



2024:DHC:9917



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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 29.11.2024***

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W.P.(C) 535/2014**PANKAJ KAPAL MEHRA****.....Petitioner**

Through: Mr. Hemant Phalpher, Mr.
Yogesh Tyagi and Ms. Anisha
Goyal, Advocates.

versus

UNION OF INDIA & ANR.**.....Respondents**

Through: Ms. Monika Arora, CGSC with
Mr. Subhrodeep Saha and Ms.
Radhika Kurdukar, Advocates.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed by the Petitioner setting out the following prayers:

“(a) Set aside the impugned penalty order dated 25.6.2013 in so far as it imposes the penalty on the petitioner.

(b) Order payment of cost to the petitioner for forcing him into litigation.

(c) Issue any other direction/order as may be deemed just and proper in the interest of justice.”

2. The Impugned Order dated 24/25.06.2013 has been passed against a public limited Company, named M/s Orkay Industries Ltd and its 14 Directors, levying a fine in the sum of Rs. 1 Crore pursuant to an Order-in-Original No. 03/02/002/00835/AM03, dated 29.03.2004. The operative part of the Order-in-Original dated 29.03.2004 is set out below:

“11. I, in exercise of powers vested in me under Section 13 of Foreign



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Trade Development & Regulation) Act, 1992 do hereby impose fiscal penalty of Rs. 1,00,00,000/- (Rupees One crore only) on the firm M/s. Orkay Industries Ltd. N.K. M. International House, Babubhai Chinai Marg, 178, Backbay Reclamation, Mumbai- 400 020 and also its Directors/Partners etc. under Section 11(2) of Act.

[Emphasis supplied]

3. Briefly the facts are that the Petitioner was employed as an Executive Director in a public limited company called M/s Orkay Industries Ltd [hereinafter referred to as “Company”], which was engaged in the export of polyester texturised yarn by processing partially oriented polyester yarn which it imported.

4. The Company went into liquidation and a provisional liquidator was appointed by the Bombay High Court on 21.04.1998. Pursuant to the order for provisional liquidation, the records and documents of the Company were taken over by the official liquidator appointed by the Court. The liquidation process was completed on 14.12.1998.

4.1 A show-cause notice was sent by Respondent No.2 under Section 14 of the Foreign Trade (Development and Regulation) Act, 1992 [hereinafter referred to as the “FTDR Act”] to the Company including its 14 Directors and the Petitioner on 07.04.2003 for non-fulfilment of its export obligations under the FTDR Act. A Reply to the show-cause notice was given by the Petitioner by its communication on 12.05.2003. In its Reply to the show-cause notice, it was clarified by the Petitioner, that the Company was a public limited company with several Directors and the Petitioner was not involved in the fulfilment of the export obligation by the Company. The show-cause notice was responded to by



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the Petitioner in his individual capacity.

4.2 Subsequently, the Respondent No.2 issued an Order-in-Original on 29.03.2004 [hereinafter referred to as the “OIO”] and imposed a fiscal penalty of Rs.1 Crore on the Company and on all its Directors under Section 11(2) of the FTDR Act.

4.3 The Petitioner filed an Appeal on 07.07.2013 under Section 15 of the FTDR Act against the OIO. The said Appeal was dismissed by Respondent No.2 by an Order dated 24/25.06.2013 [hereinafter referred to as the “Impugned Order”]. It is this Order that has been challenged by the Petitioner before this Court.

5. It is the case of the Petitioner that the Petitioner was employed as an Executive Director of the Company in 1980’s and his role was limited to project implementation, Research and Development and Human Resource Management.

5.1 Learned Counsel for the Petitioner has contended that neither the show-cause notice nor the OIO gave any reasoning for fastening the liability on the Petitioner. It was contended that merely because he is a Director of the Company, he cannot individually be held liable for prosecution and punishment on behalf of the Company.

5.2 Learned Counsel for the Petitioner further stated that the Company was directed to be wound up on 14.12.1998 and that all directors had ceased to be directors on that date. The Company was non-operational and the official liquidator was handling all claims and compliances etc.,



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qua the Company.

5.3 Learned Counsel for the Petitioner further submitted that although the Reply to the show case notice was set out in the OIO/order dated 29.03.2004, the same was simply ignored by the Respondents and the Respondents proceeded to impose the fiscal penalty of Rs.1 Crore on the Company and also its Directors/Partners under the FTDR Act.

