IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION U/S NO. 771 OF 2016

ALONGWITH

CRIMINAL APPLICATION U/S NO. 167 OF 2017

ALONGWITH

CRIMINAL APPLICATION U/S NO. 168 OF 2017

ALONGWITH

CRIMINAL APPLICATION U/S NO. 169 OF 2017

ALONGWITH

CRIMINAL APPLICATION U/S NO. 170 OF 2017

ALONGWITH

CRIMINAL APPLICATION U/S NO. 171 OF 2017

1). Mighty Constructions Pvt. Ltd
and anr. .....Applicants

V/s.

1) IL & FS Trust Company Limited
and anr. .....Respondents

* * * * *

Mr. Ganesh Vaidya, Advocate for the applicants.

Mr. Rajesh Kanojia i/by. Res Juris, Advocate for respondent no.1.

Mr. V.V. Gangurde, APP in APL-771-2016.

Mr. Y.Y. Dabke, APP in APL-167-2017.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 28TH FEBRUARY, 2017.

P.C. :-

1). This is a common order on the above applications that are between the same parties and arise out of identical proceedings filed under Section 138 Negotiable Instruments Act ("N.I. Act" for short) by respondent no.1. The orders impugned in the applications are the order dated 18th March, 2016 passed by the trial Court issuing process against the applicants for the offence punishable under Section 138 read with Section 141 of the N.I. Act and the order dated 10th June, 2016 passed by the Sessions Court rejecting the challenge of the applicants to the order of issuance of process.

2). The brief statement of facts leading to the present applications is as follows :-

. Respondent no.1 is Infrastructure Development and Finance Company. It is also registered with the Securities and Exchange Board of India under the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993. As such, it is empowered to act as Debenture trustees for its investors who are also debenture holders. The role of respondent no.1 includes holding the security created by the borrower to secure the payment, redemption and other obligations in respect of the transactions which it facilitates between the borrower and the Debenture holder.

3). Applicant no.1 is a Company registered under the Companies Act. Applicant no.2 is its Promoter and Managing Director. Applicant no.3 who is wife of applicant no.2 is its Director. Applicants no.2 and 3 are authorized signatories of applicant no.1.

4). At the request of the applicants, respondent no.1 had arranged for finances for their projects from Reliance Capital Limited to the extent of Rs.45 crores by subscribing to the Private Placement Secured Redeemable Non-Convertible Debentures issued by applicant no.1. The applicants had signed the Debenture Trust Deed on18th March, 2016 and executed other documents for the purpose of securing loan transactions. The applicants and respondent no.1 had also executed debenture subscription agreement laying down the terms and conditions of repayment of the financial assistance given to the applicants. As per the agreement, the applicants were under an obligation to make repayment of the amount every month. In consonance thereof, the applicants had, towards partial discharge of their debt of repayment, issued six cheques, the details whereof are as follows :-

Sr. No.	Cheque No.	Date	Amount
1	593470	31st August, 2015	Rs.19,09,507/-
2	593478	31st August, 2015	Rs.34,72,891/-
3	593478	31st August, 2015	Rs.34,72,891/-
4	593460	31st August, 2015	Rs.7,54,51,585/-

5	593470	31st August, 2015	Rs.19,09,507/-
6	593475	31st August, 2015	Rs.21,24,134/-

5). When respondent no.1 presented the cheques for clearing on 29th September, 2015, the same were returned for the reason "Account Blocked". Therefore, respondent no.1, before issuing the statutory notice, informed the applicants about the dishonour of the cheques. Thereupon, the applicants had told respondent no.1 that, their bank account was seized by the Income Tax authorities under Section 226(3) of the Income Tax Act, 1961 and that respondent no.1 could re-deposit the cheques after some days as the seizure order was likely to be vacated shortly. On 7th October, 2015 the applicants communicated to respondent no.1 that the Bank account had been released and instructed respondent no.1 to redeposit the cheques. But once again, the cheques were returned. This time by the endorsement "payment stopped by the drawer". Since the applicants had intentionally stopped the payment, respondent no.1 sent statutory notice dated 7th November, 2015. In the reply to the notice, the applicants, admitted receipt of the loan amount of Rs.45 crores but claimed that the cheques issued to respondent no.1 were not towards repayment of the loan, but were meant as security. Respondent no.1, then filed proceedings in the Court of Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai under Section 138 read with Section 141 of N.I. Act. The complaint describes applicants no.2 and 3 as the Directors of the Company and as signatories of the cheques.

6). After recording verification statement of the witness of respondent no.1, the trial Court, by its order dated 18th March, 2016 issued process against the applicants for the offence punishable under Section 138 read with Section 141 of the N.I. Act in all the complaints. Being aggrieved by the order, the applicants approached the Sessions Court by filing Revision Applications which have been dismissed by the order dated 10th June, 2016.

7). Mr. Vaidya, the learned Advocate appearing for the applicant submits that, applicant no.3 though a Director of applicant no.1, is a housewife. She is not signatory of the cheque. She is also not concerned with the day-to-day management of the Company. Therefore, she is not liable to be prosecuted by resorting to Section 141 of the N.I. Act. Respondent no.1 disputes the claim of respondent no.3 as a simple housewife. It points out, in its reply, that from the information received from the website, it can be seen that applicant no.3 is a Director, in as many as, eight more companies, whose names are as under :-

1 Mobile Constructions Private Limited

2 Montreal Developers Private Limited

3 Montana Developers Private Limited

4 Avenue Real Estate Private Limited

5 Mast Constructions Private Limited

6 Marigold Constructions Private

Limited

7 Greenfield Land Development Private Limited

8 Madhani Developers Private Limited.

This statement not being refuted, is sufficient, at this *prima-facie*, view of the matter to reject the claim of applicant no.1 to be a simple housewife, who is not concerned with the day-to-day management of applicant no.1, Company. Besides, applicant no.1 has only two Directors i.e. applicants no.2 and 3. In the complaint filed by respondent no.1, there is specific averment that, both are in day-to-day management of the Company, as also the signatory for applicant no.1. Therefore, this argument for dismissal of the complaint against applicant no.3 cannot be accepted.

8). As regards the second contention of the applicants that, the cheques had been issued not towards repayment of the loan but by way of security, the same being the defence of the applicants to the prosecution, needs to be taken up at the appropriate time during the trial of the complaint. Mr. Vaidya, submits that around the same time, as dishonour of the cheques, applicant no.1 has deposited substantial amount in the ESCROW Account maintained with respondent no.1. He states that, applicant no.1 has made payment of Rs.25,00,000/- on 27th November, 2015 and Rs.2,52,35,000/- on 11th December, 2015. If these payments are adjusted towards some of the cheques, the prosecution of the applicants in respect of those cheques can be quashed. Firstly, the payments made by the applicants in the ESCROW Account do not match with the cheque amounts. Besides, it is not for the Court to adjust any payment made by the applicants towards the cheques dishonoured. Hence, the applications are dismissed.

(SMT. R.P. SONDURBALDOTA, J)