

Crl.O.P.No.1772 of 2024 batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 19.07.2024

Pronounced on: 24.07.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.1772, 1775, 1776, 1784, 1786, 1788, 1792, 1796 & 1797 of 2024
& Crl.M.P.Nos.1224, 1226, 1227, 1235, 1237, 1238, 1251, 1255 & 1259 of
2024

Crl.O.P.Nos.1772 of 2024 batch,

M/s.Vasan Healthcare Pvt Ltd,
Rep. by Mr.Vimal Chandrasekran, Head HR,
IV Floor, Lancor West Minister,
No.70, Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

.... Petitioner/1st Accused

/versus/

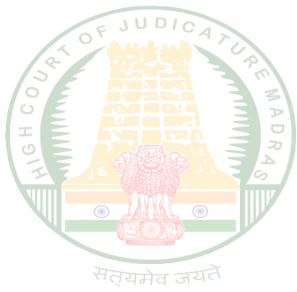
M/s.India Infoline Finance Ltd,
Rep. by Authorised Signatory &
Regional Credit Manager,
M.R.Anandakrishnan,
No.1, Masilamani Street,
T.Nagar, Chennai – 600 017.

....Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C.,
to call for the records quash the proceedings in C.C.No.310 of 2016 on the file
of the Hon'ble Learned Metropolitan Magistrate (FTC-III) at Egmore, Chennai
against the petitioner/1st accused and pass orders.

For Petitioner : Mr.G.Gautham Ram Vittal

For Respondent : No appearance



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COMMON ORDER

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The petitioner company is accused in the complaints initiated by the respondent under section 138 of Negotiable Instruments Act. For dishonouring the cheques issued to discharge the liability, the petitioner company is facing prosecution.

2. Brief facts of the case leading to the petition to quash the complaints:-

For purchase of medical equipments, the petitioner company namely, M/s.Vasan Health Care (P) Ltd., borrowed loan from the respondent company, namely, M/s.India Infoline Finance Ltd (IIFL) which is a financial Institution. To discharge the liability, the Managing Director/Authorised Signatory of the petitioner company issued the cheques which are subject matter of the complaints. The cheques, on presentation for collection, returned stating reason “Funds insufficient”. After causing statutory notice, complaints filed against i) the Company ii) A.M.Arun, the Managing Director and iii) Mrs.Meera, the Director. Pending trial, yet another creditor of the petitioner company by name M/s.Alcon Laboratories filed application under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short “IBC”) before the National



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Company Law Tribunal, Chennai Branch (in short NCLT, Chennai). By an

order dated 21/04/2017, the 1st accused company was admitted into the Corporate Insolvency Resolution Process (in short “CIRP”) and one V.Mahesh was appointed as Interim Resolution Professional (IRP). While so, the second accused A.M.Arun, the representative of the first accused company and the Signatory of the cheques died on 16/11/2020. Later, by an order dated 23/04/2021 NCLT, Chennai appointed Mr.S.Rajendran as Resolution Professional of the 1st accused company.

3. According to the petitioner, as per the resolution plan approved by the NCLT, *vide* order dated 03/02/2023 the Company has been taken over by the successful resolution applicant M/s.ASG Hospital (P) Ltd. The claims of the creditors verified by the RP and settled on condition that all the civil and criminal litigations, investigations, enquires, proceedings causes of action, claims, disputes or other judicial, regulatory proceedings against the corporate debtor or the affairs of the corporate debtor, pending, present or future shall stand extinguished. The respondent Company is one of the creditor whose claim has been admitted by RP and settled as per the resolution plan. Therefore, the prosecution against the petitioner which is the Corporate debtor



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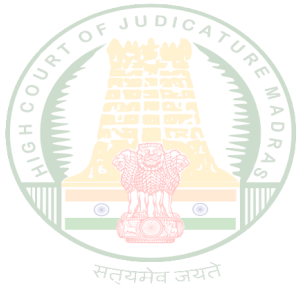
cannot proceed in view of Section 32A of IBC.

