



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment Pronounced on: 22.04.2025*+ **W.P.(C) 4260/2014, CM APPL. 8572/2014**

AJIT GULABCHAND

.....Petitioner

versus

DIRECTOR GENERAL OF FOREIGN TRADERespondent

Advocates who appeared in this case:

For the Petitioner : Mr. Dayan Krishnan, Sr. Adv. with Mr. Rishi Agrawala, Ms. Tarini Khurana, Mr. Sukrit Seth, Advs.

For the Respondent : Ms. Nidhi Raman, CGSC with Mr. Zubin Singh, Mr. Akash Mishra, Mr. Arnav Mittal, Advs.

HON'BLE MS. JUSTICE TARA VITASTA GANJU**TARA VITASTA GANJU, J.**

1. The grievance of the Petitioner as articulated in the prayers are set out below:

“(a) Issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of Certiorari quashing the Order dated 11.03.2014 passed by the Respondent confirming the penalty imposed by the Orders-in-Original passed by the Jt. DGFT.

“(b) Pass any such further Order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case.”

2. The Impugned Order dated 11.03.2014 was passed by the Directorate General of Foreign Trade [hereinafter referred to as “DGFT”] against M/s Poysha Industrial Company Ltd. and all its Directors, whereby the Four Order(s)-In-Original two dated 08.09.2009 and two dated 17.09.2009 were upheld. These Order(s)-In-Original levied a fine of Rs. 11,50,81,116/- on the



Company M/s Poysha Industrial Company Ltd. [hereinafter referred to as "Company"] and its Directors.

3. Briefly the facts are that the Petitioner was appointed as a non-executive Director of Company. During the time period of 1989-1991, the Company obtained certain Advance Licenses for importing Tinplates. As per the terms and conditions of these licenses, the Company was required to fulfil specific export obligations.

4. A reference was filed under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 [hereinafter referred to as "SICA"] by the Company and by an Order dated 26.10.1993, the Board of Industrial and Financial Reconstruction [hereinafter referred to as "BIFR"] had declared the Company to be a Sick Industrial Company within the meaning of Section 3(1)(o) of the SICA [as it stood at that time]. The BIFR gave its finding in order dated 20.12.1996 that under Section 20(1) of the SICA Act, it would be just and equitable that the Company be wound up.

4.1 Sometime thereafter, a Company Petition was filed before the High Court of Judicature at Mumbai by a creditor of the Company. By an Order dated 09.01.1998 passed by the Bombay High Court, the Company was directed to be wound up and the Official Liquidator was appointed to take the requisite steps. On 06.02.1998, the Official Liquidator took over the Company's registered office and possession of all books of accounts and other records, movable and immovable properties.

5. A show cause notice dated 08.09.1992 was sent by the Respondent under Section 14 of the Foreign Trade (Development and Regulation) Act, 1992 [hereinafter referred to as "FTDR Act"] to the Company including its Directors and the Petitioner for non-fulfilment of its export obligations



under the FTDR Act.

5.1 On 12.04.2007, the Respondent issued summons under Section 17 of the FTDR Act to the Company. The summons were only addressed to the Company with the list of Directors being mentioned therein. These summons were however never received by either the Company or its Directors. The record reflects that various summons under Section 17 of the FTDR Act were issued and subsequently, show cause notices for personal hearing addressed to the Company, were issued on 05.05.2008, 23.06.2008, 01.07.2008, 22.07.2008, 11.08.2008. A perusal of these show cause notices shows that these notices have been addressed to the Company at its registered address.

5.2 On 08.09.2009, two adjudication orders were passed imposing a penalty of Rs. 1,23,852 and Rs. 57,75,600 on the Company and its Directors. Thereafter, on 17.09.2009, two additional adjudication orders were passed imposing a penalty of Rs. 11,60,000 and Rs. 10,80,21,664 on the Company and its Directors. These orders are collectively called "Four O-I-O's". The details of these penalties imposed in terms of these Four O-I-O's are set out below:

<i>S.No</i>	<i>Order in Original</i>	<i>Details of Import</i>	<i>Penalty (Rs)</i>
1.	03/02/002/00242/AM05/EC A dated 08.09.2009	For import of 5.73 MTs of Electrolyte Quality Tinplate (Duty exemption upto 4.91 Mts only) with an obligation (a) to export 1.90 MTs of (50000 Nos.) of 509 DIA Ring Lid Tagger Assembly and; (b) to export 1.65 Mts (50000 Nos.) of 509 DIA bottoms both for containers made of Tin plate prime for a total FOB value of Rs. 1,36,325.	1,23,852/-



