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**Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others.- for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative.**

The Court, in **Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661** held as under:

**“51.** We have already opined that the decision in *Sheoratan Agarwal* [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] runs counter to the ratio laid down in *C.V. Parekh* [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in *Anil Hada* [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] has to be treated as not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the company. Needless to emphasise, the matter would stand on a different footing where there is some legal impediment and the doctrine of *lex non cogit ad impossibilia* gets attracted.”

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**“56.** We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons, whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term “as well as” in the Section is of immense significance and, in its tentacle, it brings in the company as well as the Director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the Directors or other officers is tenable even if the company is not arraigned as an accused. The words “as well as” have to be understood in the context.”

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**“58.** Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

**59.** In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in *C.V. Parekh* [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in *Sheoratan Agarwal* [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in *Anil Hada* [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in *Modi Distillery* [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove.”



NIA S. 138 / 141- Commission of offence by the company is an express condition precedent to attract the vicarious liability of others

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