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Crl.O.P.Nos.134 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.1.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.134, 137, 151, 152, 264 & 269 of 2024
and Crl MP Nos.119, 121, 135, 136, 162 & 165 of 2024

Crl.OP.No.134 of 2024

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/Accused

Vs.

The Deputy Director of Income Tax (Investigation)
Unit 3(2)
Chennai 600 034

...Respondent/Complainant

Criminal Original Petition under Section 482 of the Criminal Procedure Code praying to call for the records in EOCC No.182 of 2016 on the file of the learned Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai against the 1st Accused.

For Petitioner : Mr.G.Gautham Ram Vittal
(in all the cases)

For Respondent : Ms.Sheela



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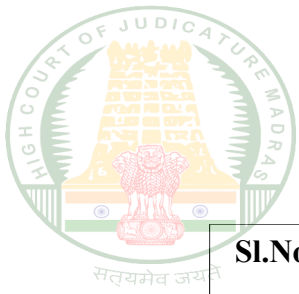
Special Public Prosecutor
(Income Tax)
(in all the cases)

COMMON ORDER

The issue that is involved in all these Criminal Original Petitions are common and therefore, on consent given by either side, the main petitions are taken up for hearing and disposed of through this common order.

2. The particulars of the proceedings that have been put to challenge in these petitions are tabulated hereunder :-

Sl.No.	Quash petition before the Hon'ble High Court of Madras	Complaint pending before Hon'ble learned Additional Chief Metropolitan Magistrate (E.O.II) at Egmore	Complaint filed under Section 277 of the Income Tax Act, 1961 for undisclosed Income and Assessment year
1.	CrI OP No.264 of 2023	E.O.CC No.179 of 2016	Assessment year 2010-2011 and undisclosed Income Rs.1,60,07,054/-
2.	CrI OP No.151 of 2023	E.O.CC No.180 of 2016	Assessment year 2011-2012 and undisclosed Income Rs.4,61,09,828/-



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Sl.No.	Quash petition before the Hon'ble High Court of Madras	Complaint pending before Hon'ble learned Additional Chief Metropolitan Magistrate (E.O.II) at Egmore	Complaint filed under Section 277 of the Income Tax Act, 1961 for undisclosed Income and Assessment year
3.	Crl OP No.137 of 2023	E.O.CC No.181 of 2016	Assessment year 2012-2013 and undisclosed Income Rs.11,85,47,810/-
4.	Crl OP No.134 of 2023	E.O.CC No.182 of 2016	Assessment year 2013-2014 and undisclosed Income Rs.19,91,43,972.29/-
5.	Crl OP No.269 of 2023	E.O.CC No.183 of 2016	Assessment year 2014-2015 and undisclosed Income Rs.28,48,39,948.70/-
6.	Crl OP No.152 of 2024	E.O.CC No.184 of 2016	Assessment year 2015-2016 and undisclosed Income Rs.28,51,51,885.90/-

3. The Company and its erstwhile Directors were prosecuted by the Income Tax Department for offence under the Income Tax Act committed during various assessment years 2010-2011 till 2015 – 2016. The undisclosed income for these assessment years were also separately worked out and mentioned in the complaint. The company was arrayed as A1 and the Managing Director one Mr.A.M.Arun was arrayed as



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A2.

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4. The case of the petitioner is that an application was filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for Brevity herein after called as IBC) by M/s.Alcon Laboratories, before the NCLT, Chennai Bench. This application was admitted and by an order dated 21.04.2017, the company was admitted into the Corporate Insolvency Resolution Process (CIRP) and Interim Resolution Professional (IRP) was appointed. The IRP who took charge of the company proceeded further and ultimately, filed an application under Section 30 of the IBC on 03.03.2022 seeking for the approval of the resolution plan. The NCLT, Chennai, approved the resolution plan and IRP was appointed as the Chairman of the Monetary committee. He submitted the list of creditors including the name of the Income Tax Department, which was also shown as one of the Creditor. The Successful Resolution Applicant took over the Management of the A1 company on 01.04.2023.