2.	03/02/002/00135/AM09/EC A dated 08.09.2009	For import of 103.73 MTs of Tin plate prime (duty exemption upto 99.22 MTs only). With an obligation to export 11,00,000 Nos. (having 90.20 MTs Tinplate Prime Content) of C.T.S. Cans.	57,75,600/-
3.	03/02/002/00134/AM09/EC A dated 17.09.2009	For import of 20.61 MTs of Tinplate Prime. With an export obligation of 2,40,000 Nos (18.24 MTs) of C.T.S. Cans.	11,60,000/-
4.	03/02/002/00132/AM09/EC A dated 17.09.2009	For import of 1785.95 MTs of Tinplate Prime (Duty exemption upto 1708.2 MTs). With an obligation to export 1538 MTs (91,90,000 Nos) of C.T.S. Cans for packaging of 100gms instant coffee.	10,80,21,664/-

6. It is the case of the Petitioner that the Petitioner was appointed as an independent non-executive director of the Company in the year 1985 and was neither a promoter nor was involved in the day-to-day affairs of the Company. The Petitioner resigned from the position of Director on 04.07.1997.

6.1 Since, the Bombay High Court, by its order dated 09.01.1998 had directed the winding up of the Company and the Official Liquidator took possession of all books of accounts and business records, no papers or records were available with the Petitioner. The only notice that is stated to be received by the Petitioner was the notice dated 06.06.2014 which was addressed to him at his address, for recovery of the penalty amount which was imposed under Section 11(4) of the FTDR Act.

7. The Petitioner filed a Revision Petition on 03.11.2009 under Section 16 of the FTDR Act setting out these facts against the Four O-I-O's. The said Revision Petition was however dismissed by the Respondent by its



order dated 11.03.2014 [hereinafter referred to as the “Impugned Order”]. The dismissal has been challenged by the Petitioner before this Court.

8. Learned Senior Counsel for the Petitioner has contended that the Impugned Order has been passed without the issuance of any Show Cause Notice to the Petitioner and in violation of Section 14 of the FTDR Act. It is submitted that Section 14 of the FTDR Act mandates that a show cause notice is required to be issued before any penalty can be imposed on a Director of a company and the Director should also be given an opportunity to make a representation. The FTDR Act does not contain any deeming provision for vicarious liability and Section 11(2) of the FTDR Act requires specific allegations of abetment for liability to be imposed on an individual. It mandates that an individual must be informed of the grounds for penalty and be given an opportunity to be heard.

8.1 Learned Senior Counsel for the Petitioner has further submitted that the Show Cause Notices issued under Section 14 of the FTDR Act do not attribute any role of the Petitioner in the alleged violations. There is no mention in the Impugned Order or the Show Cause Notices setting out how the Petitioner is responsible for the Company’s alleged non-compliance. It is thus contended that liability cannot be imposed on a director without specific allegations linking him to the default. The Show Cause Notices relied upon by the Respondent were issued only to the Company and merely included a list of directors without specific allegations against them. In addition, the Show Cause Notice dated 29.06.2004 was withdrawn on 22.11.2007, yet the Impugned Order fails to take this into account.

8.2 Learned Senior Counsel further submitted that the Show Cause Notices relied upon by the Respondent are barred by limitation. The Show



Cause Notice dated 08.09.1992 was followed by an Order-in-Original only on 08.09.2009, after a lapse of 17 years, rendering the proceedings time-barred. It is a settled law that if a Show Cause Notice is issued but no action is taken within a reasonable period, it becomes a dead letter. With respect to the other Show Cause Notices which were issued 14 and 18 years after the date of the transaction it was submitted that it is a settled principle that in the absence of a prescribed limitation period for initiating proceedings the same must be taken within a reasonable timeframe. Reliance is placed on the judgments of the Supreme Court in *Godrej and Boyce v. State of Maharashtra*¹ and *State of Punjab v. Bhatinda district Cooperative Milk Producers Union Ltd.*²

8.3 Learned Senior Counsel contends that the Petitioner cannot be held liable for the alleged non-compliance as the Company was already wound up in 1998, and all records were taken over by the Official Liquidator. The failure to submit documents in compliance with export obligations could not have been attributed to the Petitioner as he had no access or control over Company records after 1998. If at all any notice was to be issued, it ought to have been issued to the Official Liquidator.