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4. Relying upon the judgement of the Supreme Court in *Ajay Kumar Radheshyam Goenka -vs- Tourism Finance Corporation of India Ltd* reported in **2023 SCC OnLine SC 266**, the Learned Counsel for the petitioner Company submit that after the order passed by NCLT on 21/04/2017 in the application filed under Section 9 of IBC, the erstwhile Directors of the Company cease to be the Directors and they cannot represent the company after its Management vested with the IPR. Further, the claim of the creditor been settled under the resolution plan approved by the NCLT and therefore, no prosecution can sustain in view of the terms of resolution plan as approved by NCLT *vide* order dated 03/02/2023.

5. The respondent Company though received notice on 12/02/2024 sent through RPAD, had not participated in the proceedings.

6. The point for consideration is whether, the existing criminal liability of the Company and its erstwhile Directors will get extinguished in view of the resolution plan approved by NCLT ?



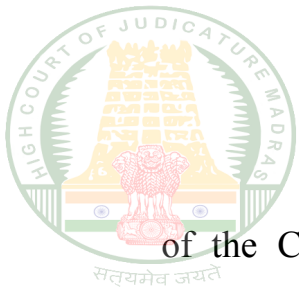
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7. The petitioner Company is facing trial in the following nine

criminal complaints initiated under Section 138 of Negotiable Instruments Act.

<i>Sl.Nos.</i>	<i>C.C.Nos.</i>	<i>Court</i>	<i>Cheque Date</i>	<i>Amount</i>
1.	312 of 2016	Metropolitan Magistrate, (FTC-II) Egmore, Chennai.	19.09.2015	1000000
2.	310 of 2016	Metropolitan Magistrate, (FTC-II) Egmore, Chennai.	19.09.2015	1000000
3.	311 of 2016	Metropolitan Magistrate, (FTC-II) Egmore, Chennai.	19.09.2015	1000000
4.	309 of 2016	Metropolitan Magistrate, (FTC-II) Egmore, Chennai.	19.09.2015	1000000
5.	313 of 2016	Metropolitan Magistrate, (FTC-II) Egmore, Chennai.	19.09.2015	1000000
6.	3090 of 2016	Metropolitan Magistrate, (FTC-II) Egmore, Chennai.	18.07.2015	500000
			20.07.2015	500000
7.	3089 of 2016	Metropolitan Magistrate, (FTC-II) Egmore, Chennai.	08.07.2015	500000
			10.07.2015	500000
			15.07.2015	500000
8.	308 of 2016	Metropolitan Magistrate, (FTC-II) Egmore, Chennai.	19.09.2015	1000000
9.	3088 of 2016	Metropolitan Magistrate, (FTC-II) Egmore, Chennai.	06.07.2015	500000
			13.07.2015	500000

8. On application by one of the operational creditor M/s.Alcon Laboratories (P) Ltd under Section 9 of IBC, 2016, for alleged default in payment of Rs.86,65,75,855/-, the NCLT, Chennai Bench *vide* order dated 21/04/2017 taking note of the default in adhering the payment schedule agreed by the petitioner company, allowed the application and ordered commencement



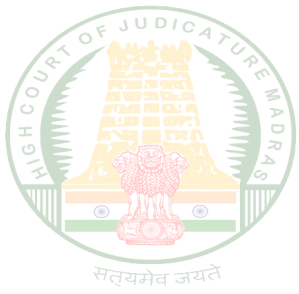
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of the Corporate Insolvency Resolution Process to be ordinarily completed

within 180 days and for the said purpose appointed Mr.V.Mahesh as Interim Resolution Professional. Also NCLT declared moratorium for proceedings against the Corporate Debtor with effect from the date of order till the completion of Corporate Insolvency Resolution Process.

9. The above order of NCLT was stayed by High Court of Madras for a brief period in a Petition filed for winding up. Later, the stay was vacated by the Division Bench on 05/09/2019 with observation that the proceedings under IBC can continue against the Corporate Debtor. Thereafter, the resolution plan submitted by Resolution Professional with consent of Committee of Creditors (CoC) 97.90% voting share and NCLT *vide* dated 03/02/2023 approved it.

