

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 2301 OF 2024

PRAVIN KUMAR AGARWAL & ORS.

-VS-

DDEV PLASTIKS INDUSTRIES LIMITED

For the Petitioners : Mr. Anirban Dutta
Mr. Shivam Bhimsaria

For the Opposite Party : Mr. Francis Samson Correa
Mr. Sunny Nandy
Ms. Sneha Singh
Ms. Yamini Tiwari
Mr. Manmohan Singh Rooproy

Hearing concluded on : 22.04.2026

Judgment on : 08.05.2026

UDAY KUMAR, J.: -

INTRODUCTION

1. The inherent jurisdiction of this Court under Section 401, 397 read with Section 482 of Code of Criminal Procedure, 1973, is invoked to assuage a perceived miscarriage of justice. The petitioners, arrayed as Accused Nos. 2, 4, and 5, seek the quashing of proceedings in Case No. CS-26711 of 2024, currently

pending before the Learned Metropolitan Magistrate, 18th Court, Calcutta.

2. At the heart of this revisional challenge is the Order dated April 6, 2024, whereby the Learned Magistrate took cognizance and issued process for offences punishable under Sections 138/141 of the Negotiable Instruments Act, 1881. The petitioners being non-signatories to the cheques in question, contended that their arraignment is a by-product of "template pleading." They argue that the complaint is devoid of a transactional nexus, relying on a bald statutory reproduction to impute vicarious liability without disclosing any specific overt acts attributable to them.

FACTUAL MATRIX

3. The genesis of the dispute lies in a commercial engagement between the complainant, Ddev Plastiks Industries Limited, and the accused company. It is alleged that between July 2022 and February 2023, the complainant supplied polymer and PVC compounds against eighteen distinct invoices, culminating in an outstanding liability of ₹2,86,78,374.00.
4. In purported part-discharge of this liquidated debt, the accused company issued four cheques (Nos. 000838, 000839, 000840, and 000841) totalling ₹36,00,000.00, drawn on the Bank of Baroda, Bhubaneswar. Upon presentation for encashment, these instruments were returned unpaid with the remark "Funds

Insufficient," as evidenced by the return memos dated January 25, 2024.

5. Consequent to the dishonour, a statutory demand notice was served on February 7, 2024. The failure of the accused to liquidate the debt within the mandatory fifteen-day window prompted the filing of the present complaint. Given that the accused reside beyond the territorial limits of the Trial Court, the Learned Magistrate conducted an inquiry under Section 202 of the Code of Criminal Procedure (now Section 225 of the BNSS) prior to the issuance of the impugned summons.
6. The petitioners move this Court on the foundational premise that holding the office of Director does not, *per se*, attract the "deeming fiction" of Section 141. They maintain that the complaint is facially deficient, as it fails to specify their individual roles in the day-to-day management of the company or the issuance of the specific cheques, thereby rendering the prosecution an abuse of the process of law.

QUESTIONS FOR DETERMINATION

7. A holistic perusal of the petition and the underlying record suggests that the controversy transcends a mere commercial default. It strikes at the legitimacy of invoking the criminal machinery against individuals whose "transactional nexus" with the alleged offence remains obscured. To resolve whether the

continuation of these proceedings serves the ends of justice, the following questions emerge for determination:

- I. Whether a "bald statement" in a complaint, which merely replicates the statutory vocabulary of Section 141 of the Negotiable Instruments Act, is sufficient to sustain a prosecution against non-signatory directors in the absence of specific overt acts?
- II. Whether the Learned Magistrate, while conducting the mandatory inquiry under Section 202 of the Code of Criminal Procedure, failed to apply his judicial mind to distinguish between the liability of the corporate entity and the individual culpability of its non-signatory officers?
- III. Whether a Director, who is neither the Managing Director nor the signatory to the cheques, can be held vicariously liable under the "legal fiction" of Section 141 without clear pleadings establishing their role in the day-to-day management at the material time?
- IV. Whether the instruments in question were issued in discharge of a "legally enforceable debt" or were "blank security cheques" issued to safeguard a fluctuating credit line, thereby precluding a cause of action under Section 138?
- V. Whether the continuation of criminal proceedings against the petitioners, in the face of a facially deficient complaint, constitutes an abuse of the process of law and

a manifest violation of the right to personal liberty under Article 21 of the Constitution of India?

