

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.12441 OF 2022

C/W

WRIT PETITION No.27046 OF 2019 (GM – PASS)

IN CRIMINAL PETITION No.12441 OF 2022

BETWEEN:

MR.MOODBIDRI NAGAVARMA GUNASHEELA
S/O MOODABIDRI NAGAVARMA
AGED ABOUT 56 YEARS
RESIDING AT: NO.5303
ANRIYA GREINBERG
8TH MAIN ROAD
13TH A CROSS ROAD
JUDICIAL LAYOUT
BENGALURU – 560 065.

... PETITIONER

(BY SRI V.VINAY GIRI, ADVOCATE)

AND:

REGISTRAR OF COMPANIES, KARNATAKA
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
II FLOOR, 'E' WING
KENDRIYA SADAN

KORAMANGALA
BENGALURU – 560 034.

... RESPONDENT

(BY SRI M.N.KUMAR, CGSPC)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO 1.SET ASIDE THE ORDER DATED 20.08.2022, PASSED BY THE HON'BLE LIX ADDL.CITY CIVIL AND SESSIONS JUDGE (CCH-60) BENGALURU IN SPL.C.NO.2001/2022 ISSUING SUMMONS TO THE PETITIONER (ANNEXURE-R); 2.QUASH THE COMPLAINT IN SPL.C.NO.2001/2022, AS AGAINST THE PETITIONER, PENDING ON THE FILE OF THE HON'BLE LIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-60), BENGALURU (ANNXURE-Q).

IN WRIT PETITION No.27046 OF 2019

BETWEEN:

GUNASHEELA. M. N.
S/O MOODABIDRI NAGAVARMA
AGED ABOUT 53 YEARS
NO. 5303,
ANRIYA GREINBERG,
13TH CROSS, 8TH MAIN,
JUDICIAL LAYOUT,
BENGALURU – 560 065.

... PETITIONER

(BY SRI CHIDANANDA URS B.G., ADVOCATE)

AND:

- 1 . UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA,

SOUTH BLOCK,
NEW DELHI – 110 001.

- 2 . REGIONAL DIRECTOR
SOUTH EAST REGION,
MINISTRY OF CORPORATE AFFAIRS,
GOVERNMENT OF INDIA,
HYDERABAD, TELANGANA.
- 3 . REGISTRAR OF COMPANIES
OFFICE OF THE REGISTRAR OF COMPANIES,
KARNATAKA, II FLOOR,
KENDRIYA SADAN,
"E" WING, KORAMANGALA,
BENGALURU – 560 034.
- 4 . CHIEF IMMIGRATION OFFICER
BUREAU OF IMMIGRATION,
BANGALORE INTERNATIONAL AIRPORT,
DEVANAHALLI,
BENGALURU – 560 300.
- 5 . REGIONAL PASSPORT OFFICER
MINISTRY OF EXTERNAL AFFAIRS
8TH BLOCK, 80 FT ROAD,
KORAMANGALA,
BENGALURU – 560 095.

(IMPLEADED VIDE COURT ORDER DATED
15.12.2023)

... RESPONDENTS

(BY SRI M.N.KUMAR, CGSPC)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA PRAYING TO a) DIRECT BY A
WRIT OF CERTORARI TO R-2 AND HIS AGENTS TO BRING INTO

THIS HON'BLE COURT THE ENTIRE RECORDS AND PROCEEDING WHICH CULMINATED IN THE ISSUANCE OF THE LOOK OUT CIRCULAR WHICH HAD RESULTED IN DETENTION OF THE PETITIONER AND DEPLANED ON 14.06.2019 WHICH STATEMENT HAVING BEEN TAKEN ON OATH DATED 14.06.2019 WHICH IS HEREWITH ENCLOSED AT ANNEXURE-'D' TO THIS PETITION SO THAT CONSCIONABLE JUSTICE MAY BE ADMINISTERED BY QUASHING THE SAME; b) DIRECT THE RESPONDENT AND OR ITS OFFICERS OR SERVANTS OR SUB-ORDINATES OR AGENTS OR ITS SUCCESSORS IN OFFICE TO QUASH THE LOOKOUT CIRCULAR ISSUED AGAINST THE PETITIONER HOLDING INDIAN PASSPORT NO.H9916160 WHICH IS ANNEXURE-'C' TO THIS PETITION; c) TO ALSO ISSUE A WRIT OF PROHIBITION DIRECTING THE RESPONDENTS TO NOT TO IMPOSE ANY RESTRICTION ON MOVEMENT OF THE PEITTIONER INCLUDING HIS RIGHT TO TRAVEL ABROAD; d) TO ALSO DECLARE THAT, IN THE ABSENCE OF ANY RESTRICTION ORDER PASSED BY APPROPRIATE AUTHORITY IN ACCORDANCE WITH LAW, THE RESPONDENTS ARE NOT ENTITLED TO PLACE ANY RESTRICTION OF MOVEMENT OF THE PETITIONER; e) TO ALSO HOLD AND DECLARE THAT THE ACTION OF THE RESPONDENTS IN DETAINING THE PETITIONER AT THE KEMPEGOWDA INTERNATIONAL AIRPORT ON 14th JUNE, 2019 IS WITHOUT THE AUTHORITY OF LAW AND VIOLATION OF ARTICLE 21 OF THE CONSTITUTION OF INDIA; f) TO DIRECT THE RESPONDENTS TO EXPUNGE THE REMARK "OFF LOADED" ON THE PASSPORT OF THE PETITIONER; g) TO ALSO ISSUE RULE IN TERMS OF PRAYERS (a) TO (c) ABOVE; h) RULE TO BE MADE ABSOLUTE.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is common in both these cases. The challenge is different – one to the proceedings in Special case No.2001 of 2022 and the other to the administrative order, a look out circular.

