IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.88 OF 2022

Premji Khepar Ruparel …Applicant
Versus
Dr. Niranjan Vijaykumar Shah and Ors. ...Respondents

WITH
CRIMINAL APPLICATION NO.92 OF 2022

Jeetendra Jaykumar Dharu …Applicant
Versus
Dr. Niranjan Vijaykumar Shah and Ors. ...Respondents

WITH
CRIMINAL APPLICATION NO.96 OF 2022

Priti Premji Ruparel …Applicant
Versus
Dr. Niranjan Vijaykumar Shah and Ors. ...Respondents

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Mr. Vineet Naik, Senior Advocate a/w Sukand Kulkarni, Mr. Parikshit Ruparel, Ms. Sayli Shinde i/by M/s. Kartikeya & Associates Advocate for the Applicants.

Mr. Pratap Patil, Advocate for Respondent No.1.

Mr. A. R. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 23rd JUNE, 2022.

PER COURT:

1. The applicants are prosecuted for offence under Section 138 of Negotiable Instruments Act, 1881 vide C.C. No.558 of 2021 pending before the Court of Joint Civil Judge Junior Division,

Saswad. The process was issued by the trial Court vide order dated 16.09.2021 under Section 138 of Negotiable Instruments Act, 1881. The applicants were impleaded as accused Nos.3, 4 & 5.

2. The brief facts of the complaints are as follows :-

i) The accused No.1 is Sugar Factory existing Co-operative Society registered under the Companies Act. Accused No.2 is the Chairman and Managing Director of accused No.1. Accused No.2 looks after whole affairs of and authorized signatory of accused No.1. Accused No.2 signed the cheques on behalf of accused Nos.1 to 6. Accused Nos. 3 & 4 are the directors of accused No.1. They are authorized signatory of accused No.1. Accused No.5 is whole time director looking after day-to-day affairs and authorized signatory director of accused No.1. Accused No.6 is the Company Secretary looking after secretarial, legal matter and authorized signatory of accused No.1

ii) The complainant sent the letter for purchase of 4,000 M.T. 'A'-grade Molasses from accused No.1. Accordingly accused No.2 replied for and behalf of accused Nos.1 to 6 by letter dated 30.10.2017 and agreed to supply 4,000 MT 'A'-grade Molasses at the rate of 2,700/- per ton excluding tax along with other terms and condition. As per letter dated 31.10.2017, the complainant paid advance payment of Rs.1,08,00,000/- by RTGS. The accused No.2 on behalf of accused Nos.1 to 6 and complainant executed agreement on 31.10.2017 for purchase/sale of Molasses. It was agreed that 4,000 m.t. Molasses will be supplied to complainant from accused No.1 sugar factory commencing of seal on 2017-18 till completion of order of 4,000 m.t.

iii) The accused supplied Molasses of 816.840 M.T. for Rs.22,05,468/- from 5th January, 2018 to 17th January 2018. The accused was supposed to supply 4,000 M.T. Molasses for season 2017-18, but failed to supply.

iv) Accused No.2 issued cheques on behalf of accused Nos.1 to 6 bearing No.151417 of Rs.54,00,000/- and cheque bearing No.151418 for Rs.54,00,000/-.

v) The complainant learnt that the accused are supplying Molasses to others which was in violation of the terms and conditions of the agreement executed between the complainant and accused.

vi) The complainant deposited cheque of Rs.54,00,000/- dated 24.09.2020 bearing No.151417. It was dishonoured on

01.10.2020 for the reason ‘Insufficient Funds’. The complainant deposited cheque dated 24.09.2020 bearing No.151418 and it was dishonoured on 01.10.2020 for the reason ‘drawers signature differs’. The demand notice was issued to the accused. The notice was served upon the accused. They failed to make the payment. The complaints were filed.

3. Learned Senior Advocate Mr. Naik submitted that the process was issued mechanically. The applicants cannot be prosecuted for offence under Section 138 of Negotiable Instruments Act, 1881. No role is assigned to them for invoking Section 141 of Negotiable Instruments Act. The applicants are Directos of Shri Dutt India Pvt. Ltd., having its registered office at Kolkatta, West Bengal and Administrative Office at Mumbai. By order dated 11.11.2019 passed by National Company Law Tribunal, Mumbai Bench (NCLT), The accused No.1 company has been merged and amalgamated with Shri Dutt India Pvt. Ltd. with effect from 09.02.2020. The accused No.1 has ceased to exist from 09.02.2020. By order dated 11.11.2019 passed by the National Company Law Tribunal, Mumbai, the resolution plan submitted by Shri. Datt India Pvt. Ltd was accepted and approved by committee

of Creditors was approved by NCLT. On 20.02.2019. NCLT admitted application filed by Cosmos Co-operative Bank Ltd. being the Financial Creditor of accused No.1 under Section 7 of Insolvency & Bankruptcy Code, 2016 (herein after referred to as 'IBC') for initiation of Corporate Insolvency Resolution Process (CIRP). Mr. Vishram Narayan Panchpor was appointed as Interim Resolution Professional ('IRP') of accused No.1. By virtue of Section 17 of the Code, the powers of the Board of Directors of the accused No.1 stood suspended and vested in the IRP. The accused No.1 entered into contract for supply of Molasses to complainant. The accused No.2 was Chairman and Managing Director of accused No.1. The accused No.2 was concerned with day-to-day management and operation of accused No.1. After initiating CIRP i.e. from 20.02.2019, the accused No.2 had no authority to represent and act on behalf of accused No.1. After the commencement of CIRP proceedings, all contracts, agreement, entered into by the Company i.e. Corporate Debtor stand suspended. With effect from 11.11.2019, accused No.1 was taken over by the new management in accordance with order passed by the NCLT and in accordance to the Resolution Plan submitted by Shri. Dutt India Pvt. Ltd. The accused No.1 ceased to exist and stood merged and or amalgamated with Shri. Dutt India Pvt. Ltd.

