IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.04.2023

Pronounced on : 19.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.25849 of 2019

and

Crl.M.P.No.13760 of 2019

Mr.KiranVittal Poojary
Director
M/s.Avni Energy Solutions Pvt.Ltd.
C/207, Dhup Chaon, Off 4,
Bunglows Road, Navkiran Marg,
Andheri (W)
Mumbai – 400 053 ...Petitioner/ 2nd Accused

Vs.

M/s.Flyjac Logistics (P) Ltd.
No.25-32, Readymade Grament Complex,
SIDCO Industrial Estate, Guindy,
Chennai – 600 032
Rep. by the Power of attorney holder
Mr.J.Srinivasan ...Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records and quash the proceedings pending in C.C.No.6945 of 2018 on the file of Fast Track Court No.V, Saidapet, Magistrate level, Chennai.

For Petitioner : M/s.Shivakumar and Suresh

For Respondent : Mr.K.Mahendran and
Mr.K.S.Karthikeyan

ORDER

The petition is to quash the proceedings in C.C.No.6945 of 2018 on the file of the Fast Track Court No.V, Saidapet, Magistrate Level, Chennai for the alleged offence under Section 138 of Negotiable Instruments Act, 1881.

2. It is alleged in the complaint that the first accused had issued two cheques for Rs.1,34,570/- (Rupees One Lakh Thirty Four Thousand Five Hundred and Seventy only) and Rs.1,61,840/- (Rupees One Lakh Sixty One Thousand Eight Hundred and Forty only) in the discharge of their liability towards the respondent; that the said cheques were presented for collection and were dishonoured for the reason “Funds Insufficient”; and that inspite of the statutory notice, the accused

did not make the payment. Hence the complaint. The petitioner is arrayed as A2 in the complaint and is alleged to be a Director of the first accused company.

3. The learned counsel for the petitioner/second accused would submit that the petitioner is a Director, nominated by SIDBI Venture Capital Ltd (SVCL), pursuant to a subscription cum Shareholders Agreement dated 16.05.2014 entered into between the first accused company and SIDBI Venture Capital Limited. The learned counsel would further submit that SIDBI Venture Capital Limited is a wholly owned subsidiary of SIDBI (Small Industries Development Bank of India) which is controlled by the Central Government. Hence the petitioner cannot be prosecuted in view of the second proviso to Section 141 (1) of the Negotiable Instruments Act, 1881.

4.The learned counsel for the respondent/complainant, however would submit that the petitioner was a nominated person as per the Shareholders Agreement between the first accused company and M/s.SIDBI Venture Capital Limited. M/s.SIDBI Venture Capital Limited is not controlled by the Central Government. The Central Government has only 21 percent shares in SIDBI. The question as to whether the petitioner was nominated as a Director by virtue of his holding any office in a financial corporation owned or controlled by the Central Government is factual and has to be adjudicated only during trial. Hence, he prayed for the dismissal of the quash petition.

5. It is admitted that the petitioner was employed with SIDBI Venture Capital Limited and has been appointed as nominee of SIDBI Venture Capital Limited (SVCL) as Director in the first accused Company. The question is whether SIDBI Venture Capital Limited is owned or controlled by the Central or State Government for the petitioner to claim protection under second proviso to Section 141 (1) of Negotiable Instruments Act, 1881. It is seen that the Small Industries Development Bank of India was established by an Act of Parliament in 1989. Section 6 of the Small Industries Development Bank of India Act, 1989 states that the Board shall consist of a Chairman, Managing Director and Directors who shall either be appointed or nominated by the Central Government. Section 3 provides for the Establishment and incorporation of the Small Industries Development Bank of India, which reads as follows:-

*"3. **Establishment and incorporation of Small Industries Development Bank of India:***

(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a corporation to be known as the Small Industries Development Bank of India.

(2) The Small Industries Bank shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by that name, sue or be sued

(3) The head office of the Small Industries Bank shall be at Lucknow or at such other place as the Central Government may, by notification, specify.

(4) The Small Industries Bank shall establish offices, branches or agencies at any place in or outside India."

The above provision would show that the SIDBI is controlled by the Central Government if not owned by it. It is further seen that SIDBI Venture Capital Limited is a 100 percent wholly owned subsidiary of SIDBI. The learned counsel for the petitioner had produced an incontrovertible document namely the copy of the Annual Returns of SIDBI Venture Capital Limited submitted in Form No.MGT-7 [Pursuant to sub-Section (1) of section 92 of the Companies Act, 2013 and sub rule (1) of rule 11 of the Companies (Management and Administration) Rules, 2014] to establish the said fact. It is also an admitted fact that the petitioner who was employed with SIDBI Venture Capital Limited was a nominated Director of the first accused company. From the above, it can be seen that the petitioner who is a nominated Director by virtue of his employment in a financial corporation controlled by the Central Government, is entitled to protection under the second proviso to Section 141 (1) of the Negotiable Instruments Act, 1881. The second proviso to Section 141 (1) of the Negotiable Instruments Act reads as follows:-

"141.(1) ..... [Provided further that where a person is nominated as a Director of a company by virtue of his

holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

6. Therefore, this Court is of the view that the impugned complaint against the petitioner cannot be sustained, and hence, the complaint is liable to be quashed only insofar as the petitioner/2nd accused alone is concerned. The Trial Court may try the other accused as expeditiously as possible.

7. Accordingly, the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

19.04.2023

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NCC: Yes/No
Index : Yes/No
Speaking/Non Speaking Order

SUNDER MOHAN. J,
dk

To

The Fast Track Court No.V
Saidapet
Magistrate level
Chennai.

Pre Delivery Order in
Crl.O.P.No.25849 of 2019
and
Crl.M.P.No.13760 of 2019

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