



CrI.O.P.No.27713 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.O.P.Nos.27713, 27715 and 27716 of 2024 and
CrI.M.P.No.15376, 15379 and 15380 of 2024

In CrI.O.P.No.27713 of 2024

M/s.Vasan Healthcare Pvt. Ltd.

Rep. by Vimal Chandrasekran, Head Human Resource
No.70, West Minister, IV Floor, Dr.Radhakrishnan Salai
Mylapore, Chennai - 600 004

Having present address at:

No.120 A, Bazaar Road,
Saidapet, Chennai - 600 015

... Petitioner

Vs.

Sheetal Hitesh Kumar Sanghvi

W/o. Hitesh Kumar

Rep. by Prakash Bhatt

... Respondent

Prayer: Criminal Original Petition filed under Section 528 of B.N.S.S. to call for the records and quash the proceedings in C.C.No.1786 of 2018 on the file of the learned III Metropolitan Magistrate at George Town, Chennai against the petitioner/accused.



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In CrI.O.P.No.27715 of 2024

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M/s.Vasan Healthcare Pvt. Ltd.
Rep. by Vimal Chandrasekran, Head Human Resource
No.70, Dr.Radhakrishnan Salai,
West Minister Complex,
4th Floor, Mylapore,
Chennai - 600 004

Having present address at:

No.120 A, Bazaar Road,
Saidapet, Chennai - 600 015

... Petitioner

Vs.

M/s.TATA Capital Financial Services Ltd.
Centennail Square, I Floor
No.6A, Dr.Ambedkar Salai
Kodambakkam,
Chennai - 600 024
Rep. by its Authorised Signatory
Venkatesh Kap.

... Respondent

Prayer: Criminal Original Petition filed under Section 528 of B.N.S.S. to call for the records and quash the proceedings in C.C.No.980 of 2016 on the file of the learned Metropolitan Magistrate (FTC-V) at Saidapet, Chennai against the petitioner/1st accused.



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In CrI.O.P.No.27716 of 2024

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M/s.Vasan Healthcare Pvt. Ltd.

Rep. by Vimal Chandrasekran, Head Human Resource
No.70, Dr.Radhakrishnan Salai, West Minister Complex,
4th Floor, Mylapore, Chennai - 600 004

Having present address at:

No.120 A, Bazaar Road,
Saidapet, Chennai - 600 015

... Petitioner

Vs.

M/s.TATA Capital Financial Services Ltd.

Centennail Square, I Floor
No.6A, Dr.Ambedkar Salai
Kodambakkam, Chennai - 600 024

Rep. by its Authorised Signatory

Mr.Venkatesh Kap.

... Respondent

Prayer: Criminal Original Petition filed under Section 528 of B.N.S.S. to call for the records and quash the proceedings in C.C.No.978 of 2016 on the file of the learned Metropolitan Magistrate (FTC-V) at Saidapet, Chennai against the petitioner/1st accused.

In all CrI.O.Ps.

For Petitioner	: Mr.G.Gautham Ram Vittal
For Respondent	: No Appearance



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COMMON ORDER

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The Criminal Original Petition in Crl.O.P.No.27713 of 2024 has been filed by the petitioner/accused to quash the proceedings in C.C.No.1786 of 2018 on the file of the learned III Metropolitan Magistrate at George Town, Chennai, against the petitioner/accused.

2. The Criminal Original Petitions in Crl.O.P.Nos.27715 and 27716 of 2024 have been filed to quash the proceedings in C.C.No.980 of 2016 and C.C.No.978 of 2016 on the file of the learned Metropolitan Magistrate (FTC-V) at Saidapet, Chennai against the petitioner/1st accused.

3. The case of the petitioner-Company is that the respondent in Crl.O.P.No.27713 of 2024 filed a complaint against the petitioner-Company in C.C.No.1786 of 2018 before the III Metropolitan Magistrate, George Town, Chennai and that the respondents in Crl.O.P.No.27715 and 27716 of 2024 filed complaints against the petitioner-Company in C.C.No.980 of 2016 and C.C.No.978 of 2016 before Metropolitan Magistrate (FTC-V), Saidapet,



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Chennai, under Section 138 read with 141 of the Negotiable Instruments Act.

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During pendency of the same, an application was filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) by M/s.Alcon Laboratories vide CA/1/IB/2017 before the National Company Law Tribunal (NCLT), Chennai Bench, and by order dated 21.04.2017, the petitioner-Company was admitted into the Corporate Insolvency Resolution Process (CIRP) and Interim Resolution Professional (IRP) was appointed. The IRP taken over the management of the petitioner-Company and issued the newspaper publication dated 24.04.2017 in two editions one in English and another in vernacular as per Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations 2016, inviting the claims from the creditors.

3.1 On 04.05.2017, an order of stay of CIRP of the petitioner-Company was passed by this Court in a batch of winding up petitions filed against the petitioner-Company by various creditors and was pending before this Court.



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On 05.09.2019, the order of stay was vacated by this Court.

