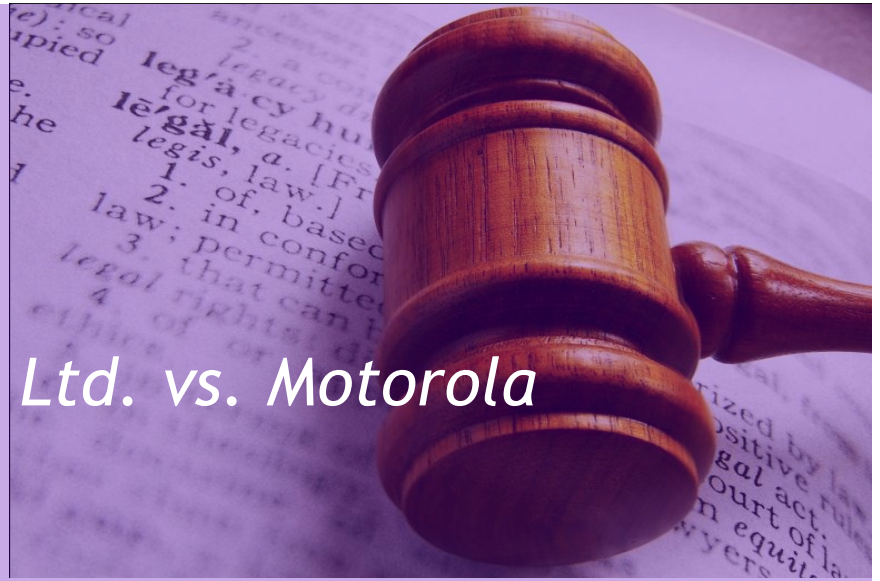


Iridium India Telecom Ltd. vs. Motorola Incorporated and Ors.



SUPREME COURT JUDGMENT

Decided on: 20.10.2010

RATIO DECIDENDI:

- A company/corporation is virtually in the same position as any individual and may be convicted of offences including those requiring mens rea.
- A company/corporation cannot escape liability for a criminal offence merely because the punishment prescribed is that of imprisonment and fine.

FACTUAL MATRIX

Iridium India Telecom Ltd. (“Appellant”) preferred the appeal before the Hon’ble Supreme Court against the order dated 08.08.2003 of the Bombay High Court quashing the criminal complaint dated 03.10.2001 filed by the Appellant against Motorola Inc.(“Respondent”) pertaining to cheating under Section 420 read with Section 120-B of the Indian Penal Code, 1860.

Appellant in its criminal complaint alleged that in August 1992, a Private Placement Memorandum (PPM) was floated to obtain funds/ investments to finance the "Iridium project", and the Respondent, apart from floating the PPM was holding entire equity in the Appellant and also designed, developed, sold, maintained and operated software and hardware of Iridium Project.

The Respondent made representations on the Iridium Project and PPM to induce persons to invest and based on such representations made by the Respondent, the Appellant as well as some banks and institutions, in good faith collectively invested a sum of US \$70 million for purchasing equity of Iridium Inc as well as spent a sum of about Rs. 150 crores in setting up a gateway at Deghi in Pune.

The representations made by the Respondent proved to be false, dishonest, fraudulent and deceitful as it was discovered that the Iridium Project was a complete failure and the Project proved to be a complete non-starter and technological failure.

ISSUE

Whether a company can be prosecuted for offences involving mens rea?

APPELLANT'S CONTENTIONS:

1. That the High Court failed to appreciate that the 1992 PPM was in the nature of a deemed prospectus. Therefore, the promoter was required to make a true and full disclosure of all the relevant facts. This duty is imposed on the promoter under Section [3](#) and [64](#) of the Companies Act, 1956.
2. That the dishonest intention of the respondent is evident from the fact that the proposal to invest in the Iridium Project which was taken to the Board of Directors of the Respondent , was not accepted by the Board of Respondent.
3. That the High Court committed a serious error of law in concluding that the Respondent being a corporation was incapable of committing the offence of cheating.
4. That it is settled in almost all jurisdictions of the world that companies can be prosecuted for certain criminal offences.

RESPONDENT'S CONTENTIONS:

1. Respondent was not controlling Appellant as it was a company controlled by strategic investors.
2. No representation was made by Respondent relating to the success of the Iridium project. The representations were not of existing facts but future projections wherein every possible warning was stated.
3. The future projections as stated in the 1992 PPM were based on certain assumptions. Merely because the expectations of the Appellant were not realized, it would not be sufficient to establish dishonest intention of Respondent. The representations were made to strategic investors, individuals, firms and entities, who were experts in their field and they were capable to ascertain risk involved in the project like Iridium.
4. The present legal position is that a company is incapable to possess the necessary mens rea for the commission of a criminal offence.
5. The facts pleaded would disclose only civil liability at best. It was further submitted that the High Court was within its jurisdiction to look at all the documents including the documents which were not on record.

JUDGMENT

Hon'ble Supreme Court of India observed, the companies and corporate houses can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offences. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. Mens rea is attributed to corporations on the principle of 'alter ego' of the company.

Further, it was held by the court that once it is established that there has been any fraudulent misrepresentation or willful concealment by which a person has been induced to enter into a contract, it is no answer to his claim to be relieved from it to tell him that he might have known the truth by proper inquiry. The Hon'ble Supreme Court further held that Appellants were entitled to an opportunity to establish that Respondent and its representatives were aware of the falsity of the representations at the time when they were made.

For **further information** on any subject raised in this case study, please contact:



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It was held that the criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or a body of persons in control of its affairs. The position in this regard as held in *Standard Chartered Bank vs. Directorate of Enforcement*, (2005) 4 SCC 530 was reiterated and based on the same the order of the High Court was set aside.

CONCLUSION

Supreme Court allowed the prosecution against the Respondent setting aside the conclusion reached by the High Court that the Respondent could not have the necessary mens rea.