



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 3301 OF 2024

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BETWEEN:

1. M/S RAJESH PROJECTS (INDIA) PVT LTD
HAVING ITS REGISTERED OFFICE AT
SHOP NO. 214, LSC BLOCK-B
RG CITY CENTRE, LAWRENCE ROAD
DELHI NORTH WEST
DELHI-110035
BY ITS AUTHORIZED REPRESENTATIVE
MR SHWETA TIWARI.
2. MR RAJESH GOYAL
DIRECTOR OF M/S RAJESH PROJECTS
INDIA PVT LTD
SHOP NO. 214,LSC BLOCK-B
RG CITY CENTRE
LAWRENCE ROAD, DELHI NORTH WEST
DELHI-110 035.
3. MR AMOD KUMAR JHA
FORMER EMPLOYEE OF
M/S RAJESH PROJECTS INDIA PVT LTD
SHOP NO. 214, LSC BLOCK-B
RG CITY CENTRE
LAWRENCE ROAD, DELHI NORTH WEST
DELHI-110 035.
4. MR DEEPAK GUPTA
DIRECTOR OF
M/S RAJESH PROJECTS INDIA PVT LTD
SHOP NO. 214, LSC BLOCK-B
RG CITY CENTRE, LAWRENCE ROAD





DELHI NORTH WEST,
DELHI-110 035.

...PETITIONERS

(BY SRI. SANJEEV B. L., ADVOCATE)

AND:

M/S LAKSHMI HYDRO PRODUCTS PVT LTD
HAVING ITS REGISTERED OFFICE AT
NO. 107, BOMMASANDRA INDUSTRIAL AREA
BENGALURU-560099
REPRESENTED BY
MR PARDEEP KUMAR GATTANI.

...RESPONDENT

(BY SRI. ANAND MUTTALLI, ADVOCATE)

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING THAT TO
QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.7456/2021
ARISING OUT OF PCR.NO.272/2020 FILED BY THE
RESPONDENT AGAINST THE PETITIONERS FOR THE OFFENCES
P/U/S 138 OF NEGOTIABLE INSTRUMENTS ACT PENDING ON
THE FILE OF II ADDITIONAL CIVIL JUDGE AND J.M.F.C.,
ANEKAL VIDE ANNEXURE-A.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

Petitioners - accused Nos.1 to 4 are at the doors of this
Court calling in question proceedings in C.C.No.7456/2021,
pending before the II Additional Civil Judge and JMFC, Anekal,
for the offence punishable under Section 138 of the Negotiable
Instruments Act, 1881 (for short 'the Act').



2. Heard Sri B.L.Sanjeev, learned counsel for the petitioner and Sri Anand Muttalli, learned counsel for the respondent.

3. Facts in brief, germane, are as follows:

Petitioner No.1 is a Company, petitioner Nos.2 to 4 are the office bearers or said to be the directors of the said company. A transaction between the petitioners – accused Nos.1 to 4 and the respondent – complainant leads the complainant before the concerned Court alleging offence punishable under Section 138 of the Act. The concerned Court takes cognizance of the offence and issues summons. It is therefore, the petitioners are before this Court in the subject petition.

4. Sri B.L.Sanjeev, learned counsel appearing for the petitioners would submit that insofar as petitioner No.1 is concerned, an Interim Resolution Professional (for short 'the IRP') under the Insolvency and Bankruptcy Code, 2016 (for short 'the Code') had taken over the company in the year 2019 and therefore, petitioner No.1 – company in terms of the judgment of the Apex Court, cannot be held liable. Insofar as



petitioner Nos.3 and 4 are concerned, the learned counsel submits that once an IRP had taken over the company, petitioner Nos.3 and 4 could not have had any role to play in the day-to-day affairs of the company. Insofar as petitioner No.2 is concerned, the learned counsel admits that he is a signatory to the cheque.

5. Sri Anand Muttalli, learned counsel appearing for the respondent would refute the submissions, contending that the moratorium so imposed under the Code or the IRP by taking over the Company would not mean that they would be absolved. Except petitioner No.1, the company, all the other three will have to come out clean in a full blown trial, is the submission of the learned counsel appearing for the respondent.