2. Heard in both the cases Sri V.Vinay Giri and Sri Chidananda Urs B.G., learned counsel appearing for the petitioner and Sri M.N. Kumar, learned Central Government Senior Panel Counsel appearing for the respondents.

3. Facts in brief, as obtaining in Criminal Petition No.12441 of 2022 would be narrated for the purpose of convenience.

3.1. The petitioner is a Chartered Accountant in practice for close to 30 years and claims to be providing service in the field of audit, accounting and tax consulting at Bengaluru. In the year 2011, the averment in the petition is that, he was introduced to one Mr. Malcom N.Desai and Mr. Micheal Ferreira who expressed interest to incorporate a Company for the purpose of starting

business in India. Those two then requested the petitioner to advise them on incorporation of the Company on financial and tax aspects and to be its auditor. During the process of incorporation, the two inform the petitioner that one Vanka Srinivasa Rao and another Guhan Ramachandran would be the first Directors of the Company to be incorporated. After the aforesaid interaction, in the year 2011 the process of obtaining Director Identification Number ('DIN', for short), took some time and persons who had contacted the petitioner requested him to become one of the Directors of the Company at the time of incorporation till Mr. Vanka Srinivasa Rao and Mr. Guhan Ramachandran obtain their respective DINs. The petitioner has had his DIN long ago. The petitioner acceded to the request and along with one of his colleagues agreed to become Director of the Company till the other two obtain their DINs. The petitioner avers that he had informed that he will not start any commercial operations of the Company and will resign immediately after the aforesaid two receiving their DIN and then they being made Directors of the Company. They are said to have agreed to the same. Accordingly, a Company by name Vihaan Direct Selling (India) Private Limited ('the Company' for short) was incorporated

on 10-10-2011 and the petitioner became its Director with effect from 10-10-2011 which is discernible from Form No.32.

3.2. The petitioner further avers that he had become one of the Directors of the Company on a stop gap arrangement without involving in day-to-day affairs of the Company, till the two obtain their DIN. The other two obtained their DIN which resulted in the resignation of the petitioner on 29-02-2012. Therefore, the petitioner was only a Director of the Company for a period of four months. The Company, at that point in time, did not commence any commercial operations. After the resignation of the petitioner, the commercial operations commenced only from the financial year 2013-14 that too after the other two obtained their DIN. The Company, thereafter appointed the petitioner as its auditor from the financial year 2012-13 up to 2014-15. The petitioner after the said period is said to have rendered advisory services to the said Company.

3.3. In the year 2016, certain complaints come to be filed against the Company and its Directors by the customers and the Investigating Agencies commenced investigation on the affairs of

the Company. No complaint was made against the petitioner. In October, 2016 the petitioner receives a communication from the office of the Senior Inspector of Police, Economic Offences Wing, Mumbai, informing him that a crime had been registered against the Company and its Directors in EOW C.R. No.78 of 2013 for offences punishable under Sections 409, 420, 465, 471, 120B and 201 of the IPC r/w Sections 3, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 ('PCMCB Act' for short) r/w Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ('MPID Act' for short) r/w Sections 5 and 7 of Drugs and Magic Remedies Act, 1954. In response to the said communication, the petitioner appears before the Competent Officer, Economic Offences Wing, produces all the documents that were sought for and submitted a detailed explanation thereon. After a detailed investigation, a charge sheet is filed in the case and the name of the petitioner is dropped from the array of accused in the Economic Offences Case No.78 of 2013.

3.4. The petitioner receives another notice from the Crime Investigation Department, Bengaluru to appear before the Deputy Superintendent of Police for the purpose of investigation. The petitioner again appears and submits all the documents and completely assisted in the investigation so conducted against the Company. Despite the petitioner submitting everything, it appears a look out circular was issued against him, which stopped him from undertaking travel beyond the shores of the nation. It is this look out circular which forms the challenge in the companion petition – Writ Petition No.27046 of 2019.

3.5. As observed hereinabove, the complaints against the Company did not stop. The respondent issues a show cause notice on 27-10-2021 setting out details of allegations against the Company and its Directors who were holding the posts of Directors during the financial years 2014-15, 2015-16 and 2016-17. In response to the show cause notice, the petitioner again files a detailed reply on 08-11-2021 setting out in detail the circumstances in which he became a Director and how he resigned from the post of Director. Notwithstanding the said explanation, a private

complaint invoking Section 200 of the Cr.P.C., comes to be filed by the respondent for offences punishable under Section 447 r/w Section 448 of the Companies Act, 2013, drawing in all the present and former Directors including the petitioner, in P.C.R. No.35 of 2022 alleging fraud and rendering false statement committed by the petitioner during 2014-15, 2015-16 and 2016-17. The petitioner is arrayed as accused No.10 on the score that he was a former Director of the Company. The concerned Court takes cognizance of the offence on 20-08-2022 and directed registration of a special case in Spl.C.No.2001 of 2022. Taking of cognizance and issuance of summons is what is challenged in the subject petition.