SUBMISSIONS OF THE PETITIONERS

- 8.** Mr. Anirban Dutta, learned counsel appearing for the petitioners, strenuously contended that the complaint serves as a classic illustration of "facially deficient" pleading. He submitted that the complainant has merely "parroted" the statutory nomenclature of Section 141 of the Negotiable Instruments Act, asserting that the petitioners were "in charge of and responsible for the conduct of the business" without providing any factual substantiation.
- 9.** Relying on the seminal authority in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla (2005) 8 SCC 89*, Mr. Dutta argued that such bald assertions are insufficient to satisfy the jurisdictional requirement for impleading non-signatory directors. He emphasized that in the absence of specific overt acts linking the petitioners to the underlying transaction, the summons remains legally unsustainable.
- 10.** It was further urged by Mr. Dutta that vicarious liability in criminal law is an exception to the general rule of *strictissimi juris* and arises solely out of a "legal fiction." Drawing from the dictum in *Ashok Shewakramani v. State of Andhra Pradesh (2023) 8 SCC 473*, he emphasized that the phrase "in charge of and responsible to the company" must be read conjunctively. He argued that the petitioners, being neither signatories to the cheques nor the

Managing Directors of the accused company, cannot be deemed liable by the mere dint of holding the office of "Director." Mr. Dutta maintained that the "total silence" in the complaint regarding the petitioners' specific roles in the supply chain or the issuance of the cheques effectively severs the chain of vicarious liability.

- 11.** A primary grievance was directed toward the mechanical issuance of process by the Learned Trial Court. Mr. Dutta contended that since the petitioners reside beyond the territorial jurisdiction of the Learned Magistrate, a mandatory inquiry under Section 202 of the Code of Criminal Procedure (now mirrored in the BNSS) was a non-negotiable jurisdictional prerequisite. Relying on the ratio in *Masud Tarif v. The State of West Bengal (2026)*, he argued that this inquiry is not a perfunctory ritual but a vital safeguard against the "weaponization" of the criminal process. The Learned Magistrate, it is submitted, failed to apply his judicial mind to distinguish between corporate default and individual culpability.
- 12.** The petitioners further contended that the instruments in question were "blank security cheques" issued to safeguard a fluctuating credit line and were never intended for encashment in the manner alleged. Mr. Dutta submitted that compelling documented strangers to the signing of the cheques to endure the rigors of a criminal trial in a distant forum constitutes a "travesty of justice."

13. He concluded by asserting that continuing a prosecution predicated on a complaint devoid of factual particulars is a manifest abuse of the process of law and an affront to the fundamental right to personal liberty guaranteed under Article 21 of the Constitution of India.

SUBMISSIONS OF THE OPPOSITE PARTY

14. Per contra, Mr. Francis Samson Correa, learned counsel appearing for the Opposite Party No. 2, defended the summoning order and asserted that the complaint is not "facially deficient" as alleged. He contended that the petitioners are not merely dormant directors but are Whole-Time Directors and Key Managerial Personnel of the accused company. Relying on the ratio in *K.K. Ahuja v. V.K. Vora (2009) 10 SCC 48*, Mr. Correa argued that while an ordinary "Director" might require specific pleading, a "Whole-Time Director" is, by the very nomenclature of the office, inherently in charge of and responsible for the company's affairs. Consequently, he submitted that the averments in Paragraph 3 are not "bald statements" but a factual reflection of the petitioners' executive status.
15. It was further urged by Mr. Correa that the issuance of the cheques was not an isolated act of the signatory but the culmination of a collective financial decision made by the Board. He argued that in a corporate hierarchy, the signatory acts as an agent of the Board; thus, directors holding executive positions

cannot disclaim vicarious liability at the threshold. Mr. Correa emphasized that whether the petitioners were specifically involved in this transaction is a "matter of trial" involving evidentiary appreciation and cannot be summarily adjudicated in a quashing petition under Section 482 of the Cr.P.C.

