Court of the Spl Judge for Economic Offences at Hyderabad

Between:

1 M/s.ER Textiles Ltd.,having registered Office at Plot No.288 Road No.2, Navodaya Colony, Banjara Hills, Hyderabad.
2 G.Eswara Rao,

..... PETITIONER(S)/Accused Nos 1&2

AND

1 Registrar of Companies Andhra Pradesh, Hyderabad.
Respondent/Complainant
2 State of A.P., through Public Prosecutor, High Court of A.P. Hyderabad.

.....RESPONDENT

Counsel for the Petitioners:SRI .J.PRABHAKAR

Counsel for the Respondent No.1: SRI T.SURYAKARAN REDDY(NOT PRESENT)

Counsel for the Respondent No.2: PUBLIC PROSECUTOR

The Court made the following :

THE HON'BLE SRI JUSTICE BILAL NAZKI

CRIMINAL REVISION CASE NO.1356 OF 2002

ORDER:

Heard learned counsel for the petitioners.

Nobody appears for respondent No.1 although notice has been served and the name of Mr. T.Suryakaran Reddy is also shown in the cause list as Standing Counsel for Registrar of Companies.

The petitioners have been convicted of the offence under Section 97(3) of the Companies Act, 1956 (for short "the Act") by the trial Court on the ground of violation of sub-sections (1) and (2) of Section 97 of the Act. Accused No.1 is a Public Limited Company and it increased its share capital beyond the authorized capital with effect from 01-03-2001. The share capital was raised from Rs.10 crores to Rs.155 crores. Form No.23 was filed before the Registrar of Companies. In terms of sub-sections (1) and (2) of Section 97 of the Act, the Company was required to give notice of the increase of the share capital within 30 days after passing the resolution enhancing the share capital. Accused No.1 and its Directors convened a meeting on 01-03-2001, passed a resolution enhancing the share capital to Rs.155 crores, but did not inform the Registrar of Companies within one month from the date of the said enhancement of the authorized share capital. After a show cause notice was issued by the Registrar of Companies to the accused on 13-07-2001, the accused in response to it made an application intimating the Registrar that Form No.5 along with requisite fee would be filed within a short time, but Form No.5 was not filed even thereafter. These facts are almost admitted and violation of sub-sections (1) and (2) of Section 97 of the Act is established. Therefore, conviction had to follow under Section 97(3) of the Act. However, learned counsel for the petitioners submits that this was the first violation committed by the Company and as a matter of fact, the company was not in a position to raise the share capital and subsequently it was again reduced to Rs.10 crores, therefore the trial Court should not have imposed a fine of Rs.100/- for each day of default on each of the petitioners and the same is excessive. I do not consider it to be excessive because Section 97(3) provides maximum fine of Rs.500/- for every day during which the default continues.

For these reasons, no interference is called for with the conviction and sentence passed by the trial Court and the Criminal Revision is accordingly dismissed. The fine imposed by the trial Court be deposited within a period of one month. Since the share capital has again been changed to Rs.10 crores, therefore, there is no necessity for the petitioners to submit Form No.5.

SD/-P.KRISHNA MURTHY
DEPUTY REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Special Judge for Economic Offences, Hyderabad (with records)
2. The Registrar of Companies Andhra Pradesh Hyderabad
3. Two ccs to the Public Prosecutor High Court of A.P. Hyderabad (out)
4. Two C.D. Copies.
5. One CC to Sri J.PRABHAKAR, Advocate (OPUC).
6. One CC to Sri T.SURYA KARAN REDDY, Advocate (OPUC).

SSV