

A USHA ANANTHASUBRAMANIAN

v.

UNION OF INDIA

(Civil Appeal No. 7604 of 2019)

B FEBRUARY 12, 2020

**[R. F. NARIMAN, S. RAVINDRA BHAT AND
V. RAMASUBRAMANIAN, JJ.]**

Companies Act, 1956: ss. 241, 337, 339 – Application to

- C *tribunal for relief in cases of oppression, etc. – Charge sheet filed by CBI against several persons occupying positions in the Punjab National Bank as well as the Directors of a company – Criminal case against the appellant-MD and CEO of the Bank that she omitted to take precautions or preventive steps to prevent the fraud perpetrated by Nirav Modi and thereby committed mis-conduct and*
- D *conspiracy with the other accused persons – Orders passed by NCLT and NCLAT in exercise of its jurisdiction u/s. 241 freezing the assets of the appellant – On appeal, held: Powers u/ss. 241, 337 and 339 cannot possibly be utilized in order that a person who may be the head of some other organization be roped in, and his or her assets be attached – Thus, the order passed by the NCLAT and well as the NCLT set aside.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7604 of 2019.

From the Judgment and Order dated 04.07.2019 of the National

- F Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) No. 79 of 2019.

C.S. Vaidyanathan, Ms. Meenakshi Arora, Sr. Advs., Parthiv K. Goswami, Anirudh Sharma, Rajiv Dalal, Abhaid Parikh, Vikrant Singh Negi, Advs. for the Appellant.

- G Sanjay Jain, ASG, Kanu Agrawal, Zoheb Hussain, Padmesh Mishra, Arkaj Kumar, Arvind Kumar Sharma, Advs. for the Respondent.

The Judgment of the Court was delivered by

A

R. F. NARIMAN, J.

1) The present appeal is by Usha Anandhasubramanian - former MD & CEO of the Punjab National Bank. She was MD & CEO of the said Bank from 14.08.2015 to 05.05.2017.

B

2) A charge sheet has been filed by the CBI against several persons occupying positions in the Punjab National Bank as well as the Directors of Gitanjali Gems Ltd.

B

3) Mr. C.S. Vaidyanathan, learned Senior Advocate appearing on behalf of the appellant, points out that the charge sheet by the CBI itself makes it clear that at the highest even the criminal case against the appellant is only that she omitted to take precautions or preventive steps to prevent the fraud perpetrated by Nirav Modi and thereby committed mis-conduct and conspiracy with the other accused persons. After pointing out the aforesaid charge sheet, Mr. Vaidyanathan then pointed out orders that were passed by the NCLT in exercise of its jurisdiction under Section 241 of the Companies Act by which certain named individuals were injunctioned from disposing movable and immovable properties/assets which belong to them and whose assets were frozen, making it clear that post-freeze only a sum of Rs.1,00,000/- per month will be allowed to each of such persons for personal expenses. He further argued that in exercising powers under Section 241, powers may be exercised under various provisions of the Companies Act including Section 337 and 339 only insofar as the mis-management of that very Company is concerned, which is obviously not relatable to any other corporate body, including the Punjab National Bank, of which the appellant is the CEO & MD. According to him, therefore, any order that freezes assets of the appellant in the exercise of jurisdiction under Section 241 of the Companies Act would be without jurisdiction. He read to us the relevant sections of the Companies Act and pointed out that however widely they are construed they can only be *qua* the Company in which acts of mis-management are alleged and not *qua* any other person.

C

4) Mr. Sanjay Jain, learned Additional Solicitor General appearing for the respondent, on the other hand, supported the orders passed by the NCLT and the NCLAT in the appellant's case by reading to us, in particular, Sections 337 and 339 of the Companies Act. According to him, where a person is liable for fraudulent conduct or business the

D

E

F

G

H

- A jurisdiction under Section 339 if very wide and would include freezing the assets of any person who was knowingly a party to the carrying on of the fraudulent conduct of business.
- 5) Having heard learned counsel for both sides, we may first set out Section 241(2) and Sections 337 and 339 of the Companies Act, B which read as follows:-
- “241. Application to Tribunal for relief in cases of oppression, etc.- (1) xxx
- (2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter:
- Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.
337. Penalty for frauds by officers.- If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Tribunal under this Act. -
- E (a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company or any other person, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company or within two months before that date, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.
- G 339. Liability for fraudulent conduct of business.-
- H

(1) If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator, or the Company Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct: A

Provided that on the hearing of an application under this sub-section, the Official Liquidator or the Company Liquidator, as the case may be, may himself give evidence or call witnesses. B

(2) Where the Tribunal makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration and, in particular,— D

(a) make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; E

(b) make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section. F

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be liable for action under section 447. G

(4) This section shall apply, notwithstanding that the person concerned may be punishable under any other law for the time being in force in respect of the matters on the ground of which the declaration is to be made. H

- A *Explanation.*—For the purposes of this section,—
(a) the expression “assignee” includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made;
- B valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made;
- C (b) the expression “officer” includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.”
- D 6) Under Section 241(2), the Central Government, if it is of the opinion that the affairs of the Company are being conducted in a manner prejudicial to public interest, may apply itself to the Tribunal for orders under this Chapter, which is headed “prevention of oppression and mismanagement”. Apart from the vast powers that are given to the Tribunal under Section 242, powers under Section 337 and 339 are also given in aid of this power, which will apply *mutatis mutandis*.
- E 7) Section 337 refers to penalty for frauds by an officer of the company in which mis-management has taken place. Likewise, Section 339 refers to any business of the company which has been carried on with intent to defraud creditors of that company. Obviously, the persons referred to in Section 339(1) as persons who are other than the parties “to the carrying on of the business in the manner aforesaid” which again refers to the business of the company which is being mismanaged and not to the business of another company or other persons.
- F 8) This being the case, it is clear that powers under these sections cannot possibly be utilized in order that a person who may be the head of some other organization be roped in, and his or her assets be attached. This being the case, we set aside the impugned order passed by the NCLAT and well as the NCLT. The appeal is allowed in the aforesaid terms.
- G 9) We may clarify that nothing stated in this judgment will have any effect insofar as the investigation conducted by the CBI or the investigation by the SFIO is concerned.