- 16.** Regarding the challenge to the summoning order, Mr. Correa submitted that the Learned Magistrate strictly complied with the procedural mandates of the Code. Relying on the judicial trend in *Prakash Chimanlal Seth v. Jagruti Keyur Rajpopat (2025) SCC Online SC 1151*, he contended that the inquiry under Section 202 does not necessitate a "mini-trial." Since the Magistrate perused the Affidavit-in-Chief under Section 145 of the NI Act, the return memos, and the statutory notice, Mr. Correa argued that the requirement of judicial satisfaction was duly met in the order dated April 6, 2024.
- 17.** The "security cheque" theory was vehemently denied by Mr. Correa as a premature factual plea. He referred to the statutory presumption under Section 139 of the NI Act, which mandates that the Court shall presume, unless the contrary is proved, that the holder of a cheque received it for the discharge of a debt or liability. Mr. Correa submitted that the Negotiable Instruments Act was enacted to enhance the credibility of banking operations, and he concluded that quashing the proceedings at this stage would frustrate the object of the statute and result in a

"miscarriage of justice." Opposite Party No. 2, therefore, prays for the dismissal of the revisional application.

DETERMINATION ON QUESTION NO. I

18. The primary pivot of this revisional challenge is whether the Complainant has discharged the "burden of pleading" necessary to bridge the gap between corporate default and individual criminal liability. It is a fundamental postulate of criminal jurisprudence that vicarious liability is an exception to the rule of *strictissimi juris*.

19. In the context of the Negotiable Instruments Act, this principle is codified under Section 141, which stipulates as follows:

141. Offences by companies. — (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence..."

20. The individuals who are not the actual drawers of the cheque are "deemed" guilty only upon the satisfaction of a specific condition:

- i. they must be "in charge of" and
- ii. "Responsible to" the company for the conduct of its business at the material time.

21. A perusal of the complaint reveals that Paragraph 3 merely replicates this statutory vocabulary. Mr. Dutta correctly characterizes this as a "bald statement" devoid of a transactional

nexus. The seminal decision in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla (2005) 8 SCC 89* established that specific averments are indispensable to substantiate *how* a director was responsible for the conduct of business. The "legal fiction" of Section 141 is not an automatic consequence of holding a directorship; it is a conditional liability that must be factually anchored within the four corners of the complaint.

- 22.** While the Complainant relies on the petitioners' status as "Whole-Time Directors" to imply responsibility, the guidance in *Ashok Shewakramani (2023) 8 SCC 473* mandates that the phrases "in charge of" and "responsible to" be read conjunctively. Even an executive designation does not dispense with the requirement to disclose a director's specific role in the transaction. In the instant case, the complaint is conspicuously silent on whether the petitioners participated in the board meetings authorizing the procurement or had any role in the issuance of the four cheques.
- 23.** Recent jurisprudence, including *Siby Thomas v. Somany Ceramics Ltd. (2024) 1 SCC 348*, reinforces that "template pleadings" are insufficient to activate the deeming provision. There must be a clear statement of fact describing the manner in which the accused was in charge. The Complainant's argument, that "role is a matter for trial," cannot serve as a shield for a facially deficient complaint. As observed in *Masud Tarif (2026)*, dragging individuals through a protracted trial without a *prima*

facie case is an affront to the constitutional guarantee of personal liberty under Article 21.

- 24.** Consequently, this Court finds that the complaint fails to meet the threshold of specific pleading. The "bald statement" in Paragraph 3 is insufficient to bridge the gap between corporate identity and personal culpability. To allow such a prosecution to proceed would be to permit a "template" to override the requirements of substantive criminal law.