4.1. The learned counsel appearing for the petitioner would vehemently contend that the Company was incorporated on 10-10-2011 with the petitioner as one of the Directors. On 29-02-2012 he resigned, as the promoters obtained their DIN and became Directors of the Company. Commercial operations of the Company had not commenced when the petitioner was one of the Directors. They commenced the said operation only from the year

2013-14, which is the narration in the complaint also. The complaint itself alleges that the acts are committed in the year 2014-15 and onwards. The Economic Offences Wing, Mumbai which had commenced proceedings, after the information was rendered by the petitioner, had dropped the petitioner from the array of accused on this very score. Long thereafter, the Crime Investigation Department ('CID' for short) calls upon the petitioner to submit his reply. Reply is submitted. Here again, the petitioner is not arrayed as an accused. But, a look out circular is issued and later a show cause notice was issued by the respondent – Registrar of Companies, Karnataka and then a private complaint is filed in which the petitioner is drawn as accused No.10, all for offences under Sections 447 and 448 of the Companies Act.

4.2. The learned counsel submits that, as on the date on which the petitioner was a Director and resigned, Sections 447 and 448 were not in the statute book. They are brought in as offences under the new Act, the Companies Act, 2013. He would, therefore, submit that the petitioner cannot be permitted to be prosecuted for reasons more than one. Insofar as challenge to the look out circular

is concerned, the learned counsel would submit that if these proceedings are obliterated, the corollary would be the look out circular getting quashed. Though it is earlier in time, the fulcrum is impending crime against the Company. He would seek quashment of proceedings on the aforesaid score.

5. *Per contra*, the learned Central Government Senior Panel Counsel Sri M.N. Kumar would seek to contend that the petitioner though resigned, was still the face of the Company. All the communications are by the petitioner for the Company. He has only resigned on paper, but was managing the affairs of the Company as its Auditor. Therefore, it is for him to come out clean in a full-blown trial. He would admit that Sections 447 and 448 were not in the statute book at the point in time, but the Company being in subsistence prior to it and after it, the transactions happening prior to it and after it would not mean that proceedings could be obliterated against the petitioner or any other accused.

6. The learned counsel for the petitioner would join issue to contend that if it is any other accused who had continued to be in

the affairs of the Company prior to and after, it would have been a circumstance altogether different. He would seek to place reliance on certain judgments to buttress his submissions, all of which would bear consideration *qua* their relevance in the course of the order.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts, dates, link in the chain of events are all a matter of record, however, would require a skeletal reiteration. The history of the case dates back to 2011; to be precise on 10-10-2011, when the petitioner is said to have been requested to become a Director of the Company owing to the fact that the other two founder Directors did not have their DIN and had taken steps for generation of their DINs. The petitioner thus becomes the Director on 10-10-2011. He then resigns as a Director on 29-02-2012. This is evidenced from Form No.32 appended to Section 266(1)(b) of the Companies Act, 1956. It reads as follows:

FORM 32 Particulars of appointment of Managing Director, directors, manager and secretary and the changes among them or consent of candidate to act as a Managing Director or director or manager or secretary of a company and/ or undertaking to take and pay for qualification shares

[Pursuant to sections 303(2), 264(2) or 266(1)(a) and 266(1)(b)(iii) of the Companies Act, 1956]

Form Language English Hindi

Note - All fields marked in * are to be mandatorily filled.

1 - This form is for New company Existing company

2 (a) * Form 1A reference number (Service request number (SRN) of Form 1A) or corporate identity number (CIN) of company U52399KA/011PTC060730

(b) Global location number (GLN) of company

3 (a) Name of the company VIHAAN DIRECT SELLING (INDIA) PRIVATE LIMITED

(b) Address of the registered office of the company NO 140B, 3rd Floor, 9th Cross Margosa road, Malleshwaram Bangalore Karnataka INDIA 560003

(c) e-mail ID of the company guna@gunasheelaassociates.com

4. Number of Managing Director, director(s) for which the form is being filed

5. Details of the Managing Director, director(s) of the company

i Details of the Managing Director or director of the company

Director identification number (DIN)

Name GUHAN RAMACHANDRAN

Father's name RAMACHANDRAN NARAYANASWAMY

Present residential address THE EDEN APTS RAMANIYAM APTS, BLOCK 2V 46/1 VELACHERY MAIN ROAD, VELACHERY CHENNAI Tamil Nadu India 600042

Nationality Date of birth

Appointment Cessation Change in designation

Designation Date of appointment or change in designation (DD/MM/YYYY)

Category

Whether chairman, executive director, non-executive director

Chairman Executive director Non-executive director

DIN of the director to whom the appointee is alternate

Name of the director to whom the appointee is alternate

Name of the company or institution whose nominee the appointee is

e-mail ID of director varsho.shankar@questnet-india.com

In case of cessation

Hereby confirmed that the above mentioned Director Managing Director is not associated with the company with effect from (DD/MM/YYYY) due to

ii Details of the Managing Director or director of the company

Director identification number (DIN)

