

STATE CONSUMER DISPUTES REDRESSAL COMMISSION  
UTTAR PRADESH LUCKNOW

APPEAL NO.3119 OF 2006

(against the judgment & order dated 01.11.2006 in Complaint case no. 1063/2000, passed by the District Consumer Forum-I, Lucknow)

Bhushan Thapar Appellant  
Versus  
Smt. Renu Chaudhary Respondent

APPEAL NO.3120 OF 2006

(against the judgment & order dated 01.11.2006 in Complaint case no. 1061/2000, passed by the District Consumer Forum-I, Lucknow)

Bhushan Thapar Appellant  
Versus  
Km. Sonal Chaudhary Respondent

APPEAL NO.1873 OF 2008

(against the judgment & order dated 02.09.08 in Complaint case no. 819/1999, passed by the District Consumer Forum-I, Lucknow)

Smt. Sonali Tandon Appellant  
Versus  
Bhushan Thapar Respondent

APPEAL NO.1875 OF 2008

(against the judgment & order dated 02.09.08 in Complaint case no. 817/1999, passed by the District Consumer Forum-I, Lucknow)

Sohan Lal Tandon Appellant  
Versus  
Bhushan Thapar Respondent

APPEAL NO.1876 OF 2008

(against the judgment & order dated 02.09.08 in Complaint case no. 818/1999, passed by the District Consumer Forum-I, Lucknow)

Smt. Usha Tandon(dead) through her legal heirs Sohan Lal Tandon and others Appellant  
Versus  
Bhushan Thapar Respondent

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BEFORE

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT  
HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER

For Sri Bhushan Thapar : Sri V.S. Bisaria, Advocate  
For the complainants : Sri S.P. Chaudhary, Advocate

DATED:16.07.2010.

JUDGMENT

MR.JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

All these five appeals having a common issue for determination are taken up together for hearing. The following issue can be framed for positive finding :-

“Whether Sri Bhushan Thapar who was one of the directors of M/s Maegabyte Leasing & Finance Company Limited would be liable to comply with the District Consumer Forum’s judgment in so far as the aforesaid company’s liability to repay the dues of the investors/complainants was concerned?

Km. Sonal Chaudhary and Smt. Renu Chaudhary invested with M/s Maegabyte Leasing & Finance Company Limited a sum of Rs.30,000/- each and after the maturity period cheques for repayment in the name of these two complainants were issued by the company but they were dishonoured for insufficiency of funds in the company’s bank account and this had driven the two complainants to file their complaint nos. 1061/2000 and 1063/2000 respectively. These two complaints were decided by the District Consumer Forum-I, Lucknow by means of a single judgment which has been challenged in the two appeals no.3119/2006 and 3120/2006. It is noteworthy that M/s Maegabyte Leasing & Finance Company Limited alongwith its directors including Sri Bhushan Thapar, the appellants were held liable to make the payment good.

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The position is slightly different in the impugned judgment dated 02.9.2008 passed by the two members in complaint case nos. 817/99, 818/99 and 819/99. The two members namely Sri V.K.Garg and Smt. Veena Arora had exempted Sri Bhushan Thapar from any liability to make payment to the investors. Although the President of the District Consumer Forum-I, Lucknow vide his dissenting judgment pronounced on 05.07.2008 held Sri Bhushan Thapar liable alongwith the company to make the payment good, yet the majority judgment will prevail with its validity to be executed. By means of the majority judgment, Sri Bhushan Thapar has been absolved of all his liabilities. All the three complainants of the aforesaid complaints namely Sri Sohan Lal Tandon (Companint case no.817/99) Smt. Uma Tandon (Companint case no.818/99) and Smt. Sonali Tandon (Companint case no.819/99) have filed the other set of three appeals nos. 1873/2008, 1875/2008 and 1873/2008 respectively challenging the majority judgment of the two members to the extent of Sri Bhushan Thapar being exempted from his liability for payment. It is significant to note that these two members held the finance company and one of its directors namely Sri Z.A. Khan to be as liable to make the payment good.

Obviously thus it is important to mention that we are not called upon to delve upon any issue on merit as none has questioned the propriety of the two judgments in so far as M/s Maegabyte Leasing & Finance Company Limited and its director Sri Z.A. Khan are concerned.