DETERMINATION ON QUESTION NO. II

- 25.** The second limb of the petitioners' challenge rests upon a procedural safeguard that has, through judicial evolution, assumed the status of a jurisdictional prerequisite. The second limb of the petitioners' challenge rests upon a procedural safeguard that has, through judicial evolution, assumed the status of a jurisdictional prerequisite. Section 202 of the Code of Criminal Procedure (now Section 225 of the BNSS) mandates a cautious approach when the accused resides beyond the court's territorial limits. The provision acts as a judicial sieve, designed to filter out vexatious or oppressive litigations against distant residents by requiring the Magistrate to "postpone the issue of process" and conduct a substantive inquiry to determine whether there exists a "sufficient ground for proceeding." The provision stipulates:

"202. Postponement of issue of process. — (1) Any Magistrate... shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation... for the purpose of deciding whether or not there is sufficient ground for proceeding."

- 26.** The use of the word "shall" in the statute underscores its mandatory character. In the present case, the petitioners reside in Bhubaneswar and Salt Lake, locations indisputably outside the local limits of the Metropolitan Magistrate, 18th Court, Calcutta. While the Order dated April 6, 2024, records a perfunctory perusal of the *Affidavit-in-Chief*, this Court must determine whether such an exercise constitutes a meaningful application of a "discerning judicial mind" or merely an instance of hollow paper compliance.
- 27.** The Hon'ble Supreme Court in *Vijay Dhanuka v. Najima Mamtaj* (2014) 14 SCC 638, and subsequently in the *Suo Motu Writ Petition* (2021) regarding the expeditious trial of Section 138 cases, has emphasized that the inquiry under Section 202 is not a perfunctory ritual. In the specific context of vicarious liability, the Magistrate's satisfaction must extend beyond the mere fact of cheque dishonour; it must meticulously identify the specific basis of liability for each individual arrayed as an accused.
- 28.** A perusal of the impugned order reveals a striking failure to distinguish between the Accused Company (Petitioner No. 1), the

Signatory (Petitioner No. 3), and the Non-Signatory Directors (Nos. 2, 4, and 5). By issuing a common, composite summoning order against all, the Learned Magistrate ignored the bedrock principle that criminal liability is individual and not collective. As observed in *Masud Tarif (2026)*, the issuance of process against outstation directors without identifying a specific factual nexus constitutes a failure of judicial application of mind.

- 29.** The Opposite Party relies on *Prakash Chimanlal Seth (supra)* to argue that since the Section 145 affidavit was present, the Magistrate's inquiry was complete. However, this Court must distinguish between a general inquiry into the offence and a specific inquiry into vicarious liability. In the ordinary course, if the accused is the signatory, the mere dishonour memo and notice might suffice for a *prima facie* case. In the present case, where the complaint itself is silent on the petitioners' specific roles, a "proper inquiry" under Section 202 would have required the Magistrate to ask: "*What material on record links Accused Nos. 2, 4, and 5 to the transaction at hand?*"
- 30.** The Opposite Party's reliance on *Prakash Chimanlal Seth (2025)*, to argue that the presence of a Section 145 affidavit concludes the inquiry is misplaced here. While an affidavit may suffice to establish the *prima facie* commission of an offence by the drawer, it cannot spontaneously generate a "transactional link" for non-signatory directors where the complaint itself is silent. A Magistrate cannot be a mere "post-office" to the complainant; he

must act as a gatekeeper of personal liberty. In this instance, the mandatory nature of Section 202 was satisfied in form but profoundly violated in substance.

31. Therefore, the impugned order of summoning, insofar as it pertains to the petitioners, suffers from a lack of judicial application of mind and a failure to conduct the substantive inquiry envisioned by the law.

DETERMINATION ON QUESTION NO. III

32. This question invites a delineation of the boundaries of "deemed liability" within the corporate criminal landscape. Since the Indian Penal Code (and now the BNS) does not recognize vicarious liability unless specifically provided by statute, Section 141 of the Negotiable Instruments Act stands as an exceptional "legal fiction." It extends the net of criminality to individuals who did not personally draw the instrument; consequently, it must be interpreted with strict adherence to its statutory conditions.

33. The complainant's proposition, that the petitioners, as "Whole-Time Directors," are *ipso facto* responsible, is legally overbroad. In the landmark ruling of *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* (2005) 8 SCC 89, the Hon'ble Supreme Court categorized corporate officers into three distinct tiers:

Tier I (The Signatory): Invariably liable as the direct performer of the incriminating act.

