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instrumentation Ltd. Vs. Abb Limited.

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Court : Karnataka

Decided On : Apr-20-2012

Judge : N. Ananda, J.

Acts : Companies Act. 1956 ; Negotiable Instruments Act - Section 138, 141; Code Of Criminal Procedure (Cr.P.C) 1973 - Section 482

Appeal No. : CRIMINAL PETITION No. 1319 Of 2012

Appellant : instrumentation Ltd.

Respondent : Abb Limited.

Advocate for Pet/Ap. : Sri R.Ravi, Adv

Judgement :

1. This petition having been heard and reserved for order on 16 04.2012, coming on for pronouncement this day the court made the following Petitioner No. 1 - M/s. Instrumentation Limited, a Company registered under the Companies Act. 1956 having its registered office at Jhalawar Road, Kota - 324 005, Rajasthan, is arrayed as accused No. 1. Petitioners 2 to 7 are arrayed as accused 2, 5, 6 to 9 in C C.No 26582/2011. pending trial for an offence punishable under section 138 of the Negotiable Instruments Act (for short, the Act'). They have sought for quashing the proceedings.

2. I have heard the learned counsel for parties.

3. The learned counsel for petitioners would submit that, there are no averments in the complaint to invoke section 141 of the Act. Petitioners 6 & 7 are contractual Directors, petitioners 2 to 5 are nominated Directors. The dispute between petitioner No. 1 and the respondent has to be resolved by taking recourse to arbitration in terms of the purchase orders placed on behalf of petitioner No.1.

4. The learned counsel for petitioners would submit that averments of complaint do not constitute an offence punishable under section 138 of the Act.

5. The learned counsel for respondent would justify the issuance of process.

6. As could be seen from the cause-title of petition, Petitioner No.2 is the Chairman and Managing Director, Petitioner No.3 is the Director (Productions), Petitioner No.4 is the Director (Finance), Petitioner No.5 is the Director (Commercial). Petitioner No.6 is the Assistant. General Manager (Finance) and Petitioner No.7 is the General Manager-Projects of petitioner No.1 M/s. Instrumentation Limited. Therefore, petitioners cannot contend that there are no averments in the complaint to invoke the provisions of section 141 of the Act.

7. The initiation of complaint was preceded by correspondence between parties. On 22.12.2010, Petitioner No.5 - Director (Commercial) had sent an e-mail that Petitioner No. 1 has difficulty in mobilising funds as various customers of Petitioner No. 1 are clue to Petitioner No.1, which had resulted in financial crunch and requested the respondent not to present the cheque for collection and has also undertaken to make payment to the respondent/complainant at the earliest. This e-mail was addressed to the respondent on 22.12.2010. This petitioners let alone making payment after receipt of notice issued by the respondent have not made payment even after initiation of complaint or till date. At this stage, petitioners cannot disown their liability by pleading technicalities though such technicalities do not exist in the complaint initiated by the respondent.

8. As could be seen from the cause-title of the complaint or averments of complaint, petitioners 2 to 7 were in-charge of day-to-day business of petitioner No. 1 Company. The cheques were issued for the materials supplied by the respondent to petitioner No. 1 Company. The details of the materials supplied by

the respondent are furnished in the complaint.

9. In paragraph 4 of the complaint, it is stated that accused 2 to 9 are in-charge and responsible for petitioner No. 1 Company for day-to-day business of the company. At this stage, there are no reasons to suspect the averments of complaint.

10. As per the averments of complaint, cheques were issued towards various materials supplied by the respondent to petitioner No. 1 Company, pursuant to various purchase orders placed by Petitioner No. 1 Company. Therefore, the contention of petitioners regarding maintainability of complaint as also liability of petitioners cannot be accepted. There is no merit in Ore petition.

11. The petition is accordingly dismissed.

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