8.4 Learned Senior Counsel for the Petitioner further relies on a Judgment passed by this Court in *Pankaj Kapal Mehra v. UOI*,³ which, while dealing with same issue under similar set of facts where a show cause notice was issued by the Respondent to a company along with its directors holding the directors personally liable for the acts of company, to submit that this Court has held that directors cannot be held personally liable unless specific

¹ (2014) 3 SCC 430

² (2007) 11 SCC 363

³ 2024:DHC:9917



allegations are made regarding their role in the performance of export obligations. Reliance was also placed on *Krishan Kumar Bangur v. Director General of Foreign Trade*⁴ and *Ved Kapoor v. Union of India & Ors.*⁵ passed by Coordinate Benches of this Court.

8.5 Lastly, it was contended that the Respondent itself admitted in its Counter Affidavit that most of the notices were returned undelivered, further proving that there was no proper service of notice upon the Petitioner. Several notices bear the inscription stating they were returned undelivered, confirming that they were neither received by the Company nor the Petitioner. Thus it is contended that the Impugned Order is to be set aside.

9. Learned Counsel for the Respondent, on the other hand, has averred that the orders in question imposed a fiscal penalty on the Petitioner, who was a Director of the Company and the Petitioner, along with other directors had applied for a license on "behalf of the firm" and their names were present in the Registration-Cum-Membership Certificate and the application for obtaining the Advance License(s).

9.1 Learned Counsel for the Respondent further contended that the Company failed to fulfil its export obligations as per the terms of the Advance License, despite exporting 100% of the required quantity and value.

9.2 Learned Counsel for the Respondent further submitted that the Petitioner's claim of being a non-executive or independent director is false, as no document has been submitted to prove this assertion. By virtue of his position as a Director, the Petitioner is deemed to have knowledge of the

⁴ 2006 SCC OnLine Del 422

⁵ 2013 SCC OnLine Del 3653



affairs of the Company. The Adjudicating Authority after considering the evidence, imposed a penalty on the "firm" and its directors.

9.3 Learned Counsel for the Respondent further stated that this is a fit case for lifting the corporate veil, as the Directors of the Company were fully aware of the non-compliance at the time of applying for the Advance License but chose to ignore their obligations despite repeated reminders.

9.4 Lastly, learned Counsel for the Respondent placed reliance on a judgment passed by the Supreme Court in the case of *Life Insurance Corporation of India v. Escorts Ltd. & Ors.*⁶, which has laid down the principle that the corporate veil may be lifted where fraud, misconduct, or evasion of statutory obligations is evident. It is contended that the directors of the Company wilfully sought to evade the conditions of the Advance License and cannot escape liability by claiming that the Company has been wound up.

10. By an Order dated 30.07.2014, a Coordinate Bench of this Court passed an order directing that no coercive steps for recovery of any payment from the Petitioner shall be taken by the Respondent till further orders. The said position has continued till today.

11. The issue before the Court is whether the Petitioner, as an independent non-Executive Director on the Board of a Company that has violated an export obligation, can be made liable personally and penalized for such violation.

11.1 It is the case of the Respondent that the export obligation imposed by the Advance License(s) were required to be fulfilled by the Company were not fulfilled within the statutory period and that despite show cause notice(s)



and an opportunity for personal hearing, the Petitioners and the Company did not comply.

12. It is apposite to extract Section 11(2) of the FTDR Act which is applicable in the present case and is set out below:

“11.....(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the foreign trade policy, he shall be liable to a penalty of not less than ten thousand rupees and not more than five times the value of the goods or services or technology in respect of which any contravention is made or attempted to be made, whichever is more.”

12.1 The provision sets out that where a person makes or abets in the making of export or import in contravention of the provisions of FTDR Act, he shall be liable to a penalty which will not be less than Rs. 10,000/- and shall not exceed five times the value of the goods in respect of which the contravention has been made. Thus, for the provision to be applicable, the person should either have been in contravention of the FTDR Act or abetted in the same.