Tier II (Managing Director): Liable by virtue of the office, as the law presumes, they are in charge of the company's business.

Tier III (Directors): Not automatically liable. For this category, the complaint must disclose a factual basis for their specific involvement.

- 34.** The petitioners, being neither Managing Directors nor Signatories, fall squarely within the third tier. Even the designation of "Whole-Time Director" does not activate an automatic presumption of guilt. As clarified in *K.K. Ahuja v. V.K. Vora (2009) 10 SCC 48*, while a Managing Director is deemed responsible by the nature of their duties, for any other Director, regardless of executive nomenclature, the complainant must plead the specific role played by them in the conduct of the business related to the offence.
- 35.** To prosecute a Director for a financial default without pleading their involvement in the procurement or payment process would be a travesty of justice. As emphasized in *Ashok Shewakramani (2023) 8 SCC 473*, the liability is not "vicarious" in the sense of a common-law master-servant relationship; it is a "deemed" liability that requires the individual to have a direct hand in the management of the affairs relating to the specific default.
- 36.** In the present case, the "legal fiction" of Section 141 remains dormant. The complaint is conspicuously silent on whether these

specific directors were involved in the purchase orders of 2022 or the subsequent issuance of cheques in 2024. As noted in *Susela Padmavathy Amma v. Bharti Airtel Limited [(2024) SCC OnLine SC 311]*, the mere fact of being a director is insufficient to attract liability. In the absence of a Transactional Link, the prosecution fails at the threshold.

- 37.** In the present case, the "legal fiction" of Section 141 remains dormant. The complaint is conspicuously silent on whether these specific directors were involved in the purchase orders of 2022 or the subsequent issuance of cheques in 2024. As noted in *Susela Padmavathy Amma v. Bharti Airtel Limited [2024 SCC OnLine SC 311]*, the mere status of "Director" is an insufficient hook for liability. In the absence of a Transactional Link, the prosecution fails at the threshold.
- 38.** Furthermore, the recent trend in *Siby Thomas (supra)* reinforces that the "Transactional Link" is the heartbeat of Section 141. If the complaint does not state that the petitioners were part of the decision-making process that led to the issuance of the dishonoured cheques, the "legal fiction" never takes flight.
- 39.** This Court finds that the complainant has failed to distinguish between "holding an executive office" and "committing a criminal offence." The petitioners cannot be held vicariously liable solely because the complainant chooses to label them "responsible" in a template paragraph.

40. A Director who is neither the Managing Director nor the signatory cannot be held vicariously liable in the absence of clear, specific pleadings establishing their day-to-day responsibility regarding the transaction in question.

DETERMINATION ON QUESTION NO. IV

41. This question necessitates an examination of the "foundational debt" required to sustain a prosecution under Section 138 of the Negotiable Instruments Act. The statute explicitly mandates that the instrument must be issued for the discharge, in whole or in part, of a "legally enforceable debt or other liability." The petitioners contend that the instruments were "blank security cheques" issued to facilitate a credit line and were never intended to be liquidated against the eighteen invoices mentioned in the complaint.
42. The jurisprudence regarding "security cheques" has undergone significant evolution. While *Indus Airways Pvt. Ltd. and others v. Magnum Aviation Pvt. Ltd. and another (2014) 12 SCC 539* held that the dishonour of a security cheque would not attract Section 138 if no subsisting liability existed on the date of drawing, the position was refined in *Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458*. The Apex Court clarified that if a debt has become "payable" by the time the cheque is presented, the "security" nomenclature of the instrument does not bar prosecution.