6. I have given my anxious consideration to the submissions made by the learned counsel for both the parties.

7. The afore-narrated facts are all a matter of record. Insofar as petitioner No.1 – Rajesh Projects, a company which had a transaction with the respondent – complainant, went into



dissolution and the other three are the office bearers *i.e.*, the directors of petitioner No.1 - company. The transaction is with regard to handing over certain instruments in the year 2020. The instruments form the fulcrum of the *lis* before the concerned Court. The IRP takes over petitioner No.1 - Rajesh Projects on 19.09.2019 and on 23.06.2020, the cheque is presented for its realisation; the cheque gets dishonoured and the dishonour of the cheque leads the complainant to the concerned Court.

8. In the light of the Interim Resolution Plan in place and the IRP taking over the Company or the project of the company, the further proceedings against the Company cannot be permitted to be continued, in terms of the judgment of the three judges benches of the Apex Court in the cases of **P. MOHANRAJ AND OTHERS VS. SHAH BROTHERS ISPAT PRIVATE LIMITED** reported in **(2021) 6 SCC 258**, has held as follows:

"....

101. As far as the Directors/persons in management or control of the corporate debtor are concerned, a Sections 138/141 proceeding against them cannot be initiated or continued



without the corporate debtor—see *Aneeta Hada* [*Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] . **This is because Section 141 of the Negotiable Instruments Act speaks of persons in charge of, and responsible to the Company for the conduct of the business of the Company, as well as the Company.** The Court, therefore, in *Aneeta Hada* [*Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] held as under : (SCC pp. 686-88, paras 51, 56 & 58-59)

"51. We have already opined that the decision in *Sheoratan Agarwal* [*Sheoratan Agarwal v. State of M.P.*, (1984) 4 SCC 352 : 1984 SCC (Cri) 620] runs counter to the ratio laid down in *C.V. Parekh* [*State of Madras v. C.V. Parekh*, (1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in *Anil Hada* [*Anil Hada v. Indian Acrylic Ltd.*, (2000) 1 SCC 1 : 2001 SCC (Cri) 174] has to be treated as not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the Company. Needless to emphasise, the matter would stand on a different footing where there is some legal impediment and the doctrine of *lex non cogitadimpossibilia* gets attracted.

56. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons, whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the Company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the section is of immense significance and, in its tentacle, it brings in



the Company as well as the Director and/or other officers who are responsible for the acts of the Company and, therefore, a prosecution against the Directors or other officers is tenable even if the Company is not arraigned as an accused. The words "as well as" have to be understood in the context.

58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the Company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the Company" appearing in the section make it absolutely unmistakably clear that when the Company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the Company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in *C.V. Parekh [State of Madras v. C.V. Parekh, (1970) 3 SCC 491 : 1971 SCC (Cri) 97]* which is a three-Judge Bench decision. Thus, the view expressed in *Sheoratan Agarwal [Sheoratan Agarwal v. State of M.P., (1984) 4 SCC 352 : 1984 SCC (Cri) 620]* does not correctly lay down the law and, accordingly, is hereby overruled. The decision in *Anil Hada [Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1 : 2001 SCC (Cri) 174]* is overruled with the qualifier as stated in para 51. The decision in *Modi Distillery [U.P. Pollution*



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Control Board v. Modi Distillery, (1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

102. Since the corporate debtor would be covered by the moratorium provision contained in Section 14 IBC, by which continuation of Sections 138/141 proceedings against the corporate debtor and initiation of Sections 138/141 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, what is stated in paras 51 and 59 in *Aneeta Hada* [*Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] would then become applicable. The legal impediment contained in Section 14 IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Sections 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Sections 141(1) and (2) of the Negotiable Instruments Act. This being the case, it is clear that the moratorium provision contained in Section 14 IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.”

(Emphasis supplied)

and in the case of **AJAY KUMAR RADHESHYAM GOENKA VS.**

TOURISM FINANCE CORPORATION OF INDIA LIMITED

reported in **(2023) 10 SCC 545**, has held as follows:

“16. The issue whether the respondent is a secured financial creditor or an unsecured financial creditor within the meaning of the said



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Code is not something we can deal with as that is the matter of the proceedings under the said Code or any appeal preferred therefrom. The only issue with which we are concerned with is whether during the pendency of the proceedings under the said Code which have been admitted, the present proceedings under the NI Act can continue simultaneously or not.