As mentioned earlier the only issue which has arisen for our determination pertains to Sri Bhushan Thapar's liability to make the payment good.

Sri V.S. Bisaria learned counsel appearing for Sri Bhushan Thapar in the first set of two appeals no. 3119/2006 and 3120/2006 has submitted with reference to documentary evidence on record that Sri Bhushan Thapar having resigned from the post of director w.e.f. 06.011.1997 had no concern with the management or any other affair/transaction of the company. Two documents in number have been placed reliance upon. Paper no.10 is a photocopy of Form no.32 which

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relates to the particulars of appointment of director and manager and changes amongst them. This form bears the name of Sri Bhushan Thapar in the relevant column and the information was submitted by the other director Sri Z.A.Khan as mentioned in column 6 that Sri Bhushan Thapar retired from the Board of Directors due to ill health w. e. f. 06.11.1997. The other document is an order (page 12) of the Company Law Board, Northern Region Bench, New Delhi, a perusal of which appears to indicate that the name of Sri Bhushan Thapar as one of the directors of the aforesaid company was directed not to be included in the list of directors of the company. This order was passed on 06.9.2000 and in this context Sri S.P. Chaudhary learned counsel for the complainants submits that although he challenges the entire claim of Sri Bhushan Thapar, yet if at all the resignation of Sri Bhushan Thapar would be deemed to have been accepted, it would be with effect from the date of the order i.e. 06.09.2000 meaning thereby that Sri Bhushan Thapar would be held responsible and liable for all the transactions conducted by him on behalf of the company upto the said date. There are certain orders of Company Judge on record which appear to indicate that criminal action against Sri Bhushan Thapar was restrained in view of the company law proceedings initiated by Sri Thapar. However, Sri S.P. Chaudhary has drawn our attention towards three cheques issued by Sri Bhushan Thapar on 3.10.1998, 24.12.98 (digits are not very clearly visible but the year 98 is apparent) and 24.11.98. Whereas the first cheque was issued in the name of one investor Smt Uma the remaining two cheques were drawn in the name of Dr. Suchitra. On the face of issuance of these three cheques as argued by Sri S.P. Chaudhary it appears that Sri Bhushan Thapar despite that he had submitted his resignation was actively working on behalf of M/s Maegabyte Leasing & Finance Company Limited. The seal of the company on all these cheques would further indicate that Sri Bhushan Thapar has been working as director although he had allegedly resigned w. e. f. 06.11.1997. Sri V.S. Bisaria pointed out here that these cheques were post dated cheques issued by Sri Bhushan Thapar prior to 7.11.1997 during ordinary course of transaction. Since there is nothing to support the contention of Sri V.S. Bisaria we do not find any merit in his argument and accordingly, we hold that the director Sri Bhushan Thapar

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was functional director even after he had submitted his resignation on 06.11.1997. The cheques in the name of Km. Sonal Chaudhary and Smt Renu Chaudhary were issued on 25.08.1998 and 25.09.1998. Sri Bhushan Thapar as one of the director of the company shall be liable alongwith the company to make the payment good.

Likewise in the case of the complaints filed by Sri Sohan Lal Tandon, Smt. Uma Tandon and Smt. Sonali Tandon , Sri Bhushan Thapar alongwith M/s Maegabyte Leasing & Finance Company Limited and other directors shall be liable to discharge their liability towards the aforesaid persons.

Sri V.S. Bisaria has informed us that the liquidator in the matter of M/s Maegabyte Leasing & Finance Company Limited has already been appointed and now he is seized of all the disputes and claims of the investors. We are not called upon to record any finding on the issue as to how recovery shall be made. The relevant law has to be followed in so far as our findings and observations are concerned. We reiterate and consequently hold that Sri Bhushan Thapar in the circumstances disclosed, alongwith other directors of the company and the company itself shall be liable to make the payment.

All the appeals are finally disposed of in terms of above.

The judgment shall be placed on the record of Appeal no.3119/2006 while its copy will be laid on the record of Appeal nos. 3120/2006, 1873/2008, 1875/2008 and 1876/2008.

  
(JUSTICE BHANWAR SINGH)  
PRESIDENT

  
(SYED ALI AZHAR RIZVI)  
MEMBER

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