IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

CORAM

THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 6472 of 2020
and
Crl.M.P.No.3572 of 2020

Mr.Suresh Kumar Herralal,
Director of Hallmark Living Space Pvt. Ltd.,
Having office at No.43, Old No.62/3,
United Plaza, Usman Road, T.Nagar,
Chennai - 600 017. ... Petitioner

Vs

M/s Larsen and Toubro LImited,
Rep. by its Authorized Representative,
Mr.V.K.Natarajan,
Mount Poonamallee Road,
Manapakkam, Chennai - 600 017. ... Respondent

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the entire records relating to the complaint in C.C.No.6574 of 2017 on the file of the XIII-Metropolitan Magistrate and now pending with Fast Track Court - I, Allikullam, Egmore, Chennai.

For Petitioner : Mr.R.Chandramohan

For Respondent : Mr.Vaibhav R.Venkatesh
for M/s.Nithyaesh and Vaibhav

ORDER

This petition has been filed to quash the proceedings in C.C.No.6571 of 2017 on the file of the XIII Metropolitan Magistrate and now pending before the Fast Track Court - I, Allikullam, Egmore, Chennai, for the offence punishable under Section 138 of the Negotiable Instrument Act.

2.1. The case of the prosecution is that the respondent / Company lodged a complaint for the offence punishable under Section 138 of Negotiable Instrument Act, alleging that the petitioner had entered into a contract with the respondent / Company on 06.01.2014 for construction of Residential Project with the 1st accused/Company, represented, by its other Directors. The said contract was entered based on their representation of the good faith and also undertaking that the payments would be effected as per the contract to the satisfaction of the complainant / respondent. However, in spite of prompt service rendered to the full satisfaction of the accused persons, the payments were not made in accordance with the contract. Therefore, in order to clear the outstanding payments to the tune of Rs.23,15,52,800/- (Rupees Twenty Three Crores Fifteen Lakhs Fifty Two Thousand and Eight Hundred only), the accused issued a cheque to the tune of Rs.5,50,00,000/- (Rupees Five Crores and Fifty Lakhs only) towards partial payment of dues, as per the instruction of the accused persons. The respondent deposited the said cheque and the same was returned by the Bank as dishonoured with endorsement "Funds Insufficient".

2.2. Thereafter, the respondent had issued a statutory notice on 10.07.2017 and the same was duly delivered to all the accused persons on 12.07.2017. On receipt of the same, the accused persons failed to pay the cheque amount and also did not bother to reply to the statutory notice. Therefore, the respondent / Company lodged the complaint.

3. The learned counsel for the petitioner submitted that there are totally six accused in this case, in which, petitioner is arrayed a A5 and he raised three grounds as follows:

(i) The petitioner is only a Sponsor Director of the Company and as such, he is not liable to be punished for issuance of the cheque on behalf of the 1st Accused.

(ii) The petitioner was in-charge of the day-to-day affairs of the Company, and there is absolutely no specific pleadings to that effect, and the Company itself filed complaint under Section 141 of the Negotiable Instrument Act, which stipulates that at the time of the commission of the offence, the accused was in charge and he was responsible to the Company for the conduct of the business of the company. In the present complaint, no such pleadings or averments were made out.

(iii) As per the Memorandum of Association and Articles of Association of the 1st Accused /company, the petitioner is one of the Sponsor Director and he is no way responsible or liable for the act committed by the 1st Accused/Company.

4. The learned Counsel for the respondent submitted that, already trial had commenced and in fact, after questioning of the accused under Section 313 of Cr.P.C, they also examined the defence witnesses before the Trial Court. He further submitted that in the Companies Act, there is no word as "Sponsor Director" and whatever documents produced by the petitioner are of their own documents and it would bind the respondent to prosecute them for the offence under Section 138 r/w 142 of Negotiable Instruments Act.

5. On a perusal of the documents produced by the petitioner, such as Memorandum of Association and Articles of Association, it revealed that the petitioner is only a Sponsor Director. Though it is stated that the Sponsors and the Investors shall exercise their respective voting rights and shall cause the Directors nominated by them to exercise their powers and duties in the manner consistent with the Agreement, they never appointed any Director so far. For their convenience, they executed Memorandum of Association and Articles of Association as if they are the Sponsor Directors, whereas on a perusal of the definition for the word "Director" under Section 2 (34) of the Companies Act,defines that *a 'Director" means the Director*

appointed by the Board of Directors of a Company.

6. That apart, the definition for Key Managerial Personnel under Section 2(51) of Companies Act in relation to the company is as follows;-

> " *(i) the Chief Executive Officer or the Managing Director or the Manager; (ii) the Company Secretary; (iii) the Whole -time Director; (iv) the Chief Financial Officer".*

Further, Section 2(60) of the Companies Act defines as follows;-

> *"Officer who is in default" and it mentions officer such as Whole -time director, KMP, directors, etc., who shall be liable to any penalty or punishment in case of default committed by the Company under the Companies Act".*

7. Therefore, the petitioner is one of the Sponsor Director, who is responsible for the day-to-day affairs of the 1st accused / Company, since he is also involved in the day to day affairs of the Company.

8. On a perusal of the complaint in Paragraph 6 and 7, it revealed that the 2nd to 6th accused are wholly responsible for the management of the affairs for the 1st accused /Company and they are also managing the day-to-day affairs of the 1st accused/ Company and further they are managing and administering the 1st accused /Company. Therefore, they are liable to be punished under Sections 138 and 142 of the Negotiable Instruments Act.

9. The 2nd to 6th accused being the Directors of the 1st accused/ Company, they are vicariously liable for the offences under Section 138 and 142 of the Negotiable Instruments Act. That apart, on a perusal of the records, it revealed that, already trial had commenced in C.C.No.6574 of 2017 before the Trial Court, and in fact, after questioning of accused under Section 313 of Cr.P.C., the defence witnesses were also examined on behalf of the accused persons. At this stage, this Court cannot entertain the quash petition filed under Section 482 of Cr.P.C. That apart, the grounds raised by the petitioner are mixed question of facts and they have to be considered only before the Trial Court during the time of trial.

10. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.6574 of 2017 on the file of the Fast Track Court-I, Allikulam, Egmore, Chennai. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

20.06.2022

Index:Yes/no
Speaking Order/Non-Speaking Order
nti/ata

To

1. The Fast Track Court - I, Allikullam,
   Egmore, Chennai.

2. The Fast Track Court - I, Allikullam,
   Egmore, Chennai.

3. The Public Prosecutor,
   Madras High Court.

G.K.ILANTHIRAIYAN. J,
nti/ata

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