5. Pursuant to the above, the NCLT passed an order on



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03.02.2023 and the relevant portion in the order is extracted hereunder :-

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33.	All the Civil and criminal litigations, investigations, enquiries, proceedings, causes of action, claims, disputes or other judicial, regulatory proceedings as against the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future, in relation to any period on or before the closing date or an account of the Resolution Applicant being in control of the Corporate Debtor pursuant to this Resolution Plan shall stand extinguished.	Granted
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6. The present quash petitions have been filed by the new Management on the ground that as per 32A of IBC, the liability of A1 company completely gets wiped off after the resolution plan is approved by the NCLT and therefore, the prosecution as against A1 company cannot be continued. A further stand has been taken to the effect that the criminal prosecution cannot be proceeded as against the new management which has taken over A1 company. Since the present petitions confine itself only to these two legal issues, the main petitions were taken up for hearing.



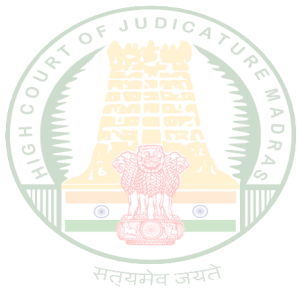
7. Heard Mr.G.Gautham Ram Vittal, learned counsel for the petitioner in all Criminal Original Petitions and Ms.Sheela, learned Special Public Prosecutor for Income Tax Department.

8. There is no dispute with regard to the fact that the criminal complaint was initiated by the respondent against A1 company and the then Managing Director of the Company. The scope of Section 32A was discussed by the Apex Court in **[Ajay Kumar Radheshyam Goenka Vs. Tourism Finance Corporation of India Limited]** reported in **2023 SCC online SC 26**. The relevant portion is extracted hereunder :-

Thus, Section 32A broadly leads to:

a. 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.

b. 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 Act, 2013 (18 of 2013) , or was in any manner in charge of, or responsible to the corporate



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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” shall be proceeded and the law will take it’s own course. Only the corporate debtor (with new management) as held in Para 42 of P. Mohanraj will be safeguarded.

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

9. In the above judgement, the Apex Court after dealing with the provision in detail, came to a categoric conclusion that insofar as the criminal prosecution is concerned, the criminal liability of the corporate debtor viz., company gets completely wiped off and the new management is allowed to take over the company on a clean slate. However, the Apex Court also made it clear that the persons who are involved in the day today affairs of the company and were incharge and responsible for running of the company, will be liable to face all the offence committed prior to the commencement of the Corporate Insolvency Resolution Process. There is no



escape for those persons from criminal liability even though the corporate debtor is given a clean slate and is handed over to the new Management.

10. Useful reference can also be made to the judgement of the Calcutta High Court in ***[Tantia Constructions Limited Vs. Krishna Hi-Tech Infrastructure P Ltd]*** in **CRP No.172 of 2022**. The relevant portions in the order are extracted hereunder :-

4. For the application of Section 32A of IBC, 2016 and in light of the present matter, it is pertinent to determine the following two issues, i.e.,

i. Whether the offence as complained in the impugned criminal proceedings has been alleged to be committed before the initiation of corporate insolvency resolution process or during such process?

ii. Whether the resolution plan has resulted in change in the management or corporate debtor in consonance with the provisions of Section 32A(1) of IBC, 2016?

5. With respect to Issue No. 1, it is pertinent to note that the corporate insolvency resolution process as against the Petitioner/Corporate Debtor was initiated on 13.03.2019 when the application was accepted and the Order of Moratorium



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under Section 14 of the IBC, 2016 was imposed by NCLT, Kolkata in the aforementioned case. The complaint that commenced the impugned criminal proceedings was filed on 22.07.2019 before the concerned court by the opposite party. Whereby, said alleged offence so complained, took place before or during the corporate insolvency resolution process and is covered under the ambit of Section 32A of IBC, 2016.

6. With respect to Issue No. 2, it is observed that the petitioner has not made specific submission in this regard. However, it is the submission of the opposite party that the impugned complaint case does not concern itself with the new directors that were appointed after takeover by the Resolution Applicant in line with the Resolution Plan so approved by NCLT dated 24.02.2022. It is their submission that they are primarily aggrieved by the actions of petitioner when it was in control of erstwhile Directors.

