

CORPORATE CRIMINAL LIABILITY OF DIRECTORS

The Supreme Court of India in the case of Sunil Bharti Mittal Vs Central Bureau of Investigation¹ scrutinized the scope of criminal liability of Directors and senior corporate officers for the acts of their companies. The Supreme Court gave a clear picture as to the contrariety between corporate attribution and vicarious liability, highlighting that there cannot be a reverse application of doctrine of attribution to impose liability on corporate officers on behalf of the company. When company is the offender, the liability of directors cannot be imputed automatically in absence of any criminal intent or material evidence implicating the directors.

Facts:

In the instant case, Central Bureau of Investigation (CBI) has filed a charge-sheet before the magistrate accusing M/s Bharti Cellular Limited, M/s Hutchison Max Telecom (P) Limited and M/s Sterling Cellular Limited, in reference to certain telecom licenses that have been the subject matter of considerable legal controversy in the past few years. In 2013, the Hon'ble Special Judge took cognizance of the matter and issues summons to the accused persons in the charge-sheet. It was noted that, at the relevant time, Mr. Sunil Bharti Mittal, being the Chairman-cum-Managing Director of Bharti Cellular Limited and Mr. Ravi Ruia being the Director in Sterling Cellular Limited, were the directing mind and will of the respective companies. Therefore, in that capacity they can be deemed as "alter ego" of the respective companies and acts of the companies can be attributed to them. In view of the same, while taking cognizance of the case, he issued summons to proceed against the abovementioned two directors as well. The two directors challenged legality of the same order before the Supreme Court.

Ruling of the Court:

1. Application of Doctrine of attribution:

The Supreme Court analysed the principle of "alter ego" laid down in *Iridium India Telecom Ltd. Vs Motorola Inc*², i.e the criminal intent of the persons controlling the affairs of the company can be imputed to the company. Applying the above principle to the present set of facts, the Supreme Court clarified that the principle of "alter ego" operates in one direction only. Where the company is the accused person, imputing the acts of the company to the managing officers of the company would be an erroneous principle of law and contrary to the principle of vicarious liability.

2. Extent of liability of Directors/persons controlling the affairs of the company:

Relying on its various earlier dicta, the Supreme Court observed that, the principle of vicarious liability has no force in criminal jurisprudence unless it is specifically provided in the statute. Further, it was held that mere fact of being a director/managing director, etc of a corporation is not enough for making him liable on behalf of the company, sufficient evidence of his active role and criminal intent is *sine qua non* for incrimination of such a person.

¹ Criminal Appeal No. 34 of 2015

² (2011) 1 SCC 74

3. **Powers of the Magistrate:**

In light of Section 190 and Section 204 of Criminal Procedure Code, the Supreme Court held that the magistrate is empowered to take into cognizance any person who has not been charge-sheeted only if a *prima facie* case is made out against him to the proper satisfaction of the magistrate. It was further observed that where the reasons for proceeding against the accused are *ex facie* incorrect, the order is bad in law.

On account of the aforementioned principles and the irregularity in application of law by the Special judge, the Supreme Court allowed the appeal and set aside the summons issued against the two officers. However, the Supreme Court provided a leeway to the magistrate to reconsider the material on record for any incriminating evidence against the two officers and pass appropriate orders in light of the principles clarified in the judgment.

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