17. We have no hesitation in coming to the conclusion that the scope of nature of proceedings under the two Acts is quite different and would not intercede each other. In fact, a bare reading of Section 14 IBC would make it clear that the nature of proceedings which have to be kept in abeyance do not include criminal proceedings, which is the nature of proceedings under Section 138 of the NI Act. We are unable to appreciate the plea of the learned counsel for the appellant that because Section 138 of the NI Act proceedings arise from a default in financial debt, the proceedings under Section 138 should be taken as akin to civil proceedings rather than criminal proceedings. We cannot lose sight of the fact that Section 138 of the NI Act are not recovery proceedings. They are penal in character. A person may face imprisonment or fine or both under Section 138 of the NI Act. It is not a recovery of the amount with interest as a debt recovery proceedings would be. They are not akin to suit proceedings.

18. It cannot be said that the process under IBC whether under Section 31 or Sections 38 to 41 which can extinguish the debt would ipso facto apply to the extinguishment of the criminal proceedings. No doubt in terms of the scheme under IBC there are sacrifices to be made by parties to settle the debts, the company being liquidated or revitalised. The appellant before us has been roped in as a signatory of the cheque as well as the Promoter and Managing Director of the accused Company, which availed of the loan. The loan agreement was also signed by him on behalf of the Company. What the appellant seeks is escape out of criminal liability having defaulted in payment of the



amount at a very early stage of the loan. In fact, the loan account itself was closed. So much for the bona fides of the appellant.

19. We are unable to accept the plea that if proceedings against the Company come to an end then the appellant as the Managing Director cannot be proceeded against. We are unable to accept the plea that Section 138 of the NI Act proceedings are primarily compensatory in nature and that the punitive element is incorporated only at enforcing the compensatory proceedings. The criminal liability and the fines are built on the principle of not honouring a negotiable instrument, which affects trade. This is apart from the principle of financial liability per se. To say that under a scheme which may be approved, a part amount will be recovered or if there is no scheme a person may stand in a queue to recover debt would absolve the consequences under Section 138 of the NI Act, is unacceptable.

....

68. Thus, the heart of the matter is the second proviso appended to Section 32-A(1)(b) IBC which provides statutory recognition of the criminal liability of the persons who are otherwise vicariously liable under Section 141 of the NI Act, in the context of Section 138 offence.

69. Thus, **Section 32-A broadly leads to:**

69.1. Extinguishment of the criminal liability of the corporate debtor, if the control of the corporate debtor goes in the hands of the new management which is different from the original old management.

69.2. The prosecution in relation to:

"... every person who was a "designated partner" as defined in clause (j) of Section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an "officer who is in default", as defined in clause (60) of Section 2 of the Companies



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Act, 2013 (18 of 2013), or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence...."

(emphasis supplied)

shall be proceeded and the law will take its own course. Only the corporate debtor (with new management) as held in para 42 of ***P. Mohanraj [P. Mohanraj v. Shah Bros. Ispat (P) Ltd., (2021) 6 SCC 258 : (2021) 3 SCC (Civ) 427 : (2021) 2 SCC (Cri) 818]*** will be safeguarded.

69.3.If the old management takes over the corporate debtor [for MSME Section 29-A does not apply (see 240-A), hence for MSME old management can takeover] the corporate debtor itself is also not safeguarded from prosecution under Section 138 or any other offences.

70. Thus, I am of the view that by operation of the provisions of IBC, the criminal prosecution initiated against the natural persons under Section 138 read with Section 141 of the NI Act read with Section 200CrPC would not stand terminated.

71. In ***JIK Industries Ltd. v. Amarlal V. Jumanji [JIK Industries Ltd. v. Amarlal V. Jumanji, (2012) 3 SCC 255 : (2012) 2 SCC (Civ) 82 : (2012) 2 SCC (Cri) 125]***, this Court held that the sanction of a scheme under Section 391 of the Companies Act, 1956 will not lead to any automatic compounding of offence under Section 138 of the NI Act without the consent of the complainant. Neither Section 14 nor Section 31 IBC can produce such a result. The binding effect contemplated by Section 31 IBC is in respect of the assets and management of the corporate debtor. No clause in the resolution plan even if accepted by the adjudicating authority/Appellate Tribunal can take away the power and jurisdiction of the criminal court to conduct and dispose of the proceedings



before it in accordance with the provisions of CrPC.