- 43.** However, this debate takes on a distinct jurisdictional character when applied to non-signatory directors. The Complainant relies heavily on the presumption under Section 139 of the NI Act, asserting that once signatures are admitted, the debt is presumed. Yet, the petitioners—directors who were not involved in the negotiation of the security arrangement—cannot be held criminally liable for the "unilateral conversion" of a security instrument into a demand instrument without specific pleadings to that effect.
- 44.** In the present case, the fragmentation of a ₹2.86 Crore debt into four identical cheques of ₹9 Lakhs each lends credence to the petitioners' argument. Such a structure suggests these were fixed-amount instruments held as a "collateral safeguard" rather than cheques issued after the crystallization of a specific invoice amount. As observed in *Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel and another (2023) 1 SCC 578*, if a cheque is presented for an amount that does not represent the "legally enforceable debt" at the time of encashment, the offence is not made out.
- 45.** The "Transactional Link" is again found wanting. The complaint fails to state that the petitioners authorized the presentation of these specific cheques for the specific discharge of the liabilities alleged. While the status of a cheque as a "security instrument" is generally a defence for trial, when challenged by non-signatory directors, the Court must discern *prima facie* evidence that these

individuals were party to the "acknowledgment of debt" that led to the cheques' presentation.

- 46.** In the absence of any material linking the petitioners to the conversion of these "security" instruments into "debt" instruments, the continuation of criminal proceedings against them is unsustainable. The presumption under Section 139 cannot be stretched to substitute the specific pleading required under Section 141. This question is answered accordingly.

DETERMINATION ON QUESTION NO. V

- 47.** The final question serves as the constitutional anchor of this revision. It poses a fundamental query: does the continuation of a criminal trial, predicated on a "facially deficient" complaint against non-signatory directors, constitute an abuse of the process of law? To answer this, the Court must look beyond the Negotiable Instruments Act and exercise its inherent duty under Section 482 Cr.P.C. (Section 528 of the BNSS) to prevent the "engine of justice" from being utilized as a tool of oppression.
- 48.** The petitioners contend they have been dragged into a criminal forum in Kolkata, remote from their residences and the site of corporate operations, not to answer for personal culpability, but to endure "procedural pressure" aimed at settling a civil debt. This Court cannot remain oblivious to the growing trend of "over-implication" in commercial litigations, where individuals are

indiscriminately arrayed as accused simply because their names appear on a corporate letterhead.

- 49.** In the *locus classicus* of *State of Haryana v. Bhajan Lal (1992) Supp (1) SCC 335*, the Hon'ble Supreme Court held that where the allegations in the complaint, even if taken at face value, do not *prima facie* constitute an offence, the Court must exercise its inherent power to quash. This principle is not a mere rule of procedure; it is a sentinel on the qui vive for the protection of Article 21 of the Constitution of India.
- 50.** While the Opposite Party argues that the "ends of justice" require the trial to reach its logical conclusion, this Court must distinguish between a legitimate trial and procedural harassment. A legitimate trial necessitates pleadings that disclose a "Transactional Link" requiring evidentiary verification. Harassment occurs when the complainant fails to meet the threshold of pleading (as determined in Question I) and yet seeks to compel the attendance of non-signatory directors in a distant forum.
- 51.** As observed in *Pepsi Foods Ltd. And another v. Special Judicial Magistrate and others (1998) 5 SCC 749*, the summoning of an accused is a serious matter with far-reaching consequences; criminal law cannot be set into motion as a matter of course. When a Magistrate issues process without the "judicial filtration" mandated by Section 202 (as determined in Question II), the resulting trial is transformed into an instrument of coercion.

- 52.** Furthermore, the recent guidance in *Lalankumar Singh v. State of Maharashtra* [2022 SCC OnLine SC 1383], reaffirms the High Court's duty to intervene when the criminal process is utilized as a "weapon of civil recovery." In the present case, the fragmentation of the debt coupled with the implication of directors who had no documented role in the supply chain suggests a strategic attempt to coerce a settlement rather than punish a crime.
- 53.** To force these petitioners to undergo the rigors of a criminal trial on the basis of a complaint that is "factually silent" and "procedurally flawed" would be a manifest travesty of justice. The right to a fair trial includes the right *not* to be subjected to trial when the law does not recognize a *prima facie* case. The "legal fiction" of Section 141 cannot be used to bypass constitutional safeguards.
- 54.** Question No. V is thus answered in the Affirmative. The continuation of proceedings against the petitioners (Accused Nos. 2, 4, and 5) constitutes an abuse of the process of law.

