There is no "deemed liability" concept for a 'Director' merely by virtue of their designation, and the presence of specific factual averments linking a director to the day-to-day management of a company is not a mere procedural formality but a jurisdictional prerequisite under Section 141 of the Negotiable Instruments Act

The **Calcutta High Court** in the case of **Masud Tarif vs State of West Bengal [CRR 2128 of 2025] dated March 20, 2026**, has discarded "deemed liability" concept for a 'Director' merely by virtue of their designation, and held that the presence of specific factual averments linking a director to the day-to-day management of a company is not a mere procedural formality but a jurisdictional prerequisite under Section 141 of the Negotiable Instruments Act (NI Act). The Court pointed out that 'Silence' in a complaint regarding an individual director's specific role constitutes a substantive failure to establish a prima facie case.

Where an underlying debt is restructured through a Settlement Agreement, the Court explained that the 'material time' for assessing liability shifts to the execution and implementation of said settlement. In settlement-based transactions, vicarious liability must be examined strictly against those who negotiated and executed the restructured debt, and a director who is a documented stranger to such an agreement cannot be held vicariously liable for the dishonour of cheques issued pursuant thereto.

In the exercise of inherent powers under Section 528 of the BNSS, the High Court said that it must prioritize the prevention of an illegal prosecution over procedural technicalities. The Court asserted that procedural delay is intended as a shield to prevent the abuse of the legal system, not a sword to perpetuate an illegal prosecution where the complaint is 'facially deficient', and an inherent illegality in a summoning order cannot be cured by the mere passage of time.

A summoning order that fails to distinguish between "Managing Directors/Signatories" and "Non-Executive Directors", particularly in the absolute absence of specific averments regarding the latter's role, reflects a failure of judicial application of mind. To allow such a trial to proceed would be to weaponize criminal machinery for civil recovery, amounting to a manifest abuse of the process of law, added the Court.

The Court observed that while the law discourages the 'mechanical parroting' of statutory language, it absolutely mandates the presence of a factual nexus, noting that the Complainant specifically attributes the request, negotiations, and discussions to Accused Nos. 2 and 3 alone. The conspicuous omission of the Petitioner is not a mere failure of elective language, but a fundamental failure of jurisdictional fact.

The Court examined the 'Initial Transaction' versus the 'Novation of Debt', observing that the Settlement Agreement functioned as a 'novation', effectively replacing the original 2013 contract with a restructured obligation. The negotiations for this settlement and the subsequent issuance of Post-Dated Cheques were handled exclusively by Accused Nos. 2 and 3, making the Petitioner a stranger to this agreement.

Further, the Court noted that Paragraph 3 of the complaint makes a blanket statement that all directors were ‘carrying on business’, but fails to provide the specific disclosure of facts required to link the individual director to the default. The ‘total silence’ regarding the Petitioner's overt acts breaks the chain of liability.

It is an essential requirement to specifically aver in a complaint under Section 141 of NI Act that the person accused was in charge of, and responsible for the conduct of business of the company. Further, in the case of a Director, the complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused company for the conduct of its business, pointed out the Court.

Further, the Court observed that while the Magistrate’s hands were tied from recalling the summoning order, the High Court’s inherent jurisdiction is not; if a complaint discloses no offence against a specific individual, the continuation of that proceeding becomes an exercise in futility and a manifest violation of the right to personal liberty under Article 21 of the Constitution of India.

Addressing the Complainant’s plea regarding the Petitioner’s ‘deep slumber’, the Court observed that while delay is a relevant factor in discretionary relief, it cannot sanitize a proceeding that is fundamentally void of jurisdictional competence. The Court therefore concluded that it is the duty of the High Court to intervene where continuation of criminal proceedings would amount to an abuse of process of law, and procedural delay cannot outweigh the substantive injustice of an untenable prosecution.