13. It is the case of the Petitioner that the proceedings which culminated into the Impugned Order are in complete violation of principles of natural justice as no show cause notice was issued to the Petitioner at all. It is contended that all the show cause notices sent were only addressed to the Company and not to the Directors. The names of the Directors were merely set out in the show cause notices and these show cause notices do not state the address of the Petitioner and thus, were never delivered to the Petitioner.

14. The documents filed by the Respondent along with its Counter Affidavit evidence that undisputably, several communications were issued by the Respondent, however each of these communications only set out the

⁶ 1985 SCR Supp. (3) 909



2025:DHC:2765



name and address of the Company. No addresses have been set out in these notices of the Directors. The record also reflects that although, show cause notice(s) were addressed to the Company/its Directors, they were neither delivered to the Company nor to any of its Directors.

14.1 This aspect was brought to the notice of adjudicating authority in the Review Petition filed against order dated 08.09.2009 under Section 16 and 17(3) of the FTDR Act filed by the Petitioner [hereinafter referred to as "Review Petition"]. The Petitioner had set out therein that in the early 1990s, the Company's net worth was completely eroded. Consequently, the Company made a reference to the BIFR under Section 15 of the SICA in 1993 when the Company was declared to be a sick industrial Company. It was further set out therein that in pursuance a Company Petition was filed in the Bombay High Court and the Company was wound up by an order dated 09.01.1998 in view of the fact that no workable proposal for its revival had been put forth.

14.2 The Petitioner had resigned as an independent non-executive Director on 04.07.1997. The Official liquidator had thereafter on 06.02.1998 taken possession of books, accounts, and files and business accounts of the Company and sealed the offices of the Company. It is not disputed that the Company had several directors and the Petitioner was only one of them. The Petitioner has stated that being a non-executive independent Director of the Company, he was not involved in the day-to-day working of the Company and could not have aided or abated in the contravention under the FTDR Act and thus, is not liable for penalty under Section 11 of the FTDR Act.

15. Four similar orders were passed imposing the penalty, two on 08.09.2009 as well as two on 17.09.2009 and the penalty was imposed on



the Company and its Directors. As stated above, these Four O-I-O's are similar to each other, the only difference between being in the amount of fiscal penalties imposed against different Advance Licences bearing different numbers.

15.1 No reference is made in the Four O-I-O's as to how the Directors are personally liable. Given the fact that the Respondent was unable to get the required information, it is unclear as to how the Respondent was able to ascertain and impose fiscal penalty, especially on the Petitioner. The provisions of the statute provides for a decision based on an examination of the facts and documents before it and not otherwise.

16. The O-I-O dated 08.09.2009 refers to the Company as a firm. It also sets out that all summons issued to the Directors were received back from the postal authorities undelivered with the remarks "left". The O-I-O further goes on to hold that exports have been made by the licensee, however there were deficiencies and despite several summons and notices for personal hearing, the Petitioner has failed to appear. It further acknowledges that one of the Directors, Mr. Harshad F. Shah replied to the letter and informed them that the Company was wound up by an order of the Bombay High Court and that the Official Liquidator had taken possession of all the assets, books and records of the Company and sealed their offices and factories. However, it states that since no evidence to that effect of the aforesaid has been brought, the same cannot be considered. The adjudication order goes on to exercise its powers and impose a fiscal penalty on the "noticee firm" and all its Directors.

16.1 The findings in the Four O-I-O's are *pari materia* to each other. It is apposite to extract these findings which are set out in OIO No.



03/02/002/00242/AM05/ECA dated 08.09.2009 which is reproduced below:

