IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.06.2015

CORAM

THE HON'BLE MR.JUSTICE R.S.RAMANATHAN

CRL.O.P.No.21597 of 2009
and M.P.No.1 of 2009

Ms.Renuka Ramnath
Director
M/s.Subhiksha Trading
Services Limited,
701, Radhika Apartments,
Opp. Sayani Road,
Prabhadevi, Mumbai. .. Petitioner

.. Vs ..

HCL Infosystems Limited
Rep. By Power of Attorney,
Mr.S.Srikanthan,
E-4, Sector 11, Noida 201 301,
Uttarpradesh.
Having local Office at
No.299, Arcot Road,
Vadapalani,
Chennai 600 026. .. Respondent

Prayer:- Criminal Original Petition filed under section 482 of the Code of Criminal Procedure, praying to call for the records and quash the proceedings in C.C.No.2161 of 2009 from the file of the learned VII Metropolitan Magistrate, Georgetown, Chennai.

For Petitioner : Mr.Krishna Srinivasan
for Mr.S.Ramasubramaniam Associates

For Respondent : M/s.Sathish Parasaran

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ORDER

The fifth accused in C.C.No.2161 of 2009 on the file of the learned VII Metropolitan Magistrate, Georgetown, Chennai, is the petitioner herein.

2. The respondent/complainant filed a complaint against the M/s.Subhiksha Trading Services Limited and its Directors, who are

arrayed as accused 2 to 8 for the offence under Section 138 of the Negotiable Instruments Act and this petition is filed by the fifth accused to quash the aforesaid complaint.

3. Mr.Krishna Srinivasan, learned counsel appearing for the petitioner submitted that there was no notice issued to the petitioner under Section 138 of the Negotiable Instruments Act calling upon her to pay a sum of Rs.3,00,00,000/- and the notice dated 15.01.2009 was addressed to M/s.Subhiksha Trading Services Limited, Mr.R.Subramanian, Managing Director and Mr.N.Sridhar, Chief Financial Officer and only a copy of notice was served on the petitioner and others and therefore, there was no statutory compliance.

4. He has further submitted that in the said notice it has been specifically mentioned that Mr.R.Subramanian, Managing Director was in charge of and responsible for the day-to-day business of the company, Mr.N.Sridhar, Chief Financial Officer, Mr.Atul Joshi, Senior President and Mr.Rathina Kumar Sundar are Managers and Company Secretary of Subhiksha Trading Services Limited respectively are dealing with the clients whose connivance and neglect have also resulted in the company committing the offence and therefore, submitted that no notice was issued to the petitioner calling upon her to make payment of a sum of Rs.3,00,00,000/-. Though notice was served on Mr.R.Subramanian, Managing Director, Mr.N.Sridhar, Chief Financial Officer, a copy of the notice only was addressed to the petitioner and others. Therefore, there was no proper service of statutory notice on the petitioner as only a copy thereof was marked to the petitioner. Therefore, the petition is liable to be allowed.

5. The learned counsel for the respondent submitted that sufficient allegations were made in the notice dated 15.01.2009. It is further stated in the notice that M/s.Subhiksha Trading Services Limited is a Board managed company and that the Directors are in charge of and responsible for the business of the company and though notice was not addressed to the petitioner, a copy of the notice was served on her and therefore, there was sufficient compliance of the statutory provision. He further submitted that in paragraph No.8 of the complaint, it has been specifically stated that the Directors of the Board, i.e. accused Nos.2, 4, 5 and 6 are in charge of and responsible for the day-to-day affairs of the company and therefore, necessary compliances have been made and hence, the petition is liable to be dismissed.

6. Heard Mr.Krishna Srinivsan, learned counsel appearing for the petitioner and Mr.Sathish Parasaran, learned counsel appearing for the respondent.

7. I am unable to accept the contention of the learned counsel for the respondent.

8. It is stated in the statutory notice dated 15.01.2009 that M/s.Subiksha Trading Services Limited is a Board Managed company and that the Directors are in charge of and responsible for the business of the company. In addition to that, it is also specifically stated that Mr.R.Subramaninan, Managing Director is in charge of and responsible for the day-to-day business of the company and Mr.N.Sridhar (CFO), Mr.Atul Joshi(Senior President) and Mr.Rathina Kumar Sundar are Managers and Company Secretary of M/s.Subhiksha Trading Services Limited and they were called upon to pay a sum of Rs.3,00,00,000/- due on the dishonoured cheque within a period of 15 days from the date of receipt of a copy of the notice.

