

Non-executive directors not liable in cheque bounce case, says SC

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THE SUPREME COURT on Monday held that non-executive directors of a company would not be liable under a cheque bounce case and no criminal proceedings can be initiated against them, as they are not involved in the day-to-day affairs of the company or in the running of its business.

Quashing criminal proceedings against a group of independent non-executive directors of MBL Infrastructure in a cheque bounce case (Sunita Palita vs Panchami Stone Quarry), the court said "liability depends on the role one plays in the affairs of a company and not on designation or status alone as held by this court in an earlier judgment of SMS Pharmaceuticals Ltd."

Stating that the Calcutta High Court overlooked the roles played by the petitioners in the company, a Bench led by Justice Indira Banerjee said the provisions of Section 138/141 of the Negotiable Instruments

Act, 1881 create a statutory presumption of dishonesty on the part of the signatory of the cheque, and when the cheque is issued on behalf of a company, also those persons in charge of or responsible for the company or the business of the company.

However, every person connected with the company does not fall within the ambit of Section 141 of the Act, the judges said, adding that a director of a company who was not in charge or responsible for the conduct of the business of the company at the relevant

time will not be liable.

The court was hearing an appeal against the HC's order that refused to quash summons issued by a magistrate court against non-executive directors in 2018. The case emanated from bouncing of a ₹1.71-crore cheque issued by the company.

While the HC said any person who is a director, manager, secretary or officer in a company can be prosecuted under the NI, the law that governs cheque bouncing-related offences, the SC clarified that the main case will go on

against the company, its managing director and the signatory of the cheque.

According to the SC, the HC adopted a hyper-technical approach in rejecting the application to quash criminal proceedings under Section 482 of the CrPC, on a cursory reading of the formalistic pleadings in the complaint, endorsing the contents of Section 141 of the NI Act, without any particulars.

"What the HC overlooked was the contention of these appellants that they were non-executive independent directors of the accused company, based on unimpeachable materials on record. The HC observed that in the petition it had specifically been averred that all the accused persons were responsible and liable for the whole business management of the accused company, and took the view that the averments in the complaint were sufficient to meet the requirements of Section 141 of the NI Act," the judgment stated.

