Ghuge

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.249 OF 2022

Ronak Mehta … Petitioner

V/s.

BDR Pharmaceuticals International Private Limited and Anr … Respondents

WITH
INTERIM APPLICATION NO.1186 OF 2022
IN
WRIT PETITION NO.249 OF 2022

BDR Pharmaceuticals International Private Limited and Anr … Applicants

V/s.

Ronak Mehta and Anr … Respondents

Mr. Gaurav Parkar for the petitioner.

Mr. Niranjan Mundargi with Mr. Amit A. Tungare for respondent No.1.

Mr. Arfan Sait, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 30, 2023

P.C.:

1. The petitioner is challenging order of issuance of process mainly on the ground that he is individual non-executive director and is therefore not liable under Section 141 (1) of the Negotiable Instruments Act, 1881.

2. The facts relevant for the adjudication of the issues are as under :-

The respondent No.1 filed a complaint alleging that the accused No.1 and complainant entered into work contracts for construction. The said contracts where supposed to be completed initially by 24th November, 2019. The complainant has made a specific averment in the complaint that the complainant and accused No.2 and 3 meet on several occasions to review progress of contract and to come an amicable solution. The accused No.2 and 3 agreed that the accused No.1 shall complete assignment by 30th June, 2020. According to complainant, accused No.2 and 3 admitted liability in the meeting dated 24th February, 2020 towards advance of Rs.1,89,01,686/- given by the accused No.1. According to the complainant accused No.2 and 3 issued cheques of unrecovered amount of Rs.1,40,00,000/-, which were dishonoured resulting into prosecution under Section 138 of the Negotiable Instruments Act, 1881. The Magistrate issued process against all accused. Aggrieved thereby applicant/accused No.3 has filed present petition.

3. Learned advocate for the applicant invited my attention to the form DIR 12 to submit that the applicant is only independent non executive director and therefore, not liable under Section 141(1) of the Negotiable Instruments Act, 1881.

4. Learned advocate for the complainant invited my attention to several documents annexed to the complaint and to the affidavit in reply and the averments in the complaint urged that the averments in the complaint and material on record is sufficient to indicate that the petitioner took active role in day-to-day affairs of the company.

5. He invited my attention in paragraph 4, 7, 9 and 15 to show that the complainant has assigned specific role to the applicant showing his active participation in day-to-day affairs.

6. With the assistance of the learned advocate for the parties I have scrutinized the material on record. The complainant in paragraph has averred that the accused No.3/applicant is the director of accused No.1/Company who was in charge or responsible for accused No.1/Company when the offence was committed. In paragraph 4 it is averred that the applicant attended several meetings. On a meeting held on 24th February, 2020, the applicant along with accused No.2 assured the complainant that the assignment will be completed. It is also averred that the accused No.3 admitted liability in meeting date 24th February, 2020 towards advance of Rs. 1,89,01,686/-. It is also averred that the applicant along with accused No.2 agreed to issue cheque in favour of complainant against unrecovered amount of Rs.1,40,00,000/-. The construction contract on page No.59 *prima facie,* appears to be signed by the applicant. The minutes of meeting dated 24th February, 2020 produced on record *prima facie,* indicate presence of applicant. Along with affidavit in reply the complainant has produced company master data which indicate that the applicant is director holding 134,160 equity shares. It also shows that the applicant attended 100% meetings gross salary of Rs.4,65,804/ was paid to the applicant. Along with affidavit on record material in the form of company website of accused No.1 shows that he is heading finance part of the business. Therefore, in my opinion, at the stage of issuance of process, the Court need not consider probative value of material produced by the complainant. However, the averment in the complaint as indicated above and *prima facie,* material produced by the complainant is sufficient to draw *prima facie,* inference that the applicant is actively involved in day-to-day affairs of the Company. Therefore, in my opinion, the Magistrate committed no illegality in issuing process against the applicant. There is neither perversity nor error of jurisdiction. The writ petition is, therefore, dismissed. No costs.

7. In view of dismissal of the writ petition, the Interim Application does not survived and is disposed of accordingly.

8. It is made clear that, the observation made above are only for the purposes of considering validity of the order of issuance of process and shall not influence the trial Court while deciding the trial on merits.

(AMIT BORKAR, J.)