72. It is true that by virtue of Section 238 IBC, the provisions of CrPC shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. **But, no provision of IBC bars the continuation of the criminal prosecution initiated against the Directors and officials.**

73. It is equally true that once the corporate debtor comes under the resolution process, its erstwhile Managing Director(s) cannot continue to represent the company. Section 305(2)CrPC states that where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation. Therefore, it is only the resolution professional who can represent the accused Company during the pendency of the proceedings under IBC. After the proceedings are over, either the corporate entity may be dissolved or it can be taken over by a new management in which event the company will continue to exist. When a new management takes over, it will have to make arrangements for representing the company. If the company is dissolved as a result of the resolution process, obviously proceedings against it will have to be terminated. But even then, its erstwhile Directors may not be able to take advantage of the situation. This is because, this Court in *Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241]* , even while overruling its decision in *Anil Hada v. Indian Acrylic Ltd. [Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1 : 2001 SCC (Cri) 174]* , as not laying down the correct law insofar as *Anil Hada [Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1 : 2001 SCC (Cri) 174]* states that the Director or any other officer can be prosecuted



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without impleadment of the company, proceeded to hold that the matter would stand on a different footing where there is some legal impediment as the doctrine of *lex non cogitadimpossibilia* gets attracted. It was specifically observed that the decision in *Anil Hada* [*Anil Hada v. Indian Acrylic Ltd.*, (2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. Considering the same, the ratio of the decision of this Court in *Ajit Balse* [*Ajit Balse v. Ranga Karkere*, (2015) 15 SCC 748 : (2016) 3 SCC (Civ) 465 : (2016) 3 SCC (Cri) 379] upon which strong reliance is placed on behalf of the appellant is of no avail.

74. What follows from the aforesaid is that for difficulty in prosecuting the corporate debtor under Section 138 of the NI Act after the approval of the resolution plan under IBC, we need not let the natural persons i.e. the signatories to the cheques/Directors of the corporate debtor escape prosecution. How can one allow the natural persons to escape liability on such specious plea? In such a situation the Latin maxim *lex non cogitadimpossibilia* is attracted which means law does not compel a man to do which he cannot possibly perform. *Broom's Legal Maxims* contains several illustrative cases in support of the maxim. This maxim has been referred to with approval by this Court in *State of Rajasthan v. Shamsher Singh* [*State of Rajasthan v. Shamsher Singh*, 1985 Supp SCC 416 : 1985 SCC (Cri) 421] .

75. Thus, where the proceedings under Section 138 of the NI Act had already commenced and during the pendency the plan is approved or the company gets dissolved, the Directors and the other accused cannot escape from their liability by citing its dissolution. What is dissolved is only the company, not the personal penal liability of the accused covered under Section 141 of the NI Act. They will have to continue to face the prosecution in view of the law laid down in *Aneeta Hada* [*Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661 : (2012) 3 SCC (Civ)



350 : (2012) 3 SCC (Cri) 241] . Where the company continues to remain even at the end of the resolution process, the only consequence is that the erstwhile Directors can no longer represent it.

....

108. Thus, the upshot of all the decisions referred to above is where the proceedings under Section 138 of the NI Act had already commenced with the Magistrate taking cognizance upon the complaint and during the pendency, the company gets dissolved, the signatories/Directors cannot escape from their penal liability under Section 138 of the NI Act by citing its dissolution. What is dissolved, is only the company, not the personal penal liability of the accused covered under Section 141 of the NI Act.

109. I may draw my final conclusions as under:

109.1. After passing of the resolution plan under Section 31 IBC by the adjudicating authority & in the light of the provisions of Section 32-A 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.

109.2. Section 138 proceedings in relation to the signatories/Directors who are liable/covered by the two provisos to Section 32-A(1) will continue in accordance with law."

(Emphasis supplied)

In the light of the afore-quoted judgments of the Apex Court, what would unmistakably emerge is, the proceedings against the company cannot be initiated as the company is under moratorium and the affairs are taken over by the Interim



Resolution Professional. Declaration of moratorium would not render the proceedings *qua* the directors unsustainable. The directors of the company would continue to remain liable as provided under Section 141 of the Act.

9. Insofar as accused Nos.3 and 4 are concerned, though they are termed as directors of petitioner No.1 - Rajesh Projects, the cheques are signed by petitioner No.2 and were presented for realisation in the year 2020, when accused Nos.3 and 4 had no role to play as the Interim Resolution Plan was in subsistence and the IRP had taken over petitioner No.1. In that light, it becomes necessary to notice the averments made in the complaint to consider the role of petitioner Nos.3 and 4 - accused Nos.3 and 4.