5.4 It is further contended that so far as concerns the application for export licence, the same was applied for the Company on 25.05.1994 by one Mr. G.K. Uchil. Thus, the liability, if any, would exist on the said person.

5.5 Learned Counsel for the Petitioner contends that this is a second round of litigation for the Petitioner. Originally the Respondent No.2 had passed an *ex parte* order dated 21.03.2012 rejecting the Petitioner's Appeal. Since notice for hearing was never received by the Petitioner, he challenged the same before this Court by filing a Writ Petition No.5550/2012 captioned ***Pankaj Kapal Mehra vs. Union of India & Ors.***

5.6 A Coordinate Bench of this Court by its order dated 06.09.2012 set aside the order dated 21.03.2012 and directed the Respondent No.2 to re-hear the Appeal and pass a speaking order.

5.7 Lastly, it was contended that the show-cause notice, OIO and Impugned Order have all been passed in the teeth of the law as laid down in Judgments passed by Coordinate Benches of this Court in ***Krishna***



Kumar Bangur v. Director General of Foreign Trade¹ case and ***Ved Kapoor v. Union of India & Ors.***², where in similar circumstances, it was held that in order to uphold the imposition of punishment on an individual director, it was necessary for the Respondents to allege and assert the existence of a duty or obligation placed on the director(s) of the defaulting company and their deliberate failure to fulfil it. Since, the show-cause notice(s) did not specify the grounds on which individual liability was being imposed on the director, they were set aside by the Court.

6. At the outset, learned Counsel for the Respondents raised an objection on the maintainability of the present Writ. It is submitted that this Court has no territorial jurisdiction to adjudicate the present Appeal since the OIO was passed in Mumbai.

6.1 Learned Counsel for the Respondents also raises the plea of *forum non conveniens* of this Court. In support of his contentions, learned Counsel for the Respondents relied upon a judgment of the Supreme Court in ***Kusum Ingots & Alloys Ltd. vs. Union of India***³ and judgment of a Coordinate Bench of this Court dated 09.07.2024 passed in W.P.(C) 9139/2024 captioned ***White Medical College and Hospital v. Union of India and Ors.***⁴

6.2 The only other contention which was raised by the Respondents

¹ 2006 SCC OnLine Del 422

² 2013 SCC OnLine Del 3653

³ (2004) 6 SCC 254

⁴ 2024 SCC OnLine Del 4712



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before this Court was that the Petitioner being the Executive Director of the Company was responsible for its affairs and that Section 2(51) of the Companies Act, 2013 provides that key managerial personnel in relation to a company, include a whole-time director of the company. It is contended that Section 2(k) of the Companies (Specification of Definitions Details) Rules, 2014 defines Executive Director as a whole-time director as defined in Section 2(94) of the Companies Act, 2013. Section 2(94) of the Companies Act, 2013 provides that a whole-time director includes a director in the whole-time employment of the company. Learned Counsel for the Respondents contends that since the Petitioner was an Executive/whole-time Director of the Company, he was involved in the day-to-day functioning of the Company and was accordingly liable for all defaults committed by the Company.

6.3 Lastly, it was contended by the learned Counsel for the Respondents that the power-of-attorney which was provided to the authorized signatory of the Company for the advanced export license was signed by the Petitioner, and thus, the Petitioner being the responsible person, delegated power to the said Mr. G.K. Uchil to apply for the advance license making him responsible for the default. Learned Counsel for the Respondent seeks to rely upon the judgment of the Supreme Court in *Standard Chartered Bank v. State of Maharashtra and Ors.*⁵ in this regard.

7. By its order dated 23.02.2016, a Coordinate Bench of this Court

⁵ (2016) 6 SCC 62



had directed the Petitioner to disclose his shareholding in the Company and that of his family, on Affidavit. The Affidavit was filed by the Petitioner on 23.03.2016. Another Affidavit was directed to be filed by the Court on 23.07.2019 to clarify as to whether the Petitioner was one of the promoters in the Company and as to whether he held an executive position in the Company.

8. The issue before this Court is that whether the Petitioner as a Director of a Company that is in violation of an export obligation, could have been personally penalized therefor.

9. The show-cause notice was issued by the Respondent authority under Section 11(2) of the FTDR Act. It is apposite to extract this provision, which is set forth below:

“11.....(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the foreign trade policy, he shall be liable to a penalty of not less than ten thousand rupees and not more than five times the value of the goods or services or technology in respect of which any contravention is made or attempted to be made, whichever is more.”