*“7. The non compliance for submission of documents of export attracted to the provisions of Rule 10, 13 and 14 of the Foreign Trade (Regulation) Rules 1993 and Section 11(2) of Foreign Trade (Development & Regulation) Act, 1992, **and the firm was, therefore, issued Show Cause Notice dated 29.06.2004 by this office in terms of powers vested in undersigned under Section 13 of the said Act requiring the firm to show cause within 15 days as to why action to impose penalty should not be taken against the firm and its Directors under Section 11 of the Foreign Trade (Development & Regulation) Act, 1992. The firm was directed to reply to the Show Cause Notice along with corroborative documents giving evidence in support of their contentions to reach the undersigned within the stipulated period and were warned that failure to do so will be presumed that they had nothing to say in their defence in the matter and the case will be decided ex-parte on merits, on the basis of information and evidence available on record without making further reference to the firm. **The Noticee firm was also offered an opportunity of personal hearing by the said Show Cause Notice, to appear before the Joint Director General of Foreign Trade in this office. Further, the Noticee firm was issued a letter dated 22.07.2008, with another opportunity of personal hearing on 08.08.2008 and copies of the same was sent to all the Directors of the noticee firm. By the said letter the licensing authority has advised the licensee to get their case redeemed in terms of Public Notice No.79 dated 2.1.2006 as the noticee firm has not submitted the original DEEC (Exports) and shipping bill for redemption purpose. **The summons issued to the noticee came back from the postal authorities with the remark ‘left’. However, one of the Directors, Mr. Harshad F. Shah replied to the said letter and informed that the noticee firm was wound up on an order of Hon’ble Bombay High Court on 9th January, 1998 and the Official Liquidator having his office at Ministry of Law, Justice & Company Affairs had took possession of all the assets, books and records of the company had sealed the offices and factories of the noticee firm. They have further informed that they have no knowledge of company’s day-to day affairs and have no knowledge of the whereabouts of the records of the company.** However, the said person did not submit any documentary evidence in support of this statement. However, **nobody appeared for personal hearing on behalf of Noticee firm on the aforesaid dates or any time thereafter, which shows that the firm and all its Directors are not interested in getting the case closed as per the provisions of policy by submitting the original export documents despite several repeated reminders...**”*****

[Emphasis Supplied]

17. The Impugned Order was passed more than 15 years after the Four O-I-O's were passed. It was held therein that the O-I-O's do not suffer from



any infirmity, since the firm (Company) had not fulfilled its export obligations, it was liable to pay the penalty imposed. It further goes on to hold that since no documentary proof was provided by the Company confirming that the Company has been wound up and an Official Liquidator has been appointed, the adjudicating authority could not stay the proceedings merely on the basis of a letter. Thus, the Review Petitions filed by the Petitioner against the four O-I-O's were dismissed. The extract of the findings in the Impugned Order are reproduced below:

"5. *The records of the case including the written submissions made by the Petitioner have been examined.*

They reveal:

I. *The company was offered an opportunity of personal hearing by letter dated 22.07.2008 with another opportunity of personal hearing on 08.08.2008 copy of which was sent to all the Directors of the company. However no one turned up for the hearings.*

II. *It has been stated that the alleged failure to submit requisite original documents as evidence of fulfilment of the export obligation was due the reason that the company had been ordered to be wound up. Also the Directors had ceased to be Directors of the company.*

III. *From the available documents of the Company it is seen that it has been listed as a sick company under the section 3(1)(o) of SICA Act 1985 and official liquidator has been appointed.*

IV. *A perusal of the Adjudication orders passed by the RA reveals that though it was brought to the notice of the Adjudication Authority that the Company is wound up and official liquidator has been appointed, no documentary proof of the same have been submitted to the Adjudicating Authority. This fact is clearly mentioned in the Adjudication Orders passed in these cases. In the absence of any documentary proof, the Adjudicating Authority cannot merely stay proceedings based on a letter from the Petitioners. Moreover, the Petitioner has never contended before the Adjudicating Authority that the Authority doesn't have power to proceed against the Company or its Directors.*

6. *Accordingly, the orders passed by the RA suffer from no infirmity. RA has made the order on the basis of records available before it...*"

[Emphasis supplied]



17.1 However, and as stated above, the Impugned Order does not contain any discussion with regard to the personal liability of the Petitioner.

18. It is also apposite to refer to Section 14 of the FTDR Act, which sets out that a show cause notice is required to be issued to a party before a penalty can be imposed. Section 14 of the FTDR Act is extracted below:

"14. Giving of opportunity to the owner of the goods (including the goods connected with services or technology), etc. — No order imposing a penalty or of adjudication of confiscation shall be made unless the owner of the goods (including the goods connected with services or technology) or conveyance, or other person concerned, has been given a notice in writing —

(a) informing him of the grounds on which it is proposed to impose a penalty or to confiscate such goods (including the goods connected with services or technology) or conveyance; and

(b) to make a representation in writing within such reasonable time as may be specified in the notice against the imposition of penalty or confiscation mentioned therein, and, if he so desires, of being heard in the matter."

18.1 It is the case of the Petitioner that the show cause notices that are sought to be relied upon by the Respondent are all issued to the Company and have not been specifically addressed to the Petitioner.

