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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 05.08.2015

W.P.(CRL) 1821/2014 & CRL.M.A.13966/2014 (Stay)

M/S VIJAY STEEL TUBES & FITTINGS PVT LTD ..... Petitioner
Through: Mr. Ankur S. Kulkarni, Advocate

versus

M/S APOLLO PIPES LTD ..... Respondent
Through: None

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is a petition under Article 226 and 227 of the Constitution of India read with section 482 Cr.P.C., 1973 praying for quashing of CC No.76/2013, under section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the said Act') pending before the learned Metropolitan Magistrate, Karkardooma Courts, Delhi.

2. Despite service of notice, none has entered appearance on behalf of the respondent-complainant.

3. Mr. Kulkarni, learned counsel appearing on behalf of the petitioner invites my attention to a decision of this Court, rendered by my esteemed brother A.K. Sikri, J., as he then was, in ***M.L. Gupta & Anr. vs. CEAT Financial Services Ltd.,*** reported as **136 (2007) DLT 308** to urge that a complaint under section 138 of the said Act cannot be filed against the present petitioner as on the date of the presentation of the cheque, the petitioner-company was in liquidation and cannot be stated to have committed any offence.

4. A perusal of the order passed by the Karnataka High Court in the case of ***M/s. Religare Finvest Limited vs. Vijay Steel Tubes and Fitting Private Limited***, **Company Petition No.70/2011** decided on 16.04.2012, annexed as Annexure P-1 to the present petition at page No.10 reveals that the petitioner-company having its registered office at 14, 1st Floor, 4th Cross Nala Cross, Lal Bagh Road, Bengaluru, was directed to be wound up by the High Court of Karnataka at Bengaluru by way of its order dated 16.04.2012. The relevant paragraph of the said order is as follows:-

> "7. Accordingly, the petition is allowed. The respondent company is order to be wound up. The Official Liquidator attached to this Court shall take over the assets of the company and take further steps in the matter for recovery of the amounts due to the creditors and workmen. The petitioner company shall

> deposit a sum of Rs.35,000/- as the initial expenses before the Official Liquidator. The petitioner company shall also take out paper publication in 'The Hindu' English news paper in this regard."

5. Mr. Kulkarni, learned counsel appearing on behalf of the petitioner then invites my attention to a copy of the complaint instituted on behalf of the respondent, which is annexed to the present petition as Annexure P-2, which reveals that the subject cheque was presented for encashment by the respondent on 18.12.2012 i.e. after the petitioner-company had been wound up under the said order of the Karnataka High Court at Bengaluru.

6. In ***M.L. Gupta*** *(supra)*, this Court was concerned with the following issue, which is extracted below:-

> "8. We are, however, concerned with the position where cheque presented is dishonoured and complaint is filed under section 138 of the Negotiable Instruments Act against the company and the Directors after the company has already been ordered to be wound up. Whether such a complaint would be maintainable is the question and the legal position on this aspect is what needs to be determined."

7. By its judgment and order, the aforesaid issue was determined by this Court by observing as follows:-

> "21. On the aforesaid averments, complaint under Section 138 of the Negotiable Instruments Act cannot be filed as on the date of presentation of the cheque the company was in liquidation and cannot be stated to have committed any offence. Even second and third accused (petitioner herein)_ were not the Incharge of the day-to-day affairs and conduct of the business of the company on that date. No doubt there are allegations of cheating as well and the complaint is under section 420 read with section 120B of the IPC as well. It would have reference to the date when the cheques were issued with intent to cheat and complaint to that extent may be maintainable if *prima facie* case under these provisions is made out. However, the summoning orders dated 29.07.2000 would show that the cognizance of the alleged offence is taken only after section 138 of the Negotiable Instruments Act and not under section 420 read with section 120B of the IPC. Since complaint under section 138 of Negotiable Instruments Act is not maintainable if filed after the winding up of the company, summoning order issued is bad in law."

8. In view of the legal position, as enunciated by this Court in ***M.L. Gupta*** *(supra)* and the facts as extracted above, the complaint instituted by the respondent is not maintainable and the summoning order issued in consequence thereof is bad in law.

9. The petition is accordingly allowed. The summoning order and the subject complaint being CC No.76/2013, pending before the Court of learned Metropolitan Magistrate, Karkardooma Courts, Delhi (Annexure P-1) are set aside and quashed.

10. The writ petition is disposed of accordingly. The pending application also stands disposed of.

11. *Dasti.*

SIDDHARTH MRIDUL, J

AUGUST 05, 2015
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