9.1 The provision thus sets out that where a person makes or abets in the making of export or import in contravention of the provisions of FTDR Act, he shall be liable to a penalty which will not be less than Rs. 10,000/- and shall not exceed five times the value of the goods in respect of which the contravention has been made. Thus, for the provision to be applicable, the person should either have been in contravention of the FTDR Act or abetted in the same. It is not disputed that the Company had 14 directors and the Petitioner was only one of them.



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10. Pursuant to orders of this Court, the Petitioner filed two Affidavits dated 23.03.2016 and 29.07.2019 respectively stating that he was a shareholder of 0.005% of the shareholding in his Company and was not a promotor in the Company but employed as an Executive Director and drawing a salary of Rs.36,000/- per month. In addition, the Petitioner also clarified therein that he was neither in charge nor had any role in obtaining the export license referred to in the Petition. The Affidavit dated 23.03.2016 being brief is extracted below:

"1. I was one of the fourteen directors of Orkay Industries Ltd., N.K.M. International House, Mumbai 400020, which was liquidated in 1998, as stated in the aforesaid Petition. This was a Public Limited Company having many thousands of shareholders.

2. I had 5000 (Five Thousand only) shares out of more than 9.95 Crore shares of this company and each share was of Rs.10 (Ten). My shares in this company were a mere .005 (point zero zero five) per cent of the total shares. My wife and children had no shares at all.

3. The total paid up capital of this company was Rs. 97.96 Crores (Rs. Ninety Seven Crores and Ninety Six Lacs)

4. I was neither in charge of the Import Export division, nor did I have any role in applying for or obtaining the licence(s) referred to in this Petition or import there against, if any."

10.1 The subsequent Affidavit filed by the Petitioner on 29.07.2019 stated:

"1) Orkay Industries Limited was originally established in the year 1968 and I was not a promotor of the company.

2) Sometime during the 1980's I was employed as an executive director of the company, my role in the company was limited to project implementation, R&D and human resource management.

3) During my employment with the company, I was drawing a salary of Rs. 36,000/- per month."



10.2 A reading of the foregoing Affidavits shows that the Petitioner was a salaried Director of the Company, who was also in charge of project implementation, Research and Development and human resource management. Thus, quite clearly, the Petitioner's involvement in the license procurement was restricted to signing on a power-of-attorney person on behalf of the company, pursuant to a board resolution passed by the Company.

11. On the aspect of territorial jurisdiction/*forum non conveniens*, the Respondents have relied on the judgment of the Supreme Court in ***Kusum Ingots*** case to submit that this Court cannot entertain the present Petition. This submission of the Respondents is misconceived. As has been referred to above, the Petitioner had previously challenged an order passed by Respondent No.2 which challenge was allowed by a Coordinate Bench of this Court by its order dated 06.09.2012. The Respondents participated in these proceedings, thus submitting to the jurisdiction of this Court.

11.1 The Supreme Court in ***Kusum Ingots*** case has held that where an order is passed by a Tribunal in one place and an Appellate Authority is constituted at a different place, a Writ Petition would be maintainable at both places. In addition, it has been held that even if a small part of the cause of action arises within the jurisdiction of the High Court, the Court can entertain the Petition. It was held in the ***Kusum Ingots*** case that:

"...27. When an order, however, is passed by a Court or Tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case,



when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority...

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...30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. (See *Bhagat Singh Bugga v. Dewan Jagbir Sawhney* [AIR 1941 Cal 670 : ILR (1941) 1 Cal 490], *Madanlal Jalan v. Madanlal* [(1945) 49 CWN 357 : AIR 1949 Cal 495], *Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd.* [1997 CWN 122], *S.S. Jain & Co. v. Union of India and New Horizons Ltd. v. Union of India* [AIR 1994 Del 126].)..."

[Emphasis supplied]

11.2 In any event, it is settled law that even if part of a cause of action arises within the territorial jurisdiction of this Court, the Court would have jurisdiction to try and entertain this Petition. The order impugned before this Court is a penalty order dated 29.03.2004, which has been upheld, by the Impugned Order, passed by the Respondent No.2 at New Delhi. Thus, a part of the cause of action has arisen in Delhi and this Court has the jurisdiction to entertain this Petition.