- "1. The address of the Complainant for the purpose of summons, court notices, etc. is as furnished in the cause title above. The Complainant may also be served through their **Advocate Anand Muttalli**, ATV Legal, No.18, Chitrakoot, Ground Floor, Kumaracot Layout, High Grounds, Bangalore-560001.
2. The address of the Accused for similar purposes is as furnished in the cause title above
3. The present Complaint is being filed by Mr. Pradeep Kumar Gattani, Authorised Signatory of the Complainant duly authorised by the Board of Directors of the company. Mr. Pradeep Kumar



Gattani is personally involved in this transaction and is fully aware of the facts and circumstances of this case. Moreover, Mr. Pradeep Kumar Gattani has been associated with the Complainant for more than 23 years and he has been working with the group companies of the Complainant. A copy of the Board Resolution dated 15-07-2020 is produced herewith as **DOCUMENT No 1.**

4. The Complainant is a Private Limited Company incorporated under the provisions of Company's Act. The Complainant is engaged in the business of Manufacturing & Trading from last 30 years.
5. The 1st Accused is a Company registered under the Company's Act and the 2nd to 4th Accused are the Directors of the 1st Accused Company. The 2nd to 4th Accused are actively involved in the day to day affairs and management of the 1st Accused. Further the 2nd to 4th Accused being the Directors of the 1st Accused are the decision makers.
6. The Accused had approached the Complainant in the month of Aug 2015 representing that they have a project at Noida of a luxurious residential apartment complex and requested the Complainant to purchase flats in the said apartment complex. After going through the brochure and the details of the property as well as representations made by the 2nd to 4th Accused, the Complainant had agreed to purchase flats for a sun of Rs. 85,00,000/-. After agreeing to the same the Complainant had paid the said amount on 24.08.2015 by way of RTGS and the Complainant after the receipt of the amount had issued Apartment Booking Letters.
7. While purchasing the said flats, the Complainant specifically enquired with the Accused about the progress of the project and the date of completion of the same During the discussion the Accused specifically and categorically, assured and promised the Complainant that the said project would be completed on or before August, 2016.



8. Based on the solemn assurance given by 2nd to 4th Accused and after finalizing the terms and conditions, the Complainant agreed and made the payment of Rs. 85,00,000/- (Rupees Eighty Five Lakhs only) towards the said flats. Accordingly the Accused have issued the Apartments Booking Letter. The copy of the Bank statement of the Complainant reflecting the aforesaid amount paid to the Accused on 24.08.2015 is herewith produced as **DOCUMENT No.2.**
9. Subsequently, during the month of August 2016 the Complainant once again enquired with the 2nd to 4th Accused about the completion of the aforesaid project. The 2nd to 4th Accused informed the Complainant that there is some delay and that the Accused would require 6 more months to complete the said project. The Complainant believing the words of the Accused agreed for the same.
10. Thereafter, during the month of January 2017 the Complainant once again approached the 2nd to 4th Accused to find out the status of the project and again the Accused asked for a further 6 months' time to complete the project. This request for extension of time was shocking and unexpected to the Complainant.
11. Due to the aforesaid uncertainty of completion of the booked flats and repeated failure of commitments on the part of the Accused, the Complainant in the month of March 2017 decided to cancel the booking of the said flats and requested the Accused to refund the amount paid by the Complainant towards the purchase of the said flats with certain conditions, the primary condition was that till the booking amount of the flats was not received by the Complainant, the Accused would not deal with the said booked flats which included entering into any Agreement or Sale Deed or any Mortgage Deed etc., of the said flats originally booked by the Complainant. Without prejudice to the above also if for any reason the Accused did not repay the amount back as agreed then the



Complainant would have the right of recourse to the flats booked

12. Accordingly, the Accused after lot of follow-ups, issued the following cheque

Cheque No	Date	Amount	Bank's Name
032513	01.10.2017	85,00,000	Karnataka Bank Ltd

The said cheque issued by the Accused when deposited got dishonored for the reason "Account Blocked" on 30.12.2017. The same was intimated to the Accused. Thereafter, demand notice dated 23.01.2018 was issued for the dishonoring of the cheque by the Complainant and was sent by RPAD. The copy of the Bank Memo dated 30.12.2017 is produced herewith as **DOCUMENT No. 3**. However on the request and assurance given by the 2nd to 4th Accused, the Complainant did not pursue with the matter. The copy of the demand notice dated 23.01.2018 is herewith produced as **DOCUMENT No.4**. The copies of RPAD receipts are produced herewith the as **DOCUMENT No.5 to 9**. The copies of RPAD acknowledgment are herewith produced as **DOCUMENT No. 10-13**.