19. The Four O-I-O's state that the show cause notice dated 29.06.2004 was issued, thereafter another notice was issued on 05.05.2008. However, it states that the summons that were issued came back unserved. Thus, although show cause notices were issued, these were not delivered (except to one Director, who is not a party to the present Petition).

19.1 Concededly, the principles of natural justice have also not been complied with by the Respondent. The record reflects that the show cause notices dated 29.06.2004 and 05.05.2008 have only been sent to the address of the Company and merely set out a list of Directors of the Company. Thus



it cannot be said that the Petitioner has been given a show cause notice by the Respondent which is in terms of Section 14 of the FTDR Act.

19.2 In any event, after the Company had been directed to be wound up on 09.01.1998, all notices should have been issued to the Official Liquidator of the Company, which was concededly not done by the Respondent. The Petitioner had no control over the Company and was not even in a position to provide any documents as required by the Respondent. If at all any notice was to be issued, it ought to have been issued to the Official Liquidator. In these circumstances, the Respondent imposing the penalty on the Petitioner is arbitrary in the given facts.

20. The issue that obtains in the present case also obtains in a matter decided by this Court, the ***Pankaj Mehra*** case. In the said case, a similar situation had arisen where after order for winding up of the Company was passed, notices under Section 11 of the FTDR Act were issued by the Respondent and Order(s) in Original were passed fastening a personal liability on the Directors of the Company for their role in the non-fulfilment of export obligations of the Company. This Court examined these Orders-in-Original and the final adjudication undertaken by the Respondent and found that no averment fastening personal liability on a Director was made either in the show cause notice or in the Order (s) passed by the Respondent. It was held by the Court that unless specific allegations are made against a Director regarding its role in the Company's export performance, they cannot be held personally liable. Reliance was also placed by this Court on the judgments in ***Krishan Kumar Bangur*** case and ***Ved Kapoor*** case in support of its decision. The relevant extract of the ***Pankaj Mehra*** case is set out below:

“12. A Coordinate Bench of this Court in Krishna Kumar Bangur case, dealt with a similar issue where a show-cause notice was issued under Sections 8



and 11 of the FTDR Act to a company and all its directors, and reasons for arriving at the conclusion that a Director is personally liable, had not been adumbrated therein. It was held that where the authority had not specifically considered the role to be played by the Petitioner therein in the export performance and was reticent on the reasons for personal culpability of any of the directors, it could not be sustained. It was further held that if the show-cause notice or the orders in original and the appellate order did not disclose any reasons, the order would be set aside. The relevant extract of **Krishna Kumar Bangur** case is below:

“6. The Show Cause Notice under Section 14 for action under Sections 8 and 11 of the Foreign Trade (Development and Regulation) Act, 1992 [hereinafter referred to as Act for short) dated 14.10.2003 had been issued to the said M/s. Hastings Mill as well as all its Directors. The say of the Petitioner is that he did not receive the Show Cause Notice. The Show Cause Notice mentions, inter alia, that it is prima facie established that M/s. Hastings Mill and their Directors have violated the conditions of Licence mentioned above and thereby made themselves liable to penal action under Section 11 of the said Act. **The reasons for arriving at the conclusion that the Petitioner as a Director, has personally become liable for such action has not been adumbrated.**

xxx

xxx

xxx

8. A perusal of the above will disclose that the Authority had not specifically considered the role that was to be played by the Petitioner in the Export Performance. It is completely reticent on the reasons for the finding of personal culpability of any of the Directors, including the Petitioner.

9. The matter was carried in Appeal by the Petitioner, and the Appeal was dismissed on 19.5.2005...

xxx

xxx

xxx

14. In order to sustain the imposition of a punishment on an individual Director it was incumbent on the Respondents to allege and assert the existence of a duty or obligation cast on one or all the Directors of the defaulting Company and the contumacious failure to fulfil it. The Show Cause Notice does not mention the grounds on which individual liability is sought to be fastened on the Director. Neither of the Orders, that is, the Order in Original or the Appellate Order, disclose reasons which have persuaded those Authorities to come to the conclusion that the Petitioner had assumed an obligation or duty in ensuring that exports corresponding to four times the CIF value would be undertaken within the prescribed period. **To assume or foist such a liability on the Directors would run counter to the basic tenets of Company law.**”

[Emphasis supplied]

13. A similar view was taken by another Coordinate Bench of this Court in **Ved Kapoor** case, where the **question arose as to whether the penalty imposed upon a company can be recovered from its directors.** Relying on **Krishna Kumar**



Bangur case, the Court held that unless the Respondents find that the Director was under a duty or obligation of the company, and consciously failed to do so, the liability cannot be attributed on such Director. It was held that such an obligation cannot be assumed merely by virtue of a person being a Director of such Company.