Name GUNASHEELA NAGAVARMA MOODBIDRI

Father's name NAGAVARMA MOODBIDRI

Present residential address 5303, ANRIYA GERINBERG, 8TH MAIN, 13TH A CROSS, JUDICIAL LAYOUT, YELAHANKA, BANGALORE Karnataka India 560065

Nationality Date of birth

Appointment Cessation Change in designation

Designation Date of appointment or change in designation

Category (DD/MM/YYYY)

Whether chairman, executive director, non-executive director

Chairman Executive director Non-executive director

DIN of the director to whom the appointee is alternate

Name of the director to whom the appointee is alternate

Name of the company or institution whose nominee the appointee is

e-mail ID of director guna@gunasheelaassociates.com

In case of cessation

Hereby confirmed that the above mentioned Director Managing Director is not associated with the company with effect from (DD/MM/YYYY) due to

Till the date the petitioner was the Director, no commercial operations of the Company started. It began only in the year 2013-14 and thereon. Four years after the resignation of the petitioner, a communication comes to be issued to him by the Economic Offences Wing, Mumbai to appear before it along with certain information and documents. It is here the petitioner comes to know that Economic Offences Wing Crime No.78 of 2013 is registered for offences under Sections 409, 420, 465, 468, 471, 120B, 201 of the IPC r/w Sections 3, 5 & 6 of PCMCB Act r/w 2(c), 3 of MPID Act, 1999 r/w 5 & 7 of Drugs and Magic Remedies Act, 1954. It reads as follows:

"To

Mr. Gunasheela M. N.
M/s. Gunasheela & Associates,
Chartered Accountants
No.140 'B', 3rd Floor, 9th Cross, Margosa Road,
Malleshwaram, Bangalore 560 003.

Sub:- Attend this office along with Information and Documents

Ref:- EOW C. R. No. 78/2013 U/s. 409, 420, 465, 468, 471, 120(B), 201 of IPC r/w 3, 5, 6 PCMCB Act r/w 2(c), 3 MPID Act 1999 r/w 5, 7 Drug and Magic Remedies Act 1954. (Oshiwara Police Station, C. R. No. 316/2013)

This is to inform you that, the above mentioned case has been registered against the directors and officials of M/s. Vihaan Direct Selling (India) Pvt Ltd, M/s. QNet Ltd, Hongkong, M/s. Transview Enterprise

India Pvt Ltd, M/s. Vanmala Hotels, Travel and Tourism Services Pvt. Ltd. and others and being investigated by Economic Offences Wing, Crime Branch, Mumbai.

During the course of investigation, it has revealed that you were the director as well as accountant/auditor of one of the accused company M/s. Vihaan Direct Selling India Pvt. Ltd., Banglore.

In this regard the following information and documents are required for the purpose of further investigation.

- 1) How and When you came in contact with officials of M/s. QNet Limited, Hongkong, M/s. QI/Group of Companies, Malaysia and Hongkong, M/s. Questnet Enterprises India Pvt. Ltd., Chennai and Banglore before you became the director, of M/s. Vihaan Direct Selling India Pvt. Ltd., Banglore ? (and the details of the officials of the above mentioned companies)
- 2) Have you done the process of registration of the companies M/s. Questnet Enterprises India Pvt. Ltd., M/s. Vihaan Direct Selling India Pvt. Ltd., Banglore and M/s. Transview Enterprises India Pvt. Ltd., Delhi / Banglore or any other companies related to M/s. QNet Limited, Hongkong, M/s. QI Group of Companies, Malaysia and Hongkong ? if yes then so furnish certified copies of all the related documents of registration.
- 3) How you became the director of M/s. Vihaan Direct Selling India Pvt. Ltd., Banglore and who have approached you for the same ?
- 4) Have you resigned from the directorship of M/s. Vihaan Direct Selling India Pvt. Ltd., Banglore? if yes then why you have resigned ?
- 5) Have you done the accounting and auditing of the company M/s. Questnet Enterprises India Pvt. Ltd., Chennai and Banglore and M/s. Vihaan Direct Selling India Pvt. Ltd., Banglore ? if yes then furnish certified copies of all the Audit Report and Balance Sheet.

- 6) How much payment have been received by you from the above mentioned company against the services of accounting / auditing provided by you or your company? and furnish the statement of account of your bank in which the payment is reflected.
- 7) Any other information / documents you would like to share with the investigation agency.
- 8) Furnish all the certified copies of related documents related to above queries.

In this regard you are directed to attend this office of Senior Inspector of Police, SIT-QNET, Economic Offences Wing, 3rd floor at New Building, Mumbai Police Commissioner's Office Compound, D. N. Road, Mumbai 400 001 along with above mentioned information and related documents within three days after receipt of this letter.

To avoid the inconvenience, you may contact Investigating Officer, Police Inspector Kapse on 9870955002.

Sd/-
(Nikhil Kapse)
Inspector of Police,
E.O.W., Mumbai."