11. The above judgement clearly lays down the law on the subject.

The moment the Corporate Insolvency Resolution Process is initiated against the corporate debtor and the application is accepted by the NCLT, the moratorium comes into operation. Once the resolution plan is accepted by the NCLT and orders are passed and the Corporate debtor gets into

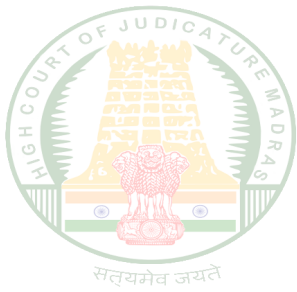


hands of the new management, all the past liabilities including the criminal liability of the Corporate debtor gets wiped off and the new Management takes over the company with clean slate.

12. In the instant case, the A1 company has now gone into the hands of the new management, pursuant to the order passed by the NCLT dated 03.02.2023. In view of the same, the new management takes over the A1 company as a clean slate and the criminal liability can no longer be mulcted as against A1 company. Therefore, the continuation of criminal proceedings as against A1 company can no longer subsist.

13. The company has been taken over by a new management and the criminal liability cannot be passed on to the new management. The Apex Court had an occasion to directly deal with this issue in a recent judgement reported in **2023 4 MLJ Criminal 497**. Paragraph 30 in that judgement is extracted hereunder :-

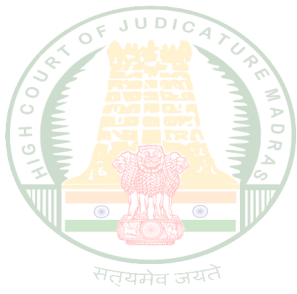
30. It is, therefore, noticeable that the criminal liability of a company (a) is recognized where it can be attributable to



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individual acts of employees, directors or officials of a company or juristic persons (Tesco, Meridian Global Funds, Standard Chartered Bank, and Iridium) (b) recognized even if its conviction results in a term of imprisonment (Meridian, Iridium); (c) cannot be transferred ipso facto, except when it is in the nature of penalty proceeding (McLeod Russel) 16 (d) the legal effect of amalgamation of two companies is the destruction of the corporate existence of the transferor company (in this case, LVB); it ceases to exist. (e) that apart, only defined legal proceedings, are succeeded to by the transferee company, which, in this case, is the DBS Bank.

14. It is clear from the above that the criminal liability of a company cannot be transferred to another company or the new management *ipso facto*. Therefore, the new management apart from not taking over the criminal liability of the A1 company, cannot also be made to undergo criminal prosecution for the offence committed by the persons who were in-charge of the company during the relevant point of time.



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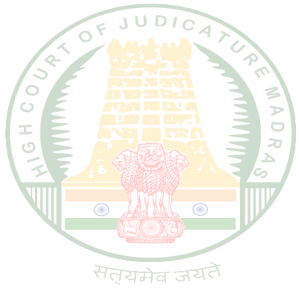
15. In the light of the above discussion, the continuation of the criminal prosecution as against A1 company has to be interfered by this Court. This Court has already recorded the fact that A2 has already died and therefore, the charge abates insofar as A2 is concerned. Accordingly, the proceedings as against A1 company in all these complaints stands quashed. It is left open to the respondent to identify the persons who were in-charge of running the company and were involved in the day today affairs of the company during the relevant point of time and it will be left open to the respondent to continue the criminal prosecution as against those officers. This is in view of the judgement of the Apex Court in *Ajay Kumar Radheshyam Goenka case* referred supra.

16. In the result, all these criminal Original petitions are allowed in the above terms. Consequently, the connected miscellaneous petitions are closed.

09.01.2024

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N.ANAND VENKATESH,J

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Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No

To

- 1.The Additional Chief Metropolitan Magistrate (E.O.II),
Egmore, Chennai
- 2.The Public Prosecutor,
Madras High Court.

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and Crl MP Nos.119, 121, 135, 136, 162 & 165 of 2023

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