pursuant to order dated 11.11.2019. The applicants were not directors of accused No.1 at the time of transaction nor accused No.1 exists on the date when the cheques were issued. The trial Court failed to ascertain whether at the relevant time, the applicants were directors of accused No.1 Company. The complainant is the Creditor of accused No.1 Company. However, the accused No.1 did not filed claim in respect to public notice issued by IRP on 23.02.2019. Sections 13, 14, 15, 17 & 31 were ignored by the Court. Section 31 of the IBC relates to approval of resolution plan. The applicants are not signatory to Cheques. Section 141 of the Negotiable Instruments Act cannot be invoked against the applicants. There are no sufficient averments in the complaint for invoking vicarious liability against the applicants under Section 141 of the Negotiable Instruments Act.

4. The applicants have filed affidavit for bringing certain documents. In the affidavit it is stated that Shri Dutt India Pvt. Ltd. had requested Axis Bank to provide certain information/documents pertaining to the cheques by letters dated 27.01.2022 and 28.01.2022. By letter dated 15.03.2022, the Axis Bank had stated that sole signatory to the bank account held by accused No.1 was accused No.2. Axis Bank received the letter from Vishram Narayan

Panchpor. The IRP of respondent No.1 stating that the NCLT Mumbai had ordered initiation of Corporate Insolvency Resolution Process of complainant and Axis Bank was instructed not to honour any cheque or any transaction without his direction. The Axis Bank was informed that, a moratorium under Section 14 of the Code had been ordered by way of admission order prohibiting institution or continuation of pending suits or proceedings against corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority, transferring, encumbering alienating or disposing of assets and legal rights or beneficial interests, any action to foreclose, recovery or enforce any security interest credited by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), recovery of any property by owner or lessor, where such property is occupied or in possession of the corporate debtor. The said account had not been operated from 20.02.2019. The cheques were signed by accused No.2. The status of the accused is 'dormant'.

5. Learned counsel for the applicants have relied upon the decision in the case of **A.K. Singhania V/s. Gujrat State Fertilizers**

Company Limited and Another (2013)16 SCC 630 and another decision of apex Court in the case of **Committee of Creditors of Essar Steel India Ltd. Vs. Satishkumar Gupta and others** in Civil Appeal No. 8766-67 of 2019.

6. Learned Advocate for the respondent-complainant submitted that the submissions of learned counsel for the applicants cannot be accepted at this stage. The issues urged by the applicants can be at the most urged during trial. The applicants were directors of accused No.1 - Company. Specific role has been attributed to them. They were responsible for day-to-day affairs of the company at the relevant time. The cheques were issued in discharge of liability. The proceedings under the IBC would not cause any restraint in stopping the proceedings under Section 138 of Negotiable Instruments Act, 1881. The decision relied upon by the learned counsel for the applicant is not applicable in this case.

7. From documents on record, it appears that accused No.1 company has been merged with Shri. Dutt India Pvt. Ltd. The applicants were impleaded as Directors of accused No.1. The complaint it is stated that accused No.2 signed the cheques. The accused No.2 is Chairman and Managing Director of accused No.1. As far as the vicarious liability of the applicants is concerned, the

complaint does not attribute specific role to the applicants. They are described as directors of accused No.1. The averments in the complaints specifically mentions that the accused No.2 was discharging the activities on behalf of the accused Nos.3 to 5. There is no material to invoke the Section 141 of the Negotiable Instruments Act against applicants. In the case of **A.K. Singhania V/s. Gujrat State Fertilizers Company Limited and Another (supra)**, it was observed that essential averments in the complaint are required to invoke Section 141 of Negotiable Instruments Act. Referring to Section 141 of the Act, the Court had observed that on plane reading of Section 141 it is evident that every person who at the time of offence was committed was in charge of and responsible to the company shall be deemed to be guilty for the offence under Section 138 of the Act in the face of it. In the case of offence by the company, to bring its Directors within the mischief of Section 138 of the Act, it shall be necessary to allege that they were in charge of and responsible to the conduct of the business of the company. It is necessary ingredients which would be sufficient to proceed against such directors.

8. On perusal of the contents of the complaints it is apparent that the applicants are described as directors of accused No.1 –

Company. Accused No.2 is described as Chairman and Managing Director of accused No.1. No role is assigned to the applicants. Hence, for lack of material even prima facie to invoke Section 141 of the NI Act, the proceedings against applicants deserves to be quashed and set aside. It is not necessary to embark upon the other issues urged by the applicants about effect of orders passed by NCLT and Provisions of IBC Code.

9. Hence, I pass the following order :-

ORDER

i. Criminal Application Nos.88 of 2022, 92 of 2022 and 96 of 2022 are allowed.

ii. Impugned order dated 16.09.2021 passed by the learned Jt. Civil Judge Junior Division Saswad, issued process under Section 138 of Negotiable Instruments Act, 1881 and the proceedings in C.C. No.558 of 2021 are quashed and set aside qua the applicants.

iii. All Criminal Applications are disposed off accordingly.

(PRAKASH D. NAIK, J.)