The petitioner appears and submits documents and details of his entry and exit in the Company. The reply dated 14-11-2016 reads as follows:

"To,

The Senior Inspector of Police,
Economic Offence Wing, SIT-Qnet,
Police Commissioner's Office
Compound, New Building, 3rd Floor,
Mumbai-400001.

Dear Sir,

Sub: Information & documents requested by your goodself

Ref: EOW C.R.No.78/2013 U/s 409, 420, 465, 468, 471, 120(B), 201 of IPC r/w 3,5,6 PCMCB Act r/w 2(c), 3 MPID Act 1999 r/w 5, 7 Drug and Magic Remedies Act 1954. (Oshiwara Police Station, C.R.No.316/2013)

With reference to above, your requested us to appear before your goodself with the following information.

- 1. During Financial year 2011-12, three officials of Qnet Ltd/Honglong, Malasiya approached me to provide my services regarding setting up of a Franchise Company in Bangalore/India. Two main persons whose name I recall are Mrs. Veni who was a project manager & Mrs. Joanna who was a legal advisor. Basically they wanted to know what kind of company to be formed, what should be the capital structure, if FDI was allowed & what are the various taxes to be paid for their line of business in India. I advised them on the various taxes to be paid in India & in State of Karnataka. I also advised them to seek opinion from experts on FEMA & FDI & practicing Company Secretary regarding the Company Structure. After consulting experts they reverted back to me & said as their proposed Directors Mr. Srinivas Rao Vanka & Mr.Guhan Ramachnadrnan did not have Director Identification Number, if I would lend my name to be Director of the Company along with any other known person to speed up the Company formation. Please note as M/s Vihaan Direct Selling (India) Pvt. Ltd was formed under the erstwhile Indian Companies Act, 1956. The Company formation in that period use to take minimum 20-25 working days. As was general practice then the professional or one of his staff or family members used to lend their name to become 1st Director of the Company & till such time proposed Directors got their DIN. Hence, I & junior employee lent our name as 1st Director till such time we were replaced by Mr. Srinivas Rao Vanka &**

Mr.Guhan Ramachandran. Please note I was Director from 10.10.2011 to 29.07.2012 & was out of the Board well before the commencement of any commercial operation of the Company, which was commenced only in May of 2012.

- 2. I have not done the process of registration of the companies M/s Questnet Enterprises India Pvt. Ltd., M/s Vihaan direct Selling India Pvt. Ltd., and M/s Transview Enterprises India Pvt Ltd., or any other companies related to M/s Qnet Limited, Honkong, M/s QI Group of Companies, Malaysia and Hongkong**
- 3. The reason for becoming 1st Director of the Company is mentioned in the point no.1**
- 4. I have resigned from the directorship on 29.02.2012 as explained to you in point no. 1. This was a just a stop gap arrangement only till such time the proposed director of the company got their DIN allotted & then were appointed as a Directors of the Company. This is a routine practice and I have assisted quite a few companies becoming 1st Director of the Company in this manner.**
- 5. I have not done any accounting & auditing services for M/s Questnet Enterprises India Pvt. Ltd., Chennai. I was the Auditor of M/s Vihaan Direct Selling (India) Pvt. Ltd. for the F.Y.2012-13. 2013-14 & 2014-15. Please find attached certified copy of Audit Report & Balance Sheet for your perusal.**
6. The details of payment received by M/s Vihaan Direct Selling (India) Pvt. Ltd against the services of Auditing & other services is attached along with proof of receipts in the Bank Statement.
7. Please note I have also consulted the Company in Income Tax & other Tax matters.

I will glad to furnish any further details you may require in this regard."

(sic)

Owing to the reply, the petitioner comes to be dropped from the array of accused in the Economic Offences Case No.78 of 2013. There are 31 accused named, but the name of the petitioner is not found. This could be gathered from the names of the accused as appended to the petition. The list reads as follows:

"Sections – 409, 420, 465, 468, 471, 120(b), 201, IPC a/w Section 3, 5, 6, P.C.M.C.B. Act, a/w. no.2C, 3 M.P.I.D. Act a/w 5, 7 Drugs & Magic Remedies Act