9. No doubt, in the last paragraph, it is stated that M/s.Subhiksha Trading Services Limited is a Board managed company and that the Directors are in charge of and responsible for the company and it is also stated that Mr.R.Subramaninan claiming to be a Managing Director was in charge of and responsible for the day-to-day business and Mr.N.Sridhar(CFO), Mr.Atul Joshi(Senior President) and Mr.Rathina Kumar Sundar are Managers and Company Secretary of M/s.Subhiksha Trading Services Limited dealing interalia with the client whose connivance and neglect have also resulted in the company committing the offence.

10. Therefore, it is seen from the notice that only the three persons viz., M/s.Subhiksha Trading Services Limited, Mr.R.Subramaninan and Mr.N.Sridhar were called upon to pay the due amount of Rs.3,00,00,000/-. It was also stated that the persons viz., Mr.R.Subramaninan, Mr.N.Sridhar, Mr.Atul Joshi and also Mr.Rathina Kumar Sundar were also responsible for the offence under Section 138 of the Negotiable Instruments Act. When the cheque has been dishonoured either the payee or holder in due course of the cheque, as the case may be, shall make a demand for the payment of the said money by giving a notice in writing, to the drawer of the cheque, informing about the return of the cheque and if the drawer of the cheque fails to make payment of the said amount to the payee or holder in due course within a period specified therein, he has committed the offence.

11. Section 138 of the Negotiable Instruments Act, 1881 reads as follows:

> "Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, wither because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice

to any other provision of this Act, be punished with imprisonment for or with fine which may extend to twice the amount of the cheque or with both:

Provided that nothing contained in this section shall apply unless-

(a)the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b)the payee or the holder in due course of the cheque, as the may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of cheque within fifteen days of the receipt of the said notice.

Explanation.- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

12. Therefore, notice must be issued to the proper person calling upon him to pay the amount due. In this case, as stated supra, demand for payment was made only on M/s.Subhiksha Trading Services Limited, Mr.R.Subramaninan and Mr.N.Sridhar and they were only called upon to pay the amount. Though a copy of the notice was served on the other Directors, they were not called upon to make payment for the amount. The copies of the notice were served on the petitioner and the other directors only as an information stating that the notice was served on M/s.Subhiksha Trading Services Limited, Mr.R.Subramaninan and Mr.N.Sridhar calling upon them to pay the amount.

13. According to me, unless a person was called upon to make the payment within the specified period, no action can be taken against such person. Even though the petitioner is one of the Directors of the company, as the petitioner was not called upon to make payment, only the specified persons mentioned in the notice were responsible for the company and hence, the petitioner cannot be made liable since the petitioner was called upon to make payment. Therefore, this petition is liable to be allowed.

14. In the decision of the Supreme Court in POOJA RAVINDER DEVIDASANI vs. STATE OF MAHARASHTRA ([2015] 1 L.W. Crl. [614), wherein it is held as follows:

> "To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the Company, one who actively looks after the day-to-day activities of the Company and particularly responsible for the conduct of its business. Simply because a person is a Director of a Company, does not make him liable under the N.I. Act. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action, A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time will not be liable for an offence under Section 141 of the N.I.Act. In National Small Industries Corporation (supra) this Court observed:
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> Section 141 is a penal provision creating vicarious liability, and which, as per settled law must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complainant that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.
>
> A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements Under Section 141."

15. According to the decision of the Supreme Court (cited supra) when specific allegations are made in the complaint about the persons, who are in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence they will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of company at the relevant time, will not liable for an offence under Section 141 of the N.I.Act. Accordingly, the petitioner/Director was not in charge of on the day-to-day affairs of the company and there was no specific allegation against the petitioner. On the other hand, the allegations were made only against Mr.R.Subramaninan, Mr.N.Sridhar and others, who played active role in the Management of the company. Therefore, on the above said ground also, this petition is liable to be allowed.

16. In the result, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

cla

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The learned VII Metropolitan Magistrate,
George town, Chennai.

+ 1 cc to M/s.S.Ramasubramaniam & Associates, Advocate SR 28270

+ 1 cc to Mr.Sathish Parasaran, Advocate SR 28163

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