

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C.No.2517/2008**

% **Date of decision : 05.08.2008**

Sh.Amit Kohli & Anr Petitioners
Through: Mr.Anil Rakhra with Mr.Amit
Pandey, Advocates.

Versus

State & Ors Respondents
Through : Nemo.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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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? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioners have challenged the order of summoning, dated 18th March, 2006, in complaint Case No.1906/2006 titled Bennett Coleman and Co. Ltd. v. Duko Advertising Pvt. Ltd., on the ground that though the petitioners were the Directors of respondent No.3, they had resigned from directorship as back as 28th June, 2003 and their resignation was duly accepted and from that day they have no connection with the said respondent No.3 and did not take part in the

management and the affairs of the said company and are not responsible for any activities of respondent No.3 after 28th June, 2003.

The learned counsel for the petitioners has very emphatically contended that in the complaint filed against the petitioners, as well as in the memo of parties, the petitioners have been described as Directors of respondent no. 3, though the petitioners tendered their resignation as Directors on 28th June, 2003 and they are not taking part in the day to day management or affairs of the company.

The learned counsel for the petitioner has relied on (2007) JCC 171, J.N.Bhatia & Ors v. State & Anr; 2007(1) LRC 9 (SC), Sabitha Ramamurthy & Anr v. R.B.S.Channabasavaradhya and 2007(1) LRC 165 (SC), Saroj Kumar Poddar v. State (NCT of Delhi) & Anr to contend that since they are no more the directors and they have produced certified copy of Form no.32, the complaint against them is liable to be quashed.

Perusal of the complaint filed by the respondent No.2 reveals that the allegation against the petitioners are not restricted only to petitioners being the Directors and responsible for day to day work. The respondent No.2 has categorically contended that the petitioners on earlier occasions were representing themselves as authorized representatives of the advertising agency and had released advertisement on a regular basis to the respondent No.2. It has also been categorically contended that respondent no.3 being the advertising

agency, the petitioners and other directors, respondents No.2 & 3 in the complaint, namely Mrs.Kavita Vohra and Mr.Ravi Vohra, are the authorized signatories and are handling the affairs of Delhi office. It is also asserted that the petitioners and other authorized signatories are looking after the day to day affairs of the advertising agency and it is their responsibility to clear all such liabilities that fall on the respondent No.3 and by giving the cheques of respondent No.3 to the complainant company, the petitioners and other authorized signatories have acknowledged their liability towards the complainant company. It is also categorically pleaded that despite the notice received by the petitioners they have refused to clear their outstanding dues and did not even care to approach the respondent No.2/complainant company to clear their outstanding dues. The relevant paragraphs containing the specific averments against the petitioners are as under:-

“2. The Respondent No. 1 to 5 are running an advertising agency of which respondent No. 2 is the Managing Director, Respondent No. 3 is the Director and together they are running the affairs of the Delhi office located at D-6/6002-II, Vasant Kunj, New Delhi-110070 and D-3/3596, Vasant Kunj, New Delhi-110070. The Respondent no 2 and Respondent no 3 have been in regular touch with the executives of the complainant company. On earlier occasions the Respondents 4 and 5 were also representing themselves as authorized representatives of the advertising agency and released advertisement on a regular basis to the company. The advertising agency is fully accredited by the Indian Newspaper Society (INS) and had been getting various advertisements published in various Newspaper and Magazines published by the Complainant Company from time to time. Since the Advertising agency is an accredited one, the Complainant newspaper Group I.e. The Times of India Group, is expected to give 60 days credit facility to the agency. Under the rules made by

the Indian Newspaper Society, Credit facility is extended/given to all such agencies, which are given accreditation by the society.

3. The Complainant Carries on business in the field of Newspaper, magazine etc. and also printers and publishers of several daily newspapers, magazines and periodicals ie. The Times of India, Economic Times, Nav Bharat Times, Femina and Filmfare Etc. and are having a good standing and goodwill reputation in the publishing industry as also the eyes of the general public . It was during the course of its ordinary business, Complainant had got published several advertisements booked by the Respondent Advertising agency and their representatives, the same were published in the newspapers of the Complainant, duly and diligently. It is due to booking and subsequent publication of such advertisements in the newspapers, the Respondents had issued the following cheques-

	Cheque no	Amount	Dated
01.	526591	20,00,000/-	31.05.2005
02.	526598	6,74,090/-	10.06.2005

The cheques were drawn on Andhra Bank, R K Puram, New Delhi-110022, against the billings of the complainant.

4. The Respondent no 1 being the advertising agency, and the respondents 2 to 5 being authorized signatory on behalf of Duko Advertising were handling the affairs of the Delhi office. It was during the course of handling the affairs of the Delhi office that Respondent No. 2 and another issued cheques bearing no. 526591 dated 31.05.2005 for Rs 20,00,000/- and 526598 dated 10.06.2005 for Rs 6,74,090/- for payment of all the liabilities on behalf of the advertising agency, Duko Advertising Pvt. Ltd. and had undertaken the responsibility of clearing the total dues of Rs 26,74,090/- of agency.

