IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.M-14661 of 2016 (O&M)

Syam Prasad Reddy Indukuri

...Petitioner

VERSUS

Indiabulls Housing Finance Ltd.

...Respondent

(ii) CRM No.M-14667of 2016 (O&M)

Syam Prasad Reddy Indukuri

...Petitioner

VERSUS

Indiabulls Housing Finance Ltd.

...Respondent

Date of Decision: May 02, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rakesh Chopra, Advocate
for the petitioner.

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INDERJIT SINGH, J.

This order shall dispose of above-mentioned two connected cases as the point for determination in both the cases is the same.

The above-mentioned petitions have been filed by petitioner for quashing of criminal complaint No.5138/2015 [new 6896/2015] (in CRM No.M-14661 of 2016), criminal complaint No.5139/2015 [new 6852/2015] (in CRM No.M-14667 of 2016) and summoning order dated 06.01.2015 passed in both the complaints by learned Judicial Magistrate Ist Class, Gurgaon and all subsequent proceedings arising therefrom.

Learned counsel for the petitioner firstly argued that the summoning order is a non-speaking order. Secondly, there is no allegation in the complaints that present petitioner was the Incharge of the affairs of the company and responsible for the commission of the offence. He next argued that even there is no specific averment in the complaints regarding the same. He further argued that the offence has been committed in the present case after the amounts of dishonoured cheques were not paid by the company and before that the present petitioner, who was one of the Director of the Company had already resigned.

After hearing learned counsel for the petitioner and after going through the record, first of all I find that no revision has been filed against the summoning order. If it is a non-speaking order, then the petitioner has the remedy to challenge the summoning order but this remedy has not been availed by the petitioner. Secondly, I find that copy of the complaint has been placed on the record. It is specifically stated in the complaint that accused No.1 i.e. M/s Indu Eastern Province Projects Private Ltd. through accused No.2 to 4 has approached the complainant for available financial facilities. For this purpose, accused No.1 through its directors and authorized signatories entered into and executed facility agreement and other related documents with complainant and availed loan. In para 5 of the complaint (in CRM No.M-14661 of 2016), it is stated that in partial discharge of the admitted liability and undisputed liabilities of payment to the complainant, accused No.1 through its Directors,viz, accused No.2 and 3 and authorized signatory viz, accused No.4 have issued two cheques for ₹53,86,854/- and ₹87,33,600/-, both dated 01.08.2014 totalling to ₹1,41,20,454. In second complaint (in CRM No.M-14667 of 2016), it is stated that two cheques of ₹52,95,152/- and ₹88,35,492/- both dated 01.09.2014 totalling to ₹1,41,30,644/- were issued. When all the cheques were presented for encashment with its banker i.e. Yes Bank, Gurgaon Branch by the complainant, those cheques were returned back dishonoured due to the reason of 'Funds Insufficient'. The averments in the complaint itself shows that the present petitioner, who is accused No.2 in the complaint has approached the complainant for loan along with other Director accused No.3 and authorized signatory accused No.4. Therefore, in no way, it can be held that present petitioner was not the Incharge of the affairs of the company or was not taking part in day-to-day work of the company. Rather, the allegations are that these Directors along with authorized signatory executed facility agreement and other related documents with the complainant. Therefore, the argument of learned counsel for the petitioner that present petitioner is not Incharge or responsible for conducting business of the company, has no merit.

As per the admitted case of the petitioner, the cheques in complaint (in CRM No.M-14661 of 2016) were issued on 01.08.2014, which were presented and returned unpaid with the remarks 'Funds Insufficient' vide memo dated 01.08.2014. Legal notice was issued on 30.08.2014. In the second complaint i.e. in CRM No.M-14667 of 2016, the cheques were issued on 01.09.2014, which were presented and returned unpaid with the remarks 'Funds Insufficient' vide memo dated 01.09.2014. Legal notice was issued on 30.09.2014. The present petitioner has resigned as Director of the aforesaid company on 22.09.2014. In no way, it can be held that due to the resignation of the present petitioner, he is not liable for the commission of the offence and offence has been committed after his resignation.

Learned counsel for the petitioner cited judgment passed by the Hon'ble Supreme Court in ***Harshendra Kumar D vs. Rebatilata Koley etc., 2011(1) RCR (Criminal) 887***, in which it is held that the Director who had resigned and his resignation was duly accepted prior to the issuance of cheque, cannot be held liable. This cited judgment, rather goes against the petitioner as he has not resigned prior to issuance of cheques but after the issuance of cheques. Learned counsel for the petitioner also cited judgment passed by the Hon'ble Supreme Court in ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and another, 2005(4) RCR (Criminal) 141***. I have gone through this cited judgment and the same will not apply in the