12. A Coordinate Bench of this Court in *Krishna Kumar Bangur* case, dealt with a similar issue where a show-cause notice was issued under Sections 8 and 11 of the FTDR Act to a company and all its directors, and reasons for arriving at the conclusion that a Director is



personally liable, had not been adumbrated therein. It was held that where the authority had not specifically considered the role to be played by the Petitioner therein in the export performance and was reticent on the reasons for personal culpability of any of the directors, it could not be sustained. It was further held that if the show-cause notice or the orders in original and the appellate order did not disclose any reasons, the order would be set aside. The relevant extract of **Krishna Kumar Bangur** case is below:

*“6. The Show Cause Notice under Section 14 for action under Sections 8 and 11 of the Foreign Trade (Development and Regulation) Act, 1992 [hereinafter referred to as Act for short] dated 14.10.2003 had been issued to the said M/s. Hastings Mill as well as all its Directors. The say of the Petitioner is that he did not receive the Show Cause Notice. The Show Cause Notice mentions, inter alia, that it is prima facie established that M/s. Hastings Mill and their Directors have violated the conditions of Licence mentioned above and thereby made themselves liable to penal action under Section 11 of the said Act. **The reasons for arriving at the conclusion that the Petitioner as a Director, has personally become liable for such action has not been adumbrated.***

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8. A perusal of the above will disclose that the Authority had not specifically considered the role that was to be played by the Petitioner in the Export Performance. It is completely reticent on the reasons for the finding of personal culpability of any of the Directors, including the Petitioner.

9. The matter was carried in Appeal by the Petitioner, and the Appeal was dismissed on 19.5.2005...

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14. In order to sustain the imposition of a punishment on an individual Director it was incumbent on the Respondents to allege and assert the existence of a duty or obligation cast on one or all the Directors of the defaulting Company and the contumacious failure to fulfil it. The Show Cause Notice does not mention the grounds on which individual liability is sought to be fastened on the Director. Neither of the Orders,



that is, the Order in Original or the Appellate Order, disclose reasons which have persuaded those Authorities to come to the conclusion that the Petitioner had assumed an obligation or duty in ensuring that exports corresponding to four times the CIF value would be undertaken within the prescribed period. To assume or foist such a liability on the Directors would run counter to the basic tenets of Company law.

[Emphasis supplied]

13. A similar view was taken by another Coordinate Bench of this Court in ***Ved Kapoor*** case, where the question arose as to whether the penalty imposed upon a company can be recovered from its directors. Relying on ***Krishna Kumar Bangur*** case, the Court held that unless the Respondents find that the Director was under a duty or obligation of the company, and consciously failed to do so, the liability cannot be attributed on such Director. It was held that such an obligation cannot be assumed merely by virtue of a person being a Director of such Company.

11. In view of the legal proposition enunciated in the above-referred cases, the respondents would be competent to proceed against the petitioner under Section 11(2) of the Act, if they are of the opinion that he was under a duty or obligation to fulfil the export obligation of the company and consciously failed to do so. Of course, in such a case, it would be incumbent upon the respondents to issue a notice under Section 14 of the Act to him, stating therein the ground on which such a liability is sought to be fastened on him. Such an obligation cannot be assumed merely on account of the petitioner being or having been a director of the company.

12. For the reasons stated hereinabove, both the writ petition are disposed of with a direction that the penalty imposed upon M/s. Hitkari China Limited shall not be enforced against the petitioner, though it can certainly be enforced against the company. This order, however, shall not come in the way of the respondents proceeding against the petitioner, under Section 11(2) of the Act, in terms of this order.

[Emphasis supplied]

14. A show-cause notice that was sent by Respondent No.2 to the



Petitioner and the Company merely stated that a license was obtained for fulfilling an export obligation, and that since the obligation was not fulfilled, the show-cause notice was being issued. There was no averment therein about fastening of liability on a director. The show-cause notice was replied to by the Petitioner in his capacity as a director, wherein it was clarified that the Company went into liquidation and all directors had ceased to be directors from 14.12.1998 and that books and records of the Company were with the official liquidator. It was further clarified by the Petitioner that he was an employee director. The Petitioner also sets out in this Reply that considering that the violation/complaint was in the year 1997, it was not possible for the Petitioner to pinpoint or locate the records to analyse and prove that the export obligations were fulfilled. The relevant extract of the Reply dated 12.05.2003 sent by the Petitioner reads as follows:

“5. Upon the Company, being ordered into liquidation, all the Directors of the said Orkay Industries Ltd., immediately ceased to be Directors as per the relevant sections of the Companies Act 1956 since then.