The Respondents 2 to 5 are managing and controlling the day to day business affairs of Respondent No. 1. The Respondent 2 and another had issued the cheques from their account to liquidate the liability of all the Respondent. Since Respondent No. 2 to 5 are looking after day to day affairs of the advertising agency, it is their responsibility to clear all such liabilities that fall on the Respondent No. 1, and by duly giving the cheque to the

complainant company, the Respondents No. 2 to 5 have acknowledged their liability towards the Complainant Company. The cheque was drawn on Andhra Bank, R K Puram, New Delhi-110022. (Attached as Annexure C(CW-1/3)

5. That the complainant presented the aforesaid cheques with their banker i.e. the HDFC Bank but the same were returned unpaid with the remark "Payment stopped by the drawer" for the first cheque and " Exceeds arrangement" for the second cheque. The complainant came to know about the dishonor of the aforesaid cheques from their bankers vide memo dated 22.6.2005 and 14.6.2005 received by the office of the complainant company. (Bank memo is attached as Annexure D)(CW-1/4).

6. That the complainant after coming to know that the cheque was dishonoured immediately contacted the Respondents for making the payments. The Complainant through its advocate sent a legal notice on 1.7.2005, which was sent on 2.7.2005. The legal notice is attached herewith, (Attached as Annexure E Colly)(CW-1/5) requesting for payment against the dishonoured cheques. The said legal notices were sent vide Postal receipts of Indraprastha HPO dated 2.7.2005. (Attached as Annexure F)(CW-1/6). The Respondents nos 1, 4 and 5 have received the notice sent by the counsel for the complainant company. (A. D card received back by the complainants is attached herewith, as Annexure G colly (CW 1/7). The Respondents have refused to clear the outstanding amount due on them and have not even cared to approach or contact the Complainant Company, inspite of repeated reminders sent by the Complainant Company. The action of the Respondents seems suspect and dishonest and with malafide intentions, and have successfully evaded all queries of the Complainant; hence the Complainant is left with no other alternative but to file this complaint before the Hon'ble Court."

The learned counsel for the petitioners has contended that the petitioners resigned as a Director on 28th June, 2003 and Form 32 was also issued on 13th August, 2003 and a certified copy of the Form 32 has also been produced with the present petition. The cheques which

have been dishonoured were issued on behalf of respondent No.3 company on 31st May, 2005 and 10th June, 2005 and, therefore, there cannot be any liability of the petitioners.

This cannot be disputed in the facts and circumstances that the allegations against the petitioners is not only that they are the Directors and responsible for day to day affairs and the business, but something more than that. The complainant has pleaded categorically that the petitioners are authorized representatives and were representing themselves to be authorized representatives and releasing advertisement on a regular basis to respondent No.2. It has also been contended that petitioners along with other authorized representatives are handling the affairs of Delhi office and by giving the cheques the petitioners have acknowledged their liability towards the respondent No.2 company.

In the circumstances, it cannot be inferred that there are just bald allegations against the petitioners being liable as Directors of the respondent No.3 company. Even if the petitioners had resigned as a Director on 28th June, 2003 and have produced the Form 32 dated 13th August, 2003, they being the authorized representatives and responsible for day to day business of the company and since they have been releasing advertisements representing themselves as the authorized representatives of respondent No.2 company, their liability cannot be negated at this stage merely on account of the petitioners

having resigned as Directors from 28th June, 2003. The precedents relied on by the petitioners are also distinguishable. In J.N.Bhatia & Ors (Supra) it was held that if a person is arraigned as an accused only on the ground that he was a Director, then such a complaint against such a person is to be dismissed and no summoning order could be issued. However, if there are specific accusations against such persons arraigned as accused which even obliquely suggest that such persons were at any point of time directly or indirectly in charge of and responsible to the accused company for the conduct of its day to day business, then their liability cannot be negated in view of the specific accusations made against each of them. It was held that whether a person is responsible for the day to day affairs of the company would depend on the respective roles assigned to the officers in the company.

This is not disputed that even a non director can be liable under Section 141 of the Act. Since there are specific accusations against the petitioners, the fact that the petitioners had resigned on 28th June, 2003 will not negate their liability at this stage. A clear case has been spelt out in the complaint against the petitioners that they have been duly authorized representatives of the company and had been looking after the day to day business of the respondent No.3 company and by issuing the cheques they have held themselves liable. They had been given the notices as contemplated under the Negotiable Instrument Act but even thereafter they have not tried to contact the respondent No.2

and absolve themselves of their liability. The petitioners have pleaded categorically as to how the petitioners are liable and the allegations are not based simply on account of the petitioners being Directors of respondent no. 3.

From the perusal of the averments made in the complaint it is also apparent that the allegations against the petitioners are not mere repetition of the phraseology contained in Section 141 of the Negotiable Instrument Act. In J.N.Bhatia & Ors (Supra) the allegations against the Director were “that the accused petitioner No.1 is a limited company and the accused Nos.2 to 6 are its Directors and persons in charge of, and are responsible for day to day affairs or the business of the accused, petitioner No.1 company.” In contradistinction the allegations against the petitioners in the present petition are categorical and specific and consequently the petitioners cannot rely on the said precedent to claim quashing of complaint against them. The other judgments relied on by the petitioners are also distinguishable as the averments made against the accused in those case were also generic and were repetitive of the phraseology as contained in Section 141 of the Code of Civil Procedure.

Consequently, in view of the specific averments made against the petitioners, and the role assigned to them, and they being the duly authorized representatives of the respondent No.3 company, and since they have been carrying on the day to day business of the said

company, and since they have been earlier issuing cheques on behalf of the company, and since they have continued to be the authorized representatives of the company, they cannot be absolved of their liability at this stage merely because they ceased to be the Directors of the company. The complaint against them and the order issuing summons cannot be quashed in the facts and circumstances against them.

In the facts and circumstances, the petition is without any merit and is, therefore, dismissed.

August 05, 2008
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ANIL KUMAR, J.