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3.2 Pursuant to an application made in MA/1050/2019 in CA/1/IB/2017 filed by the the Interim Resolution Professional (IRP) for the revival of the Corporate Insolvency Resolution Process (CIRP) of the petitioner-Company, the National Company Law Tribunal (NCLT), Chennai, allowed the revival on 03.10.2019. Further, the NCLT, Chennai directed that the IRP to continue CIRP of the petitioner/1st accused-Company and instructed to issue a fresh newspaper publication, which was subsequently carried out.

3.3 On 23.04.2021, the NCLT, Chennai Bench-I, in IA/287/I.B./2021 in CA/1/IB/2017 appointed Mr.S.Rajendran as the Resolution Professional (RP) of the 1st accused/petitioner-company. After inviting Resolution Plans and getting approval from the Committee of Creditors (CoC), the Resolution Professional filed an application under Section 30 of IBC on 03.03.2022 in I.A. (IBC)/288(CHE)/2022 in CA/1/IB/2017 seeking the NCLT, Chennai Bench approval for the CoC-approved Resolution Plan of the ASG Hospital Private



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Limited (Successful Resolution Applicant). The NCLT, Chennai Bench,

approved the Resolution Plan on 03.02.2023. Thus, the ownership and management of the petitioner-Company has come to be vested with M/s.ASG Hospital Private Limited.

3.4 As provided in the Resolution Plan, a Monitoring Committee has been formed to implement the Resolution Plan and one Mr.S.Rajendran, who appointed as the Chairman of the Monitoring Committee, completed the distribution and Successful Resolution Applicant has taken over the petitioner-Company.

3.5 According to the learned counsel for the petitioner-Company, as per the list of creditors published by the Interim Resolution Professional and Resolution Professional time to time, the respondents/complainants herein have not filed their claims before the Interim Resolution Professional and Resolution Professional.

3.6. As per Section 32A of the Insolvency and Bankruptcy Code, 2016



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after approval of the Resolution Plan under order of the NCLT, all criminal Litigations as against the erstwhile management shall be continue and which were not covered under the Resolution Plan ceases to exist or applied against the succeeding management.

3.7. Mr.Vimal Chandrasekaran, Head of Human Resource of the petitioner-Company filed a Vakalat on behalf of the petitioner-Company in the above C.C. along with the Resolution Plan passed by the NCLT, Chennai Bench and Memo to take on record the aforesaid Resolution Plan Order and to dismiss the complaints against the petitioner-Company and the learned Magistrate recorded the Memo and the aforesaid NCLT Order, however, refused to dismiss the complaint. Hence, the present petition is filed.

3.8. The learned counsel for the petitioner-Company also referred to the decision of the Hon'ble Supreme Court in the case of ***Ajay Kumar Radheyshyam Goenka Vs. Tourism Finance Corporation of India Ltd. in 2023 10 SCC 545*** and ***(2021) 16 SCC 116***.



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4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. It is seen that a proceedings has been initiated before the NCLT for liquidation against the petitioner-Company. The defacto complainant in C.C.Nos.980 of 2016 and 978 of 2016 are concerned, namely M/s.TATA Capital Financial Services Ltd. has been shown as creditor in the list of creditors in the proceedings of the NCLT Chennai Bench and therefore, it will duly bind the defacto complainant/M/s.TATA Capital Financial Services Ltd. Hence, the complaints against the petitioner-Company in C.C.Nos.980 of 2016 and 978 of 2016 on the file of the Metropolitan Magistrate (FTC-V), Saidapet are quashed as against the petitioner-Company/1st accused alone. **Accordingly, the Criminal Original Petitions in Crl.O.P.Nos.27715 and 27716 of 2024 are allowed.**

6. However, there is no materials to show that the defacto complainant in C.C.No.1786 of 2018 on the file of the III Metropolitan Magistrate, George



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Town, Chennai, namely Mrs.Sheetal Hitesh Kumar Sanghvi, was made as a

party to the said proceedings and the NCLT also issued any notice personally

to the defacto complainant/Mrs.Sheetal Hitesh Kumar Sanghvi. **Therefore, the**

Criminal Original Petition in CrI.O.P.No.27713 of 2024 is dismissed.

7. The petitioner-Company is at liberty to work out their remedy or to take all his defense before the Magistrate in the pending C.C. in the manner known to law. The citations referred to by the learned counsel for the petitioner are not applicable to the facts and circumstance of the present case. Every case has got its own facts and circumstances. There is no precedent for criminal cases. Since the defacto complainant was not made as a party to the NCLT Proceedings, the grounds taken by the petitioner are matter for defense and since the proceedings regarding NCLT was not brought to the notice of the defacto complainant/Mrs.Sheetal Hitesh Kumar Sanghvi, the citations referred to by the learned counsel for the petitioner, are not applicable to the present case on hand. It is for the petitioner to take his defense during trial about the



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proceedings of the NCLT.

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8. With the above observations, the Criminal Original Petitions in CrI.O.P.Nos.27715 and 27716 of 2024 are **allowed**. The petition in CrI.O.P.No.27713 of 2024 is **dismissed** since the defacto complainant/Mrs.Sheetal Hitesh Kumar Sanghvi, was not a party to the said proceedings.

06.12.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No
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To

1. The III Metropolitan Magistrate
George Town, Chennai
2. The Metropolitan Magistrate (FTC-V)
Saidapet, Chennai

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P.VELMURUGAN. J.

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