13. In-between, the 2nd to 4th Accused had sought time for repayment of the aforesaid amount and in order to compensate the said delay, the Accused had also agreed to pay the Complainant the interest for the deferred period. Although, the Complainant was not very much keen to accept the said offer but with no better alternative, the Complainant had to accept the same. Accordingly the Accused calculated the interest and issued the following cheques towards refund of the booking amount and interest



Cheque No.	Date	Amount	Bank's Name
179278	31.3.2018	7,65,000	Punjab National Bank
103854	31.3.2018	5,10,000	Punjab National Bank
103853	31.3.2018	85,00,000	Punjab National Bank

The aforesaid cheques were also presented with the Complainant's Banker for encashment but to the shock and surprise of the Complainant the aforesaid cheques were also dishonoured for the reason "Funds Insufficient" dated 06.04.2018. The photo copies of the said cheques are herewith produced as **DOCUMENT No.14-16**. Bank memos dated 06.04.2018 are produced herewith as **DOCUMENT No. 17-19**. The Accused once again requested the Complainant to provide some time and gave assurance to the Complainant to repay the aforesaid amount. Based on the said assurance the Complainant once again did not pursue the matter.

Thereafter, the Accused again took some time and once again issued the following cheques along with interest as committed:-

Cheque No	Date	Amount	Bank's Name
130982	31.03.2019	12,75,000	Karnataka Bank Ltd
130975	31.03.2019	12,75,000	Karnataka Bank Ltd
130981	01.04.2019	85,00,000	Karnataka Bank Ltd

The aforesaid cheques are herewith produced as **DOCUMENT No.20-22**. On the due date the 2nd to 4th Accused requested the Complainant not to present the cheques and requested for one year time. Left with no other alternative the complainant reluctantly agreed for the same. Thereafter the accused issued the following cheques



Cheque No	Date	Amount	Bank Name	Deposited on
049975	01.04.2020	85,00,000/-	Allahabad Bank, New Delhi	23.06.2020
049977	31.03.2020	12,75,000/-	Allahabad Bank, New Delhi	23.06.2020
049978	31.03.2020	12,75,000/-	Allahabad Bank, New Delhi	23.06.2020
049976	31.03.2020	12,75,000/-	Allahabad Bank, New Delhi	23.06.2020
TOTAL		1,23,25,000/-		

14. Believing the representation made by the 2nd to 4th Accused, the Complainant deposited all the aforesaid cheques as stated herein above for encashment with its Bank, Canara Bank, Bommasandra Industrial area branch, Bangalore-560099. The copies of the cheques are herewith produced as **DOCUMENT No.23 10 26**. But to the utter dismay, the Complainant came to know that all the aforesaid cheques were returned unpaid, being dishonoured with the remark "**FUNDS INSUFFICIENT**" vide return memo dated 24.06.2020. The copies of the Bank's return memo dated 24.06.2020 are herewith produced as **DOCUMENT No.27 to 30**.
15. Pursuant to the receipt of the said banker's memo, the Complainant got issued a legal notice dated 16.07.2020 calling upon the Accused persons to pay a sum of Rs. 1,23,25,000/- (Rupees One Crore Twenty Three Lakhs and Twenty Five Thousand Only) being the amount for which the said cheques were issued within 15 days from the receipt of the said legal notice. A copy of the said legal notice dated 16.07.2020 herewith produced as **DOCUMENT No. 31**.
16. The Accused persons have failed and neglected to pay the aforementioned amount within a period of 15 days from the date of receipt of the notice. The said legal notice was sent by way of Registered Post Acknowledgement Dues (RPAD). The copies of the



RPAD receipts are produced as **DOCUMENT No. 32-39**. The Registered Post Acknowledgment Dues (RPAD) were not returned to the Complainant.

However, when the Complainant verified with online portal of the Government it showed that the four of the notice Were served on the Accused persons on 27.07.2020 and the other four showed that the "Addressee Left Without Instructions" on 23.07.2020 The copies of the online printout is produced herewith **DOCUMENT No. 48 to 47**.