6. It is almost 4 years now that the company is closed and in the hands of the Official Liquidator appointed by the Hon'ble Bombay High Court. The Factories were spread out in four locations, were professionally managed and had a large work force at each location. Sir, the company had many employees and each one had an assigned duty Applying for a license, imports and exports there against, preparation, filing and keeping of documents and records was done by various employees. As one of the employee Directors of the company, I was not concerned or involved in any way with such types of jobs.

7. All the staff was suddenly rendered jobless due to the liquidation and has moved on to other jobs and places. The sudden nature of such an event, after being in existence for 30 years, has put us in this situation. The Books and Records are in the possession of the Official Liquidator at the various Factory locations and Offices as also at the Offices of the Official Liquidator. Also considering the considerable passage of time



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and absence of any of the managerial or other staff, we have no way of knowing as to what is lying at which place today. Consequently, we do not know how to pinpoint or locate the records to analyse the import export account so as to determine and prove the fulfillment of export obligations. We believe that the captioned license would be lying unutilized or would only have been utilized after the exports had already taken place.”

[Emphasis supplied]

15. The record reflects that the show-cause notice although was addressed to the Company and its 14 Directors, was not delivered to the Company or the other 13 Directors of the Company. The only person on whom the show-cause notice and the Impugned Order was served upon by the Respondent, was the Petitioner. The Reply of the Petitioner was thus in his individual capacity and not on behalf of the Company.

15.1 The OIO refers to the Company as a firm and acknowledges the Reply given by the Petitioner. It also states that all notices sent to the directors except for the Petitioner had come back with the remarks “office closed as Court sealed the premises”. It acknowledges that the Company was wound up on 14.12.1998 by the Bombay High Court when possession of the factory books and records were sealed and notes that it is “impossible to get the required information”. However, OIO goes on to exercise powers and impose a fiscal penalty on the Company and its directors. In fact, the words used in the OIO are Directors/Partners. The relevant extract of OIO is below:

“10. It has been observed from the file that the firm has not submitted any documents evidencing fulfilment of export obligation against the above licence nor the firm has submitted any reply. The noticee has factories at four locations and was professionally managed and had a large work force at each location. The import exports work. It was noticed that their various employees did documentation work only and



that employees are no more with them since last 4/5 years due to close of the company. In view of this, it is impossible to get the required information. Now the possession of company has been taken over by the official Liquidator as per the Hon'ble High Court of Mumbai and the official Liquidator has also sealed all the properties belong to the company.

ORDER

11. I, in exercise of powers vested in me under Section 13 of Foreign Trade Development & Regulation) Act, 1992 do hereby impose fiscal penalty of Rs.1,00,00,000/- (Rupees One crore only) on the firm M/s. Orkay Industries Ltd. N.K. M. International House, Babubhai Chinai Marg, 178, Backbay Reclamation, Mumbai- 400 020 and also its Directors/Partners etc. under Section 11(2) of the Act.”.

[Emphasis supplied]

15.2 No reference is made in the OIO as to how the directors are personally liable. Given the fact that the Respondent was unable to get the required information, it is unclear as to how the Respondent was able to ascertain and impose fiscal penalty, especially on the Petitioner. The provision of the statute provides for a decision based on an examination of the facts and documents before it and not otherwise.

16. The Impugned Order is passed more than 9 years after the OIO and premises itself on the fact that the firm (read Company) had not fulfilled its export obligations, and since it could not produce any document in its support, it was liable for the obligation. It further goes on to hold that the ground of liquidation of the Company could not be a ground for non-submission of export documents or non-payment of custom duty could not be taken as a ground for non-submission by the Petitioner. The discussion on this aspect is limited. There is however no discussion at all as to the personal liability of the Petitioner at any place



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in the Impugned Order.

17. This Court concurs with the judgments passed in *Krishna Kumar Bangur* case and *Ved Kapoor* case, which relying on *Santanu Ray vs. Union of India*⁶, have held that unless specific allegations have been made which discuss the role of a director in the export performance, there is no question of finding him personally liable for the same. The order impugned has failed to fulfil this or show any adjudication on this aspect. In the absence thereof, the Respondent cannot now by, taking additional grounds and pleas, attempt to go beyond the Impugned Order.