CONCLUSIVE FINDINGS AND RATIO DECIDENDI

- 55.** In view of the exhaustive deliberation on the various facets of law and fact, this Court summarizes the findings and the resulting ratio as follows:
- i. This Court finds that the "burden of pleading" under Section 141 of the Negotiable Instruments Act is not a

mere procedural formality but a substantive jurisdictional prerequisite. Criminal liability, particularly of a vicarious nature, cannot be fastened upon a Director through the artifice of "template pleading."

- ii. To bridge the gap between corporate default and individual criminality, the complaint must disclose a clear, factual description of the overt act or the specific role played by the Director. Merely "parroting" the statutory nomenclature, stating a Director is "in charge of and responsible for the business" is insufficient where the individual is not a signatory or a Managing Director.
- iii. Where an accused resides beyond the territorial jurisdiction of the Court, the inquiry under Section 202 of the Cr.P.C. is a mandatory constitutional safeguard. This inquiry must be substantive rather than perfunctory. The Magistrate must specifically identify the basis of liability for non-signatories before setting the criminal machinery in motion.
- iv. The judicial application of mind during this inquiry must specifically address the basis of liability for non-signatories. Any summoning order issued in a mechanical fashion, which fails to distinguish between the "Company" and its "Non-Signatory Directors," constitutes a jurisdictional error and a violation of the procedural due process.

- v. The "deeming fiction" of Section 141 must be strictly construed. In the absence of specific averments linking the petitioners to the procurement or the issuance of the instruments, a Director cannot be made to stand trial solely because of their executive designation.
- vi. While Section 139 of the Act creates a presumption in favor of the holder, it does not exempt the complainant from the requirement of pleading a specific "legally enforceable debt." When instruments appear to be collateral security against a fluctuating credit line, and the complaint fails to link the petitioners to the crystallization of that debt, the penal provisions of Section 138 cannot be used to bypass the necessity of civil adjudication.
- vii. The continuation of criminal proceedings against non-resident, non-signatory directors on a "facially silent" complaint constitutes an egregious abuse of the process of law. Such "weaponization" of criminal law for civil recovery is a manifest violation of the fundamental right to personal liberty under Article 21 of the Constitution of India. The inherent power of this Court must be exercised to prevent the "process from becoming the punishment."

CONSEQUENTIAL ORDERS AND DIRECTIONS

- 56.** Consequent upon the findings recorded above, this Court is of the firm opinion that the prosecution of the petitioners is legally unsustainable. To allow the trial to proceed would be to sanction a miscarriage of justice.
- 57.** Accordingly, the criminal proceedings in Case No. CS-26711 of 2024 (Ddev Plastiks Industries Limited v. Gupta Power Infrastructure Limited & Ors.), presently pending before the Learned Metropolitan Magistrate, 18th Court, Calcutta, including the Order dated April 6, 2024, are hereby quashed and set aside, strictly and exclusively in respect of the present Petitioners, namely, Accused Nos. 2, 4, and 5.
- 58.** The Petitioners stand discharged from their respective bail bonds, if any.
- 59.** All coercive steps, including warrants or look-out circulars, if any, issued against them in connection with this matter shall stand vacated forthwith.
- 60.** The Learned Metropolitan Magistrate, 18th Court, Calcutta, is directed to proceed with the trial with utmost expedition against the remaining accused, namely Accused No. 1 (The Company) and Accused No. 3 (The Signatory) with all deliberate speed and in accordance with the law, without being influenced by any observations made herein regarding the merits of the underlying commercial dispute.

61. The quashing of proceedings against the non-signatory directors shall not be construed as an expression of opinion on the merits of the underlying commercial liability of the accused company.
62. The Complainant remains at liberty to pursue any other civil remedy available under the law for the recovery of the alleged outstanding dues. The observations made herein shall not prejudice such civil proceedings.
63. The Criminal Revisional Application being CRR 2301 of 2024 stands allowed to the extent indicated above.
64. Interim order/orders, if any stand vacated.
65. There shall be no order as to costs.
66. The Trial Court Record (TCR), if any, shall be sent down to the Trial Court, at once.
67. Case diary, if any, be returned forthwith.
68. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)