10. The petitioner herein had filed a memo before the Judicial Magistrate and sought for dismissal of the complaint against the first accused Company as barred by law in view of Section 32-A of IBC and the judgment of Supreme Court in *Ajay Kumar Radheyshyam Goenka (cited supra)*.



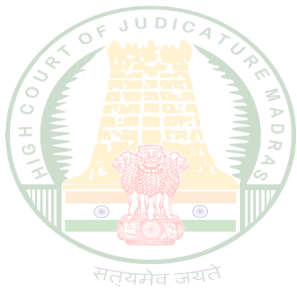
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11. The Judicial Magistrate has returned the memo stating that the

relief sought cannot be passed of memo. Meaning, the petitioner should have filed application under relevant provision of law for the relief sought. The petitioner, however had chosen to file petition under section 482 Cr.P.C., to quash the criminal complaint as against the first accused Company which is the Corporate Debtor for the reasons stated above.

12. After insertion of Section 32-A in the IBC by way of amendment with effect from 28/12/2019, the liability of the corporate debtor for prior offences is restricted. In *Ajay Kumar Radheshuyam Goenka case*, the Hon'ble Supreme Court, after considering the effect of the Section 32-A of IBC in respect of prior liability of the Company and its directors, particularly in proceedings under Section 138 of Negotiable Instrument Act, had vividly clarified the legal position as under:-

“42. Unfortunately, Section 32-A is inelegantly drafted. The second proviso to Section 32-A(1) speaks of persons who are in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor and who are, directly or indirectly, involved in the



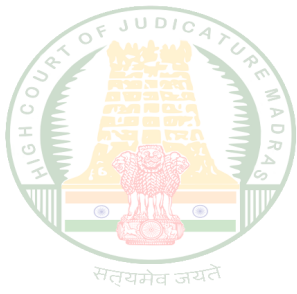
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commission of “such offence” i.e. the offence referred to in sub-section (1), ‘as per the report submitted or complaint filed by the investigating authority...’. The report submitted here refers to a police report under Section 173CrPC, and complaints filed by investigating authorities under special Acts, as opposed to private complaints. If the language of the second proviso is taken to interpret the language of Section 32-A(1) in that the “offence committed” under Section 32-A(1) would not include offences based upon complaints under Section 2(d)CrPC, the width of the language would be cut down and the object of Section 32-A(1) would not be achieved as all prosecutions emanating from private complaints would be excluded. Obviously, Section 32-A(1) cannot be read in this fashion and clearly includes the liability of the corporate debtor for all offences committed prior to the commencement of the corporate insolvency resolution process. Doubtless, a Section 138 proceeding would be included, and would, after the moratorium period comes to an end with a resolution plan by a new management being approved by the adjudicating authority, cease to be an offence qua the corporate debtor.

43. A section which has been introduced by an amendment into an Act with its focus on cesser of

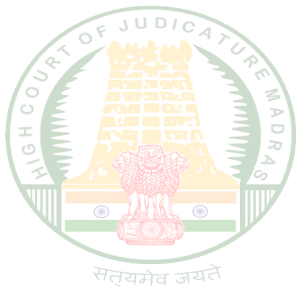


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liability for offences committed by the corporate debtor prior to the commencement of the corporate insolvency resolution process cannot be so construed so as to limit, by a sidewind as it were, the moratorium provision contained in Section 14, with which it is not at all concerned. If the first proviso to Section 32-A(1) is read in the manner suggested by Shri Mehta, it will impact Section 14 by taking out of its ken Sections 138/141 proceedings, which is not the object of Section 32-A(1) at all. Assuming, therefore, that there is a clash between Section 14 IBC and the first proviso of Section 32-A(1), this clash is best resolved by applying the doctrine of harmonious construction so that the objects of both the provisions get subserved in the process, without damaging or limiting one provision at the expense of the other. If, therefore, the expression “prosecution” in the first proviso of Section 32-A(1) refers to criminal proceedings properly so-called either through the medium of a first information report or complaint filed by an investigating authority or complaint and not to quasi-criminal proceedings that are instituted under Sections 138/141 of the Negotiable Instruments Act against the corporate debtor, the object of Section 14(1) IBC gets subserved, as does the object of Section 32-A, which does away with criminal prosecutions in all cases against the corporate debtor, thus absolving the corporate debtor from the same after a new management



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comes in.”