Claimant: - Shri.Gurupreetsingh Inderjeetsingh Anand
Name of the Accused

| Sr. No. | Accused Name | Arrest Date | Release date | Sr. No. | Accused Name | Arrest Date | Release date |
|---------|---|-------------|---|---------|----------------------------------|-------------|--|
| 1. | Messers. Vihaan Direct Selling (India) Pvt. Ltd | - | - | 2. | Michael Joseph Ferreira | 01.10.16 | Still in the Judicial Custody |
| 3. | Malcolm Nozer Desai | 01/10/16 | Still in the Judicial Custody | 4. | Srinivasa Rao Vanka | 01.10.16 | - |
| 5 | Magaral V. Balaji | 01/10/16 | Still in the Judicial Custody | 6. | Chinar Surendrarao Shinde | - | Dt. 13.1.16 Anticipatory Bail Sanctioned |
| 7 | Navjot Mahesh Das | - | Dt. 13.1.16 Anticipatory Bail Sanctioned | 8 | Smt. Mercilla Komal Dutt | - | Dt. 13.1.16 Anticipatory Bail Sanctioned |
| 9 | Smt. Aarti Arun Dighe | - | Dt. 29.02.16 Anticipatory Bail Sanctioned | 10 | Manjunath Shridhar Hegde | 16/08/13 | 31/8/13 |
| 11 | Bijoy Panikulangara Mathews | 22/11/13 | 09/12/13 | 12 | Sabina Bijoy Joseph | 22/11/13 | 09/12/13 |
| 13 | Vivek Vishwanath Kumar alias Kumar Vivek | 22/11/13 | 09/12/13 | 14 | Manish Bipin Bhanjali | 22/11/13 | 09/12/13 |
| 15 | Jagdevsingh Dhulsingh Parmar | 22/11/13 | 09/12/13 | 16 | Rohit Harish Chandra | 22/11/13 | 09/12/13 |
| 17 | Shashibhushan Rameshwar Pande | 22/11/13 | 09/12/13 | 18 | Namrata Shashibhushan Pande | 22/11/13 | 09/12/13 |
| 19 | Sujan Nikhil Chatterjee | 12/09/14 | 27/11/14 | 20 | Tarun Santosh Ratnani | 12/09/14 | 27/11/14 |
| 21 | Yasad Aspi Kasad | 23/12/14 | 13/01/15 | 22 | Abhinav Sanjeev Sharma | 05/01/15 | 27/01/15 |
| 23 | Sayan Prabir Chatterjee | 05/01/15 | 07/02/15 | 24 | Sameer Satish Naik | 05/01/15 | 06/02/15 |
| 25 | Sadeep Subhash Kalra | 04/03/15 | 10/04/15 | 26 | Hitesh Lajpalraj Miglani | 04/03/15 | 10/04/15 |
| 27 | Nitin Harish Bhatia | 18/02/16 | 29/02/16 | 28 | Rambahadur Singh Dharamraj Singh | 18/05/16 | 23/06/16 |
| 29 | Monish Bhojraj Bhandarkar | 29/05/16 | 23/06/16 | 30 | Haresh Valji Bhadra | 29/05/16 | 23/06/16 |
| 31 | Suvija Shrinivas Pai | 29/05/16 | 10/06/16 | | | | |

Investigator Officer: 1) P.I. Nikhil Kapse/ Economic Offence , Qnet SIT
2) P.I.Nitin Unhavane/ Economic Offence , Qnet SIT
3) P.I.Dilip Deshmukh/ Economic Offence , Qnet SIT

9. Two years passed by, another notice comes to be issued by the Criminal Investigation Department, Bengaluru on 04-09-2018. The notice reads as follows:

"NOTICE

Whereas, it appears that there are been transfer of funds form M/s Vihaan Direct Selling (India) Pvt. Ltd. in to your accounts. In this regarded it appear that you are acquainted with the facts & circumstances of the case noted below, which I am investigating under the Code of Criminal Procedure Code.

You are hereby required to appear before me for investigation purpose on 07.09.2018 at 10.30 along with relevant copies of records if any at Criminal Investigation Department headquarters, (CID) Cyber Crime Division, No.1 Carlton House, Palace Road, Bangalore-560001 for the purpose of answering certain questions relating to the case. Mentioned below.

Cr. No24/2018 U/s 406-420 IPC KDPI Act u/s 09 & Prize & Money circulation scheme(Banning) Act u/s. 3/4/5/6/1978 Halasoor PS (Presently investigated by the undersigned at CID head quarter, Carlton House, Palace, Road, Bangalore-560001. Karnataka, Bangalore.)

Sd/-

(S. Badrinath)

Dy. Superintendent of Police
Criminal Investigation Department
Carlton House, Palace Road,
Bangalore – 560 001.

To,
Sri/Smt. Suriya Akil Jabbar
S/o. Jabbar Suriya
Gunsheela & Associates
No.140 B, 2nd Floor, 9th Cross
Margosa Road, Malleswaram,
Bangalore-560003."

(sic)

The petitioner again appears before the CID and submits all the documents to two communications. They read as follows:

"To,

Deputy Superintendent of Police
Cyber Crime Police Station,
C.I.D, Head Quarters, No.1,
Carlton House, Palace Road,
Bangalore-560001.

Dear sir,

Sub: Investigation In the case of M/s Vihaan Direct
Selling India Pvt Ltd

Ref: Your notice No.Cr-24/HalasoorsPS/CID-Inv-18 dt.
04.09.2018

In continuation to our personal appearance, we wish to bring to your notice the following:

1. **The Undersigned are Chartered Accountants & Partners of Gunasheela And Associates Firm in existence for more than 10 years & with a combined experience of 30 years in profession.**
2. **We have not received any funds from Vihaan Direct Selling (India) Pvt Ltd (Vihaan) into our personal accounts.**
3. Our Firm has providing following services to them.
 - a. Statutory Auditor for the period F.Y.2012-13,13-14 & 14-15
 - b. Tax consultant for the period F.Y.2012-13 to February 2018.
4. **Being Tax consultants they have mandated us to pay all the Taxes on their behalf. In this regard they**

use to transfer the amount regularly to our Bank account held in the name of Gunasheela And Associates, IDBI Bank, Malleshwaram Branch, Bangalore. As per their direction we have paid Income Tax, TDS dues, Service Tax dues & VAT & GST dues.