17. The Accused issued the aforesaid cheques in order to discharge the debt/liability towards the Complainant. However, the same are dishonoured. Moreover, while issuing the said cheques Accused had solemnly assured the Complainant that the same would be duly honoured upon presentation before the bank of the Complainant.
18. It is pertinent to mention here that the 2nd Accused to 4th Accused are the Directors of the 1st Accused and as such they are the Principal officers of the 1st and were looking after the day to day affairs of the 1st Accused. The 2nd Accused to 4th Accused are involved in the said transaction and are jointly as well as severally responsible for each and every business conducts at the relevant point of time when the said cheques were issued and subsequently dishonoured.
19. From the foregoing facts it can be construed without a shadow of a doubt that the 1st Accused had issued the aforesaid cheques towards discharge of its debt/liability towards the Complainant and that the 2nd Accused to 4th Accused had full knowledge that the 1st Accused does not have adequate bank balance to honour the said cheques and the said cheques would not be encashed on presentation by the Complainant. The Accused have further committed an offence punishable under section 138 of Negotiable Instruments Act, 1881.
20. The cause of action for the present complaint arose on 24.06.2020, when the Banker's memo was



received by the Complainant, on 17.07.2020 when the legal notice was issued, on 27.07.2020 when the legal notice was served on the Accused and on the those subsequent days when the Accused failed to comply with the legal notice issued by the Complainant. Hence, the present complaint is filed within the time stipulated.

21. The offence is committed within the jurisdiction of this Hon'ble Court.

WHEREFORE, it is humbly prayed that this Hon'ble Court may kindly be pleased to

- a. Take cognizance of the offence committed by the Accused under Section 200 of the Code of Criminal Procedure, 1973.
- b. Conduct enquiry and punish the Accused in accordance with Section 138 of the Negotiable Instruments Act, 1881.
- c. To compensate the Complainant under section 357 of the Code of Criminal Procedure, 1973 and other incidental charges as this Hon'ble Court deems fit in the interest of justice.
- d. For costs of this Complaint.
Any other relief as this Hon'ble Court deems fit in the interest of Justice."

A perusal at the averment made in the private complaint would demonstrate that all the allegations made against accused Nos.3 and 4 are common and omnibus. There is no pointed reference to the day-to-day affairs that accused Nos.3 and 4 were involved in petitioner No.1 - Rajesh Projects. In that light, it is apposite to quote the judgment of the Apex Court rendered in the case of **K.S. MEHTA v. MORGAN**



SECURITIES AND CREDITS PRIVATE LIMITED¹, wherein, it is held as follows:

" "

Analysis and findings

15. This Court has consistently held that non-executive and independent Director(s) cannot be held liable under Section 138 read with Section 141 of the NI Act unless specific allegations demonstrate their direct involvement in affairs of the company at the relevant time.

16. This Court in *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal* [*National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal*, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113 : (2010) 154 Comp Cas 313] observed: (SCC pp. 336, 338-39 & 345-46, paras 13, 22 & 39)

"13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company *without anything more as to the role of the Director*. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

22. Therefore, this Court has distinguished the case of persons who are in charge of and responsible for the conduct of the business of the company at the time of the offence and the

¹ (2025) 7 SCC 615



persons who are merely holding the post in a company and are not in charge of and responsible for the conduct of the business of the company. Further, in order to fasten the vicarious liability in accordance with Section 141, the averment as to the role of the Directors concerned should be specific. The description should be clear and there should be some unambiguous allegations as to how the Directors concerned were alleged to be in charge of and were responsible for the conduct and affairs of the company.

39. From the above discussion, the following principles emerge:

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for the offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If the accused is a Managing Director or a Joint Managing Director then it is not



necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint.

(vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases."

(emphasis in original)

17. In *N.K. Wahi v. Shekhar Singh* [*N.K. Wahi v. Shekhar Singh*, (2007) 9 SCC 481 : (2007) 3 SCC (Cri) 203 : (2007) 137 Comp Cas 939] this Court in para 8 observed: (SCC p. 483)

"8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in the facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable."

18. In *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975 : (2005) 127 Comp Cas 563] , this Court laid down that mere designation as a Director is not sufficient; specific role and responsibility must be established in the complaint.