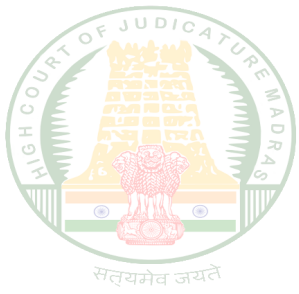
(emphasis in original and supplied

.....

68. 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. 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



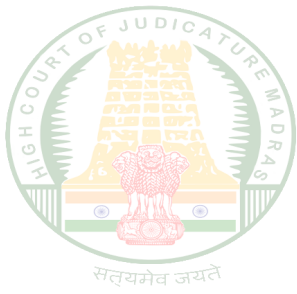
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*process, obviously proceedings against it will have to be terminated. But even then, its erstwhile Directors may not be able to take advantage of the situation. This is because, this Court in Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) 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 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 cogit ad impossibilia* 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.*

72. *What follows from the aforesaid is that for*



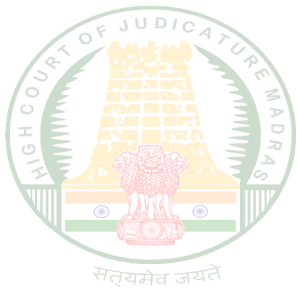
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*difficulty in prosecuting the corporate debtor under Section 138 of the NI Act after the approval of the resolution plan under IBC, we need not let the natural persons i.e. the signatories to the cheques/Directors of the corporate debtor escape prosecution. How can one allow the natural persons to escape liability on such specious plea? In such a situation the Latin maxim **lex non cogit ad impossibilia** 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] .*

*73. 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*



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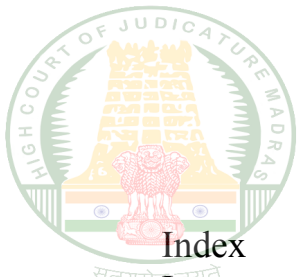
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remain even at the end of the resolution process, the only consequence is that the erstwhile Directors can no longer represent it.”

13. As a result of the above discussion and the law laid in *Ajay Kumar Radheshyam Goenka case*, it is clear that the corporate debtor cannot be prosecuted for the prior liability after the approval of the Resolution Plan. At the same time, it is to be bear in mind the protection under Section 32-A of Insolvency & Bankruptcy Code, 2016 is restricted only to the Corporate debtor and not to its Directors who were in-charge of the affairs of the Company when the offence committed or the signatory of the cheque.

14. Before this Court in this application only the Corporate debtor seeks quash. Therefore, the Criminal Original Petitions are allowed. The criminal prosecution in C.C.Nos.308,309, 310, 311, 312, 313, 3088, 3089 and 3090 of 2016 as against the first accused Company alone stands quashed. Consequently, connected Miscellaneous Petitions are closed.

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Index :Yes/No.

Internet :Yes/No.

Speaking Order/Non-Speaking Order

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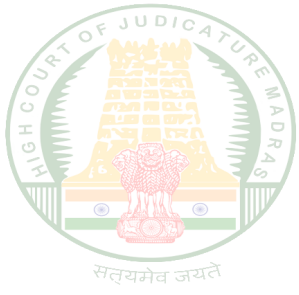
To:-

1.The Metropolitan Magistrate (FTC-III) at Egmore, Chennai.

DR.G.JAYACHANDRAN,J.

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Pre-delivery common order made in
Crl.O.P.Nos.1772, 1775, 1776, 1784, 1786,
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