18. There is another aspect which has to be taken into consideration. The export licence was issued on 15.11.1994. Proceedings were initiated by issue of the show-cause notice on 07.04.2003. The OIO was then passed on 29.03.2004. The complaint of default in export obligations was of the year 1997.

18.1 The export obligation of the year 1997 was challenged by the Respondent in the year 2003, which led to the passing of the OIO on 29.03.2004 and Impugned Penalty Order on 24/25.06.2013. No explanation has been provided by the Respondents for the delay in taking steps against the Petitioner, none has been argued before this Court either.

19. The Petitioner has also relied upon an Order-In-Appeal dated 24.07.2005 passed by the Respondent in a connected case being case

⁶ 1988 SCC OnLine Del 169



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No.11/27/03-04/ECA-1 filed by the Respondent No.2 against the Company which states that since there is no evidence as to whether the Petitioner was not the Managing Director but a mere employee. It was further held that in these circumstances, the entire penalty could be recovered from the Company alone. Thus, the Respondent excluded the name of the Petitioner from the proceedings dated 25.07.2006. This Order in a connected Appeal passed by the Respondent No. 2 is extracted below:

*"5. ...While the orders have been passed against the firm and Sh. Pankaj Mehra as Ex-MD of the firm. But only Shyri Mehra has preferred an appeal. Though the appellant firm as well as the advocate has pleaded that Shri Pankaj K. Mehra was not the MD but was merely an employee of the firm but no documentary evidence to this effect has been producea [sic.produced]. Generally, Managing Director is the whole sole responsible for all activities of a firm. **In this case there is no evidence either to confirm that he was MD or employee[sic.employee] as the Adjudication order itself show him as Ex-MD of the appellant firm.** The appellant firm has not filed any appeal against the impugned Adjudication order and **any appeal filed now will be time barred.** Under these circumstances, the entire penalty has to be recovered from the firm only. While these orders are in any case liable to be enforced against M/s. Orkay Industries Ltd. on account of their failure to file appeals under the Act. **I hold the view that the name of the appellant be excluded from the proceedings of the above referred Adjudication orders.** Accordingly in view of powers vested in me in terms of provisions of the Section 15 of the Foreign Trade (D&R) Act, 1992 the following order is made.*

No. 11/2/03-04/ECA-I/1330

dated 25.7.2006

ORDER

- 1. Only the name of **Shri Pankaj K. Mehra** is excluded from the proceedings under the above referred Adjudication Orders and accordingly the Orders stand modified to that extent.*
- 2. Since the firm have not filed any appeal against these Adjudication orders and statutory time allowed has already passed, **these orders be enforced against them and entire penalty, including Rs.10 lakhs imposed on Shri Mehra may also be recovered from the company and demand may be raised to the official Liquidator.**"*



[Emphasis Supplied]

20. The Respondent has relied upon a judgment of the Supreme Court in the *Standard Chartered Bank* case to submit that a whole time Director or an Executive Director is liable and responsible for the business of the Company. This judgment was in the context of quantification of liability of a Director of a Company under the provisions of Section 138 and 141 of the Negotiable Instrument Act, 1881, where the vicarious liability of the Director of the Company is specifically set out in the provisions of the said Act. Thus, this decision is inapplicable in the facts of the present case.

21. In addition, the contention of the Respondents that the Petitioner being a whole-time director is automatically liable and culpable for the defaults of the Company is also misconceived. In any event, the Petitioner has filed the Affidavits pursuant to the orders passed by this Court wherein he has clearly set out that he was only an employee director and that he had no role to play in the export obligation or licences. The Respondents have also not disputed the fact in its orders that the Company went into liquidation in 1998, and that all documents and records were taken over by the official liquidator, when such proceeding is filed in terms of Section 446 of the Companies Act, 1956 and Section 33 of the Insolvency and Bankruptcy Code, 2016, and once a company goes into liquidation, all proceedings to be initiated against such company could only be initiated with prior approval of the adjudicating authority. There is no evidence of this being done either.



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22. This Court therefore finds no merit in the contentions of the Respondents. The Impugned penalty order is set aside.

23. The Petition is disposed of in terms of the foregoing.

TARA VITASTA GANJU, J

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Click here to check corrigendum, if any