IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.757 OF 2023

Chandrashekar Balasubramanyam ...Applicant/ (Ori. Accd.No.3)

vs.

M/s. Vistra ITCL (India) Limited and Anr. ...Respondents

Mr. Ashish Verma a/w. Mr. Govind Gupte and Mr. Dhanraj Lodha, for the Applicant.
Mr. S.R. Agarkar, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 29, 2024

P.C.:

1. Heard the learned counsel for the parties.

2. This application under section 482 of the Code of Criminal Procedure, 1973 calls in question the legality, propriety and correctness of an order of issue of process dated 6th July, 2022 for an offence punishable under section 138 of the Negotiable Instruments Act, 1881 (the Act, 1881) in Criminal Complaint No. 1505470/SS/2021 filed by complainant/respondent No. 1.

3. The respondent No. 1 is engaged in the business of, inter alia, providing trusteeship services in relation to debentures issued by companies in India. M/s. Tierra Farm Assets Company Private Limited (accused No. 1) is a company incorporated under the Companies Act. Accused No. 1 entered into a Debenture Trust Deed dated 17th December, 2015, pursuant to which the accused No. 1 had

issued 25,000 debentures each having face value of Rs. 20/-. Under the said Debenture Trust Deed, the complainant was appointed as debenture trustee in relation to debentures. Towards discharge of liability to pay an amount of Rs. 44,44,444/- as the principal amount on 30th September, 2019 to the debenture trustees, the accused No. 1 had issued cheaque drawn on Karnataka Bank Limited, Sadashivnagar, Bangalore in the sum of Rs. 44,44,444/- payable on 30th September, 2019. The cheque was dishonored on presentment. Despite the service of demand notice, accused No. 1 failed and neglected to pay the amount covered by the dishonored cheque.

4. The complainant thus lodged a complaint for an offence punishable under sections 138 read with 141 of the Act, 1881 with the allegations that the applicant/accused No. 3 and Ramesh Gowda, the accused No. 2, were the Directors and in-charge of and responsible for the day to day conduct of the business of accused No. 1 company. By the impugned order dated 6th July, 2022, the learned Magistrate issued the process.

5. Mr. Verma, the learned counsel for the applicant, submitted that the learned Magistrate committed an error in issuing the process against the applicant, by invoking the provisions under section 141 of the Act, 1881 as the applicant is a non-executive

director in the company and there are no averments which spell out the role of applicant/accused No. 3 in the commission of the alleged offences. It was submitted that the company has passed resolution in the year 2012 itself that the applicant will not be responsible for any or all debts, liabilities of the company, the applicant being a non-executive director. Attention of the Court was invited to the copy of resolution dated 15th March, 2012 and form No. 32 which indicate that the applicant was a non-executive director of the accused No. 1.

6. I have perused the averments in the complaint. Prima facie, there are adequate averments in the complaint to the effect that the accused Nos. 2 and 3 were the directors of the accused No. 1 – company and were in-charge of and responsible to the company for day to day conduct of the affairs of the company. In paragraph No. 15, there are specific averments to that effect.

7. The learned counsel for the applicant submitted that the complaint lacks particulars of the role of the applicant. Mere averments in the complaint without spelling out of the role of the applicant, especially when the applicant is a non-executive director, according to learned counsel, is not sufficient. Reliance was placed on the judgment of the Supreme Court in the case of **Sunita Palita and Others vs. M/s. Panchami Stone Quarry**[1]. In the said case, after

1 (2022) 10 Supreme Court Cases 152.

adverting to the previous precedents including the judgments in the cases of **National Small Industries Corpn. vs. Harmeet Singh Paintal**[2] and **Pooja Ravinder Devidasani vs. State of Maharashtra and Anr.**[3] it was enunciated that the impleadment of Directors of the accused company merely on the basis of a statement that they are in-charge of and responsible for the conduct of the business of the company without anything more, is not a sufficient or adequate fulfillment of the requirement under Section 141 of the Act, 1881.

8. Prima facie, there is material to show that the applicant is a non-executive director of the accused No. 1 company. However, the fact that the accused No. 1 is a private limited company with only two directors i.e. accused Nos. 2 and 3, cannot be lost sight of. The question as to whether the company had resolved that the applicant shall not be responsible for any or all debts, obligations and liabilities of the company and whether on that count the liability cannot be fastened on the applicant by invoking section 141 of the Act, 1881 would be a matter for adjudication at the trial.

9. Prima facie, there are adequate averments in the complaint to the effect that the applicant was charge of and responsible for the day to day business of the company at the time when the offence was committed. Whether there was an internal understanding

2 (2010) 3 SCC 330.
3 (2014) 16 SCC 1.

between the directors of the accused No. 1 would essentially be a matter of indoor management. Such averments are sufficient for the learned Magistrate to issue process as has been held in **Gunmala Sales Private Limited vs. Anu Mehta and Others**[4]. In the case of **K.K. Ahuja vs. V.K. Vora**[5] it has been held that the mere fact that the applicant was a non-executive director by itself is not sufficient to jettison away the complaint in the face of the averments which meet requirements of section 141 of the Act, 1881.

10. Of course, the applicant would have the opportunity to demonstrate at the trial that he was not responsible for the conduct of the business of the company and consequently for the commission of the offence under section 138 of the Act, 1881.

11. Thus, the application does not deserve to be entertained.

12. Application stands rejected.

(N. J. JAMADAR, J.)

4 (2015) 1 Supreme Court Cases 103.
5 (2009) 10 SCC 48.