19. In *Pooja Ravinder Devidasani v. State of Maharashtra* [*Pooja Ravinder Devidasani v. State of*



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Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : (2015) 190 Comp Cas 106] , this Court while taking into consideration that a non-executive Director plays a governance role, they are not involved in the daily operations or financial management of the company, held that **to attract liability under Section 141 of the NI Act, the accused must have been actively in charge of the company's business at the relevant time. Mere Directorship does not create automatic liability under the Act. The law has consistently held that only those who are responsible for the day-to-day conduct of business can be held accountable.**

20. In *Ashok Shewakramani v. State of A.P.* [*Ashok Shewakramani v. State of A.P.*, (2023) 8 SCC 473 : (2023) 4 SCC (Civ) 116 : (2023) 3 SCC (Cri) 568 : (2024) 243 Comp Cas 310] , this Court held: (SCC p. 478, para 20)

"20. After having considered the submissions, we are of the view that there is non-compliance on the part of the second respondent with the requirements of sub-section (1) of Section 141 of the NI Act. We may note here that we are dealing with the appellants who have been alleged to be the Directors of Accused 1 company. We are not dealing with the cases of a Managing Director or a whole-time Director. The appellants have not signed the cheques. In the facts of these three cases, the cheques have been signed by the Managing Director and not by any of the appellants."

21. In *Hitesh Verma v. Health Care at Home (India) (P) Ltd.* [*Hitesh Verma v. Health Care at Home (India) (P) Ltd.*, (2025) 7 SCC 623] , this Court held: (SCC paras 3-4)

"3. As the appellant is not a signatory to the cheque, he is not liable under Section 138 of the 1881 Act. **As it is only the signatory to the cheque is liable under Section 138, unless the case is brought within the four corners of Section 141 of the 1881 Act, no other person can be held liable. ...**



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4. There are twin requirements under sub-section (1) of Section 141 of the 1881 Act. In the complaint, it must be alleged that the person, who is sought to be held liable by virtue of vicarious liability, at the time when the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company. A Director who is in charge of the company and a Director who was responsible to the company for the conduct of the business, are two different aspects. The requirement of law is that both the ingredients of sub-section (1) of Section 141 of the 1881 Act must be incorporated in the complaint. Admittedly, there is no assertion in the complaints that the appellant, at the time of the commission of the offence, was in charge of the business of the company. Therefore, on a plain reading of the complaints, the appellant cannot be prosecuted with the aid of sub-section (1) of Section 141 of the 1881 Act."

22. Upon perusal of the record and submissions of the parties, it is evident that the appellant(s) neither issued nor signed the dishonoured cheques, nor had any role in their execution. There is no material on record to suggest that they were responsible for the issuance of the cheques in question. Their involvement in the company's affairs was purely non-executive, confined to governance oversight, and did not extend to financial decision-making or operational management.

23. The complaint lacks specific averments that establish a direct nexus between the appellant(s) and the financial transactions in question or demonstrate their involvement in the company's financial affairs. Additionally, the CGR(s) and RoC records unequivocally confirm their non-executive status, underscoring their limited role in governance without any executive decision-making authority. The mere fact that the appellant(s) attended Board meetings does not suffice to impose financial liability on the appellant(s), as such attendance does not



automatically translate into control over financial operations.

Conclusion

24. Given the lack of specific allegations and in view of the aforesaid observations, the appellant(s) cannot be held vicariously liable under Section 141 of the NI Act."

(Emphasis supplied)

In the light of the afore-quoted judgment, the directors cannot be drawn into the web of proceedings without any rhyme or reason, or any specific allegations against them, which I do not find in the case at hand.

10. Insofar as petitioner No.2 is concerned, he is the signatory to the cheque. Learned counsel for the petitioners vehement contention is that, whether he is the signatory to the cheque or otherwise, or is it a forged cheque or otherwise, cannot now be considered in the light of the IRP being appointed and taking charge over the affairs of petitioner No.1. He would also submit that petitioner No.2 – accused No.2 must be absolved of the proceedings before the concerned Court.

11. The said submission is unacceptable on the score that petitioner No.2, who is the signatory to the cheque, must face



the proceedings, as the law does not absolve the director merely because the IRP has been appointed and the affairs are taken over by the Interim Resolution Professional. Therefore, with the observations made above, the petition deserves to succeed *albeit*, in-part.

12. For the aforesaid reasons, the following:

ORDER

- a. The criminal petition is partly allowed.
- b. The proceedings in C.C.No.7456/2021, pending before the II Additional Civil Judge and JMFC, Anekal, against petitioner Nos.1, 3 and 4 stands quashed.
- c. The proceedings in C.C.No.7456/2021, pending before the II Additional Civil Judge and JMFC, Anekal, against petitioner No.2 – accused No.2 shall continue.

Ordered accordingly.

SD/-
(M.NAGAPRASANNA)
JUDGE

nvj
List No.: 2 Sl No.: 10