11. In view of the legal proposition enunciated in the above-referred cases, **the respondents would be competent to proceed against the petitioner under Section 11(2) of the Act, if they are of the opinion that he was under a duty or obligation to fulfil the export obligation of the company and consciously failed to do so. Of course, in such a case, it would be incumbent upon the respondents to issue a notice under Section 14 of the Act to him, stating therein the ground on which such a liability is sought to be fastened on him.** Such an obligation cannot be assumed merely on account of the petitioner being or having been a director of the company

12. For the reasons stated hereinabove, both the writ petition are disposed of with a direction that the penalty imposed upon M/s. Hitkari China Limited **shall not be enforced against the petitioner, though it can certainly be enforced against the company.** This order, however, shall not come in the way of the respondents proceeding against the petitioner, under Section 11(2) of the Act, in terms of this order.”

[Emphasis supplied]

21. As stated above, this Court has in ***Pankaj Mehra*** case while relying on the judgments passed in ***Krishan Kumar Bangur*** case and ***Ved Kapoor*** case, and on the judgment of the Supreme Court in the ***Santanu Ray vs. Union of India***⁷, has held that unless specific allegations have been made which discuss the role of a director in the export performance, there is no question of finding the director personally liable for the same. The order impugned or even the Four O-I-O's have failed to fulfil this or show any adjudication on this aspect. In the absence thereof, the Respondent cannot now by, taking additional grounds and pleas, attempt to go beyond the Impugned Order or the Four O-I-O's.

22. There is another aspect which has to be taken into consideration. The export licences were issued during the time period of 1989-1991. Between

⁷ 1988 SCC OnLine Del 169



27.06.2002 and 11.09.2008, the Respondent issued multiple notices, summons, and orders concerning various Advance Licenses held by the Company. The Four O-I-O's were then passed on 08.09.2009 and 17.09.2009. No explanation has been provided by the Respondent in these Four O-I-O's for the delay in taking steps against the Petitioner or the Company. No reason has been urged before this Court either.

23. The Respondent has placed reliance on the judgment of the Supreme Court in the *Life Insurance Corporation of India* case to submit that the corporate veil may be lifted in instances where fraud, misconduct, or evasion of statutory obligations is established. The said judgment was with regards to the government introducing Non-Resident Portfolio Investment Scheme under the Foreign Exchange Regulation Act, 1973, which permitted non-resident companies wherein at least 60% ownership or beneficial interest vested in non-resident Indian individuals to invest in shares of Indian companies. The said decision is entirely inapplicable to the present case.

24. In addition, the contention of the Respondent that the Petitioner being a whole-time director is automatically liable and culpable for the defaults of the Company is also misconceived. It is no longer *res integra* that in order for a Director to be vicariously liable for the offences of the Company unless such Director was in charge and responsible to the Company for the conduct of its business, such Director cannot be held to be liable for offences alleged to have been committed by that Company.

24.1 In any event, the Petitioner has stated that he was appointed as an independent non-executive director and that he had no role to play in the company's day to day affairs or export obligation or licences.

25. The Respondent has also not disputed the fact either in the Impugned



2025:DHC:2765



Order or in the Four O-I-O's that the Company went into liquidation in 1998, and that all documents and records were taken over by the Official liquidator. Thus, once a company goes into liquidation, all proceedings to be initiated against such company for the failure to submit documents in compliance with export obligations could only be initiated as is mandated in law. There is no evidence of this being done by Respondent either.

26. This Court therefore finds no merit in the contentions of the Respondent. Accordingly, the Impugned Order and the Four Order(s)-In-Original are set aside.

27. The Petition is disposed of in the foregoing terms. All pending Application(s) stand closed.

28. The parties shall act based on a digitally signed copy of the order.

TARA VITASTA GANJU, J

APRIL 22, 2025/g.joshi/ ha