

IN THE HIGH COURT OF DELHI AT NEW DELHI

21. **CRL. M.C. No. 7423-25 of 2006**

Date of order: 28th March, 2008.

P.S.SHRINIVASAN & ORS. Petitioners
Through Jatin Zaveri, Advocate for the Petitioner.

versus

M/S VLS FINANCE. LTD. Respondent
Through Mr.Sidharth Luthra, Senior Advocate
with Mr. P.S. Singhal and Mr. Madhav Khurana,
Advocates.

WITH

24. **CRL. M.C. No. 7430-32 of 2006**

P.S.SHRINIVASAN & ORS. Petitioners
Through Jatin Zaveri, Advocate for the Petitioner.

versus

M/S VLS FINANCE. LTD. Respondent
Through Mr.Sidharth Luthra, Senior Advocate
with Mr. P.S. Singhal and Mr. Madhav Khurana,
Advocates.

WITH

25. **CRL. M.C. No. 7435-37 of 2006**

P.S.SHRINIVASAN & ORS. Petitioners
Through Jatin Zaveri, Advocate for the Petitioner.

versus

M/S VLS FINANCE. LTD. Respondent
Through Mr.Sidharth Luthra, Senior Advocate
with Mr. P.S. Singhal and Mr. Madhav Khurana,
Advocates.

AND

26.

CRL. M.C. No. 7458-60 of 2006

P.S.SHRINIVASAN & ORS. Petitioners
Through Jatin Zaveri, Advocate for the Petitioner.

versus

M/S VLS FINANCE. LTD. Respondent
Through Mr.Sidharth Luthra, Senior Advocate
with Mr. P.S. Singhal and Mr. Madhav Khurana,
Advocates.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

ORDER

Dr. S. Muralidhar, J.(open court)

1. These four petitions raise similar questions and are accordingly being disposed of by this common judgment. They seek the quashing of the criminal complaints, CC.Nos.3096 of 2004, 3095 of 2004, 5386 of 2004, and 2225 of 2001 all titled *VLS Finance Ltd. v. Shaan Interwell (India) Ltd. & Ors.* under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') pending in the court of the learned Metropolitan Magistrate ('MM'), New Delhi in so far as it concerns the three Petitioners.

2. Aggrieved by the dishonour of the cheques issued by M/s Shaan Interwell (India) Ltd. (hereinafter 'the Company') in favour of the complainant VLS Finance Ltd., the aforementioned complaints were filed against the Company and six other co-accused including the Petitioners here. In each of the complaints, the Petitioner No. 1, Mr. P.S. Shrinivasan described as Chairman of the Company was arrayed as accused No. 2, Mr. S.P. Agarwal Petitioner No.2 described as Director as accused No. 6 and Petitioner No. 3 Mrs. Shanti Shivkumar as accused No. 7 is also described as the Director of the Company. The averments in each of these complaints as regards the liability of these Directors is contained in para 3 which reads as under:

“That the accused no. 1 is a Company duly registered under the Companies Act, 1956 having its Registered Office at the address given in the title of the complaint. The accused no. 2 is the Chairman cum Managing Director whereas the accused Nos. 3 to 7 are the Directors of the accused no. 1 company. The said accused persons are in-charge of and are responsible for the affairs of the respondent no. 1 company.”

3. Summons were issued by the learned MM after recording the pre-summoning evidence of the complainant for the offence under Section 138 NI Act. Against the summoning orders issued by the learned MM, the petitioners filed revisions petitions which were dismissed by the learned Additional Sessions Judge, New Delhi by separate orders dated 21st August 2006.

4. The learned counsel for the Petitioner relies on the judgment of the Supreme Court in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla (2005)* 8

SCC 89 and contends that in the absence of a specific averment in the complaint to the effect that the persons, apart from the Company, sought to be arraigned as accused were persons who were in charge of the affairs of the company and responsible to it for the conduct of its business “at the time of the commission of the offence”, the complaints would not be maintainable against such persons.

5. In reply, the learned counsel for the Respondent contends that the other paragraphs of the complaint and the statement made by the complainant’s witness at the stage of the pres-summoning evidence before the learned MM satisfies this requirement. He refers to para 6 of the Complaint which reads as under:

“That the accused, towards the repayment of quarterly installments, had issued post-dated cheques in favour of the complainant and at the time of issuance of the said cheques the accused persons had assured and promised that the same will be honoured on their due dates by their banker.”

A reference is also made in paragraphs 10,12, and 13 which contain averments generally against all the accused. Reliance is also placed on the judgment of the Supreme Court in *N. Rangachari v. Bharat Sanchar Nigam Ltd. AIR 2007 SC 1682*, where in para 18, the Supreme Court held that even when the complaint does not contain an averment that at the time of the commission of the offence the persons arrayed as accused were in charge of the affairs of the Company, it must be so construed.

6.1 The first point to be considered is what is the precise nature of the averment that is required to be made in a complaint under Section 138 NI Act where the Company is the principal accused and certain others are sought to be made co-accused by virtue of the liability attaching to them in terms of Section 141 NI Act. In *Neeta Bhalla*, the three questions referred to the Bench of three Judges of the Supreme Court has been set out in para 1 of that judgment and they read as under:

“1. This matter arises from a reference made by a two Judge Bench of this Court for determination of the following questions by a larger Bench:

"(a) whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfill the requirements of the said section and it is not necessary to specifically state in the complaint that the persons accused was in charge of, or responsible for, the conduct of the business of the company.