5. We have enclosed our ledger account giving details of receipts & payments of Taxes. We are also enclosing copies of all the challans of month May 2017 as sample for your verification & if required we are ready to produce before your goodself copies of all the Tax challans paid by us on behalf of Vihaan. **Hence, as can be seen from above we are only rendering professional services to Vihaan as Chartered Accountants. This matter was also investigated by Enforcement Directorate, Bangalore & EOW Mumbai Police.**

We will be glad to furnish any further details you may require in this regard.”

.....

19.09.2018

To,

Deputy Superintendent of Police
Cyber Crime Police Station,
C.I.D, Head Quarters, No.1,
Carlton House, Palace Road,
Bangalore-560001.

Dear Sir,

Sub: Investigation in the case of M/s Vihaan
Direct Selling India Pvt Ltd

Ref: Your notice No.Cr-24/HalasoorsPS/CID-Inv-18

In continuation to our personal hearing on 07.9.2018, we furnish the following as requested by your goodself:

1. Copies of the all Tax challans paid by us on behalf of M/s Vihaan Direct Selling India Pvt Ltd From F.Y.2012-13 to F.Y.2017-18. This includes, TDS, VAT, ST, CST, GST, IT, PT & other levies.
2. Please also find attached Pendrive containing data relating to TDS payments. This includes name of the payee, PAN, amount paid & TDS deducted challan wise. Please note as informed to you this TDS returns are filed by the Company themselves & our brief was only to pay the Tax. Hence, for any further details for Tax deduction you have to contact Vihaan itself.

We will be glad to furnish any further details you may require in this regard.”

The CID files its charge sheet arraigning 21 accused. The list of accused are as follows:

“....

13. Particulars of Accused Persons: Separate sheet along with POI and POA collected during investigation enclosed.

| Sl. No. | Name | Designation - As claimed by accused in different documents |
|---------|--|--|
| A 1 | M/s. Vihaan Direct Selling (India) Private Limited | Company |
| A 2 | Malcolm Desai | Director |
| A 3 | Michael Ferreira | Director |
| A 4 | Vanka Srinivas Rao | Director |
| A 5 | Guhan Ramachandran | Director |
| A 6 | Balaji Magaral Veeravalli | Director |
| A 7 | Premdas Ramunni Kurup | Director |
| A 8 | Raveendranath Surendranath Wahal | Director |
| A 9 | Suryanarayana Kantha Vijayasarathy | Director |

| | | |
|------|------------------------------|------------------------------------|
| A 10 | Dilipraj Pukkella | Director-(Director & Service) |
| A 11 | Muhammed Imthiaaz | Director- Freelance Dealer |
| A 12 | D'Cruz Raymond Gregory | Manager-IDC |
| A 13 | Raghunandan S | Senior Manager-ISC |
| A 14 | Patla Udayashankara Bhat | Manager-Logistics |
| A 15 | Nagaraj Rama Rao | Director-Head Finance and Accounts |
| A 16 | Chakarapani | Manager-Finance |
| A 17 | Umesh kanjarakandy | - |
| A 18 | Sushen A.R.A | - |
| A 19 | Bhanu Ramdas | Senior Manager-Finance |
| A 20 | Bharathisha A | - |
| A 21 | Srinivasa Vara Prasad Velala | Business Relationship Manager" |
| | | |

The petitioner is not an accused. Therefore, after accepting the reply of the petitioner by two Investigating Agencies – one under the Economic Offices and the other by the CID, Cyber Crime – the name of the petitioner was dropped from the array of accused. It is presumably that the petitioner was dropped for the reason that nothing was found against him and his reply was found satisfactory.

10. Then begins the third proceeding. Three years later, the Registrar of Companies/the respondent in CrI.P.No.12441 of 2022 files a private complaint before the learned Magistrate under Section 200 of the Cr.P.C., now for the offences under Sections 447

and 448 of the Companies Act, 2013. In the said complaint, in P.C.R.No.35 of 2022 the petitioner is arrayed as accused No.10. In the entire complaint the allegations/role of the petitioner are found at paragraphs 3, 20(vi), 26 and 32. They read as follows:

"....

3. The accused No.1 i.e. the company had only two directors from 28/09/2016 i.e. accused Nos. 2 and 3, respectively. However, they have been disqualified under section 164(2) of the Companies Act, 2013 with effect from 16/05/2019 by the **Complainant Accused Nos.4 to 10 are Former Directors and Accused Nos. 11 and 12 are Promoters and Shareholders of Accused No.1 Company and are liable for punishment under section 447 read with section 448 of the Companies Act, 2013.** The accused Nos.2 and 3 have deliberately provided/intimated incomplete residential address to mislead the regulators and investors.

....

20. **The inspectors submitted supplementary inspection report dated 02/09/2020, depicting in detail as to how fraud has been committed by the accused No.1 company and its directors i.e. accused herein.** During the course of the inspection, the inspectors observed that;

....

