

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPLICATION NO.562 OF 2021

Advance Oleochem Pvt. Ltd.
Through its Director,
Mr. Ashok Kumar Harilal Shah,
Flat No.1002, 10th Floor, Maitry
Residency-1, Borsapada, Behind
Poisar Bus Depot, Kandivali,
Mumbai 400 067

...Applicant/
Org. Accused

Vs

1 Manoj Agarwal
Add: 604, Mangal Murthy Tower,
60 Feet Road, Opp: ICICI Bank,
Bhayander (W), Thane-401 101

...Respondent/
Org. Complainant

2 The State of Maharashtra

... Respondents

...

Mr. Ajay Panikar i/by Ajay Law Associates for the Applicant.

Mr. Darshit Jain with Mr. Pradeep Singh for Respondent No.1.

Smt. M.R.Tidke, APP for the Respondent No.2-State.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : NOVEMBER 30, 2021.
PRONOUNCED ON: DECEMBER 6 , 2021.

JUDGMENT :

Rule.

2 Rule made returnable forthwith. With consent of the learned counsel for the parties, matter is taken up for final hearing forthwith.

3 This application, under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) seeks to quash the Criminal Case, S.C.C. No. S/18820 of 2019 instituted by the respondent no.1 (hereinafter called 'Complainant' for short) under Section 138 of the Negotiable Instruments Act, 1881 ('NIA' for short). and summons issued therein, by the 6th Joint Chief Judicial Magistrate, First Class, Thane.

4 Back-ground facts:

The complainant, is a Chartered Accountant. He was, financial creditor, of M/s. Aryavart Chemicals Pvt. Ltd. (Corporate debtor) within the meaning of Insolvency and Bankruptcy

Code, 2016. The National Company Law Tribunal ('NCLT' for short) in a petition filed by M/s. Panama Petrochem Limited (Operational Creditor) appointed Mr. Sandip Mehta as the 'Resolution Applicant (RA)' and appointed three members 'Committee of Creditors ('COC')'. The complainant was a member of the 'COC'. That, out of three members, resolution plan submitted by the, RA, was approved by two members except the complainant. It appears, complainant was not satisfied with the resolution plan, because he being financial creditor, he would receive just Rs.98,000/- as per the resolution plan, as against Rs.13 Lakhs, then due. It is complainant's case that applicant -accused being, 'Operational Creditor' approached and persuaded him for not filing an appeal against the order of the NCLT before the National Company Law Appellate Tribunal ('NCLAT' for short) and offered him to pay Rs.2,02,000/-. It appears, the complainant had accepted the offer and did not file appeal. In consideration of this omission, accused drew a cheque in favour of the complainant for Rs.2,02,000/- dated 30th May, 2019 drawn on Bank of Baroda, Mahavir Nagar Branch, Kandiwali (West).

5 Cheque in question was returned “Unpaid”; whereafter, complaint, in question was filed on 15th October, 2009.

6 In paragraphs 7 and 8 of the complaint, complainant pleaded that cheque in question drawn by the accused was towards ‘legally enforceable liability’. Paragraph 8 of the complaint reads as under;

*“8 The Complainant further states that, along with the cheque the Accused gave in writing on his Company’s Letter-Head an acknowledgment of the said cheque duly signed by the Accused. Hereto annexed and marked as “**Exhibit-B**” is the copy of the said written Acknowledgment by Accused dated 01/03/2019.”*

7 The learned Judicial Magistrate, First Class, Thane issued the summons on 3rd March, 2021 to the applicant, which is assailed in this application.

8 Mr. Panikar, the learned counsel for the applicant, submitted that, ‘cheque amount’ in question would not constitute ‘legally enforceable liability or debt’ within the meaning of

Explanation to Section 138 of NIA. The learned counsel submitted, that in this case, ‘Object’ of the agreement between the complainant and the accused was not lawful in-as-much as cheque was drawn in complainant’s favour, to dissuade him from, preferring an appeal against the order of the NCLT. Therefore, the ‘Object’ of the agreement and ‘Consideration’ payable thereunder, was unlawful. Thus, argued, that agreement between the parties, being immoral and opposed to public policy, within the meaning of Section 23 of the Indian Contracts Act, 1872, agreement was void. Therefore, the learned counsel would urge that the complaint and ‘Issue Process’, order passed thereunder be quashed and set aside.

9 The learned counsel for the complainant, on the other hand, would support the complaint and the order ‘Issue Process’.

10 Under Section 138 of the NIA, expression,“of any debt or other liability for the discharge, in whole or in part of any debt or other liability”, means, ‘debt or liability arising, from an agreement of which object is lawful,within the meaning of Section 23 of the

Indian Contracts Act, 1872. Section 23 reads as under:

“23. What consideration and objects are lawful, and what not.- The consideration or object of an agreement is lawful, unless-

*it is forbidden by law; or
is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or*

involves or implies, injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.”

. This Section declares, what kind of consideration and object are not lawful.

11 Indisputably, complainant was a member of ‘COC’ and he accepted the consideration from the accused for not preferring an appeal against the order of the NCLT. Section 23 of the Contract Act, lays down that ‘Consideration’ or ‘Object’ of the agreement is unlawful, if it is forbidden by law or would defeat the provisions of law or would involve injury to any person or property of another or the Court considers it, as immoral, or opposed to public policy. It

may be stated that it is contrary to the public policy to induce public officer for money or other valuable consideration, to use their position/office and influence to procure benefit. In fact, Illustrations 'f' and 'h' appended to Section 23 of the Contracts Act aptly applies to the facts of the case.

12 In the case of **Nutan Kumar and Others v. Ind Additional Sessions Judge, Banda AIR 1994 Allahabad 298**, it was held thus;

“ An agreement offending a Statute or public policy or forbidden by law is not merely void by it is invalid from nativity. It cannot become valid even if the parties thereto agree to it. The concept that an agreement may be void in relation to a specified person and may be valid or voidable between the parties thereto is not applicable to an agreement the very formation whereof law interdicts, or which is of such a character that, if permitted, it would frustrate the provisions of any law, or is fraudulent, or opposed to public policy. Neither party can enforce said agreement. No legal relations come into being from an agreement offending a Statute or public policy.”

13 Thus, I hold that agreement between the Complainant and the accused was, void since, beginning.

14 In consideration of the facts of the case and for the foregoing reasons, since liability sought to be enforced by the complainant under the agreement was ‘void’, the complaint under Section 138 of the NIA was not maintainable. It is, therefore, quashed. Application is allowed.

15 Rule is made absolute in the aforesaid terms.

16 Application is disposed of.

(SANDEEP K. SHINDE, J.)