(b) whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(c) even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors of Joint Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against."

6.2 In para 10 of the judgment the Supreme Court explained that the law required the complainant to show that the persons sought to be arraigned as accused in addition to the Company were in charge of and responsible to it for the conduct of its business “at the relevant time when the offence was

committed and not on the basis of merely holding a designation or office in a company.” The emphasis was on the averment that the person was in fact “connected with the commission of a crime at the relevant time”. Thereafter in para 19 the questions posed were answered thus:

“19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that **at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.**

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. **The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.**

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.” (emphasis supplied)

6.3. The above paragraphs of the judgment in *Neeta Bhalla* make it clear that the minimum averment to be made in a Complaint under section 138 NI Act has to contain three components:

- (a) that the person sought to be arraigned as an accused was in charge of the affairs of the Company;
- (b) further, that the person sought to be arraigned as an accused was responsible to the Company for the conduct of its business; and
- (c) further that such person was in such capacity as in (a) and (b) above **at the time when the offence was committed.**

Without the above averment, the requirement of Section 141 NI Act could not be said to be satisfied.

7. The learned counsel for the Petitioner is right in pointing out that the later judgment in *N. Rangachari* by the Bench of two judges of the Supreme Court proceeds on the premise, as is evident from para 13 of that judgment, that “a person in the commercial world having a transaction in the company is entitled to presume that the Directors of the company and in charge of the affairs of the company”. This is contrary to the specific answer to question (b) in *Neeta Bhalla* where the Bench of three judges held that “a Director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement under Section 141

NI Act is that the person sought to be made liable should be in charge of and

responsible for the conduct of the business of the company **at the relevant time.**” Viewed in this manner, it is seen that the observations made in para 18 in *N. Rangachari* to the effect that the complaint need not specifically aver that “at the time of commission of the offence”, the person concerned was in charge of and responsible to the affairs of the company, and that such averment could be presumed, is not in conformity with the explanation of the law by the larger Bench of three judges in *Neeta Bhalla*.

8. None of the complaints, in these four matters, contain an averment that satisfies the requirement of law as explained by the Supreme Court in *Neeta Bhalla*. Even the pre-summoning evidence in each of these four complaints does not contain any statement therein to the effect that the Petitioners were in charge of the affairs of the company and responsible to it for the conduct of its business **at the time of the commission of the offence**. The crucial statement that they were functioning as such “at the time of the commission of the offence” is missing even in the pre-summoning evidence.

9. Finally, it was contended that Petitioner No.1 Mr. P.S. Shrinivasan who is described as the Chairman of the Company, would in any event be answerable for the offence under Section 138 NI Act in that capacity irrespective of any averment in terms of Section 141 as laid down in *Neeta*

Bhalla. This Court finds that the Supreme Court in *Neeta Bhalla* held that the case of a Managing Director or Joint Managing Director stood on a different footing than the other Directors. In fact the answer to question (c) in that judgment brings out this distinction. Therefore, where a Complaint is against the Company under section 138 NI Act then it need not contain any specific averment in terms of Section 141 NI Act as regards the Managing Director or Joint Managing Director. However, that does not hold good for the other Directors including the Chairman of a Company. This distinction was brought out by the Supreme Court in *Everest Advertising Pvt. Ltd. v. State (NCT of Delhi) (2007) 5 SCC 54 of Delhi* where in para 23 it observed as under:

“23. A Chairman of a large company may or may not be aware of the actual transaction if in a given situation, cheques are issued in ordinary course of business. The Managing Director or a Deputy Managing Director, in view of *S.M.S. Pharmaceuticals Ltd.* would be deemed to be aware thereof. A Chairman or a Director of a company need not be.”

The above observations read with the observation in *Neeta Bhalla* make it clear that the presumption as to liability can extend only to the Managing Director or a Joint Managing Director of a Company and in respect of the other Directors, including a Chairman, the Complaint must contain a bare minimum averment that **at the time of the commission of the offence**, they

were persons in charge of the affairs of the Company and responsible to it for the conduct of its business.

10. It was finally submitted that the liability in terms of Section 141 (2) NI Act could attach to a person who answers the description of a " Director, Manager or Secretary in a Company" with whose connivance the offence was committed. This Court finds that apart from a general averment concerning all accused, there is no specific averment in relation to each of these persons that the offence was committed in connivance with other or all any of them. Therefore, this contention is also rejected.

11. For the aforementioned reasons, these petitions are allowed. Each of the three Petitioners will stand discharged in respect of the above mentioned four criminal complaints, i.e. CC.Nos.3096 of 2004, 3095 of 2004, 5386 of 2004, and 2225 of 2001 all titled ***VLS Finance Ltd. v. Shaan Interwell (India) Ltd. & Ors.*** The complaints will proceed against all the other accused.

12. The petitions are accordingly disposed of. It is expected that the trial court will now proceed with the complaints as expeditiously as possible. A certified copy of this order will be sent to the concerned learned MM before

whom the aforementioned complaints are pending the by the Registry of this Court within five days.

S. MURALIDHAR, J

MARCH 28, 2008
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