- vi. In India, since 2011, QNET through Transview Enterprise India Private Limited and Vanamala Hotels Travel and Tourism Services Private Limited has been procuring products and services and making payments to them. The Inspectors have reported that from the bank statements provided by the accused No.1 company, the said company has made payment of around one crore rupees each on multiple

occasions to companies mentioned herein above. **The accused No.1 company and its directors i.e. accused herein have failed to explain the trading relationship with the above companies.**

26. Even after filing the winding up petition against the accused No. 1 company by Union of India, before the NCLT, Bengaluru Bench under section 271 read with section 272 of Companies Act 2013, in the month of June 2019, the said company has continued its fraudulent activities and luring new investors. The Covid 19 pandemic condition has probably facilitated the same, as several people are desperate for new avenues for income, given the job losses and pay cuts due to the pandemic. The accused No.1 company is also allegedly making use of Video Conferences - Zoom meet etc., to spread their multi-level marketing business and give training to new IRs on how to bring new people to the chain and thus earn commission.

.... ..

32. The accused No.1 company and its directors accused Nos. 2 and 3 respectively have made false statement, as defined in Section 448 of the Act by giving different information/documents, one of which is at least obviously false and are hence liable for penal action under section 447 of the Act on the particular ground. **As the accused No.1 company has had business operations of the same nature from year 2013-14 onwards, the promoters (who are also present shareholders) who incorporated the accused No.1 company are the ultimate beneficiaries of its activities, including the directors at relevant periods of time. Therefore, the directors of the said company have not acted in utmost good faith and their action is not for proper purpose as is evident from the fact that numerous people have lost their hard-earned money by investing in the said company. Thus, they are liable for action under section 447 of the Companies Act, 2013 and a show-cause notice was sent to them to**

show cause as to why penal action should not be initiated against them.”

On a blend of the aforesaid paragraphs, there is nothing that can be said against the petitioner. It is the case of the complainant itself that accused No.1/Company began its business operations in the year 2013-14, before which the petitioner had resigned. The complaint itself narrates that the petitioner was a Director for four months, but he was a former Director and, therefore, he should be prosecuted. The complaint is absolutely bald insofar as the petitioner is concerned. Yet, against other Directors/accused, a plethora of narrations of particular transactions are found. The concerned Court upon complaint, takes cognizance by the following order:

“Date: 30-07-2022

The Central Government Senior Panel Counsel for complainant and complainant have filed the complaint U/sec. 200 of Cr.P.C., 1973 for violation of Section 447 r/w Section 448 of the Companies Act and prays this Hon’ble Court to:

- (a) Take cognizance of this complaint, issue process to the accused, try them according to law and punish them for the offence under Sec.447 r/w Sec.448 of the Companies Act, 2013.**
- (b) Direct the accused to pay costs of the proceedings and remit to complainant office as provided under Section 446 of the Companies Act, 2013.

- (c) Exempt the complainant and witnesses from examination under Section 200 of the Code of Criminal Procedure, 1973.
- (d) Dispense with attendance of the complainant before this Hon'ble Court, in terms of proviso to Section 439(3) of the Companies Act, 2013.
- (e) And pass such order/s deemed fit under the fact and circumstances of the case.
 - 1. List of witnesses filed.
 - 2. List of Documents filed
 - 3. Memo of appearance is filed.

ORDER

Counsel for Complainant is present.
Register PCR and put up file by 30-07-2022."

(Emphasis added at each instance)

With all the aforesaid narration and the petitioner being found innocent by two agencies – one by Economic Offences Wing and the other Criminal Investigation Department – can he be permitted to be prosecuted for the third time for offences under Section 447 or 448 of the Companies Act? The answer would be an unequivocal and emphatic 'no'.

11. Criminal prosecution against a person is a very serious thing. It cannot be a frolicsome act on the part of the respondent.

The role of the accused must be clearly spelt out and not vaguely said that he might have been involved in the offence. There are a plethora of documents to demonstrate that the petitioner was not a Director and had nothing to do with the Company when the Company began its operations. If it were to be otherwise, the other two Investigating Agencies would not have given the petitioner a clean chit. The documents were thoroughly scrutinized by both the Investigating Agencies. Therefore, it would not become necessary to go into the factor whether a *post facto* law can be used to punish the petitioner. Finding no allegation against the petitioner that could permit prosecution, it would suffice, on the said reason the proceedings are obliterated.

12. In the light of obliteration of proceedings in Crl.P.No.12441 of 2022, the companion petition W.P.No.27046 of 2019, which challenges the look out circular, also deserves to succeed, for the reason that the look out circular was obtained on a statement of oath. The Economic Offences Wing on whose proceedings LOC had been generated against the petitioner, has filed charge sheet in C.C.No.9 of 2023 detailing every act and every

accused for several offences. The name of the petitioner is not found as an accused.

13. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition and Writ Petition are **allowed**.
- (ii) Proceedings in Special C. No.2001 of 2022 pending before the LIX Additional City Civil and Sessions Judge, Bengaluru stands quashed.
- (iii) Look Out Circular issued against the petitioner by the respondents stands quashed.
- (iv) It is made clear that the observations made in the course of the order only relate to the petitioner/accused No.10 and would not be applicable to any other accused in the impugned proceedings.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

Bkp
CT:MJ