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Crl.O.P.Nos.10905 & 10975 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

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THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Crl.O.P.Nos.10905 & 10975 of 2024

and

Crl.M.P.Nos.7446 & 7506 of 2024

Akash K.Domadiya

Director,

M/s.Tradohub B2B Limited

... Petitioner in both cases

Vs.

M/s.Samunnati Agro Solutions Pvt.Ltd.,

Rep.by its Power Agent Sri.K.Amudan

... Respondent in both cases

Common Prayer: Criminal Original Petitions are filed under Section 482 of Criminal Procedure Code, pleaded to call for records of complaint bearing S.T.C.Nos.171 & 2792 of 2022 pending on the file of learned V Fast Track Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner in both cases : Mr.J.Magesh forfeiture
M/s.Nathan and Associates

For Respondent in both cases : Ms.Rukmani Venugopal

COMMON ORDER

The petitioner herein being the signatory of the cheque for Rs.2 Crores drawn in favour of the M/s.Samunnati Agro Solutions Pvt.Ltd., is before this Court to quash the complaints instituted under Section 138 of



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Negotiable Instruments Act, on the ground that the petitioner is not the owner of the company M/s.Tradohub B2B Limited and he resigned from the company before the initiation of proceedings and being a non Executive Director acting on the instance of the owner cannot be vicariously held liable.

2. Further, it is also contended that the NCLT, Ahmedabad has initiated insolvency proceedings against the company and proceedings had commenced from 16.11.2021. The affairs of the company is now vested with Insolvency Resolution Professional Mr.Sachin Naveen Sinha vide order dated 06.03.2023. Therefore, it is contended that the proceedings cannot continue after the dispute between the accused company and the creditors been seized by the NCLT. The entire affairs of the company now been monitored and the Managing by the respondent police and IBC provides for moratorium and protection from any prosecution or proceedings against the erstwhile management.

3. The learned counsel appearing for the respondent / complainant states that the subject cheque was issued by the accused/petitioner to discharge the legally enforceable debt arising from



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the business transaction of outsourcing between the complainant company and the M/s.Tradohub B2B Limited. The subject cheque was issued by the petitioner to discharge the liability of the company, in which, he was the Director. The cheque which is the subject matter of the complaint was drawn on 02.09.2020 much prior to the NCLT proceedings and appointment of Resolution Professional. Even according to the petitioner, he resigned from the Directorship of the company M/s.Tradohub B2B Limited only on 16.11.2021. Hence it is submitted that the complaint against the petitioner has been rightly taken cognizance by the Court and whatever the defence available with the petitioner, those has to be raised only in the trial.

4. Both the counsels rely upon the judgment of the Hon'ble Supreme Court rendered in *Ajay kumar Radheshyam Goenka Vs. Tourism Finance Corporation of India Ltd* reported in **2023 LIVE LAW (SC) 195**. In this judgment the Hon'ble Supreme Court had discussed about the vicarious liability of the Directors of the company and the company which has subjected to insolvency proceedings under IBC. The conclusion drawn by the Hon'ble Supreme Court in that case



reads as below:-

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“86.(a) After passing of the resolution plan under Section 31 of the IBC by the adjudicating authority & in the light of the provisions of Section 32A of the IBC, the criminal proceedings under Section 138 of the NI Act will stand terminated only in relation to the corporate debtor if the same is taken over by a new management.

(b) Section 138 proceedings in relation to the signatories/directors who are liable/covered by the two provisos to Section 32A(1) will continue in accordance with law.”

5. The facts of the case in hand is that the cheque issued by the petitioner on behalf of the company, in which, he was the Director. His liability under Section 138 of Negotiable Instruments Act will not get extinguished in view of the subsequent appointment of Resolution Professional. Neither his resignation from the Directorship subsequent to the issuance of the cheque will protect him from prosecution. He being the signatory of the cheque and issued from the account maintained by him, he is liable to face criminal prosecution.

6. Taking into account that the petitioner being the Director of



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the company which owe money to the complainant, all the defence raised in the quash petition are to be tested in the trial and not under Section 482 of Cr.P.C., Hence, this Criminal Original Petitions stand dismissed. Consequently, the connected Criminal Miscellaneous Petitions are also dismissed.

02.08.2024

Neutral Citation : Yes/No
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To

The V Fast Track Metropolitan Magistrate, Saidapet, Chennai

Dr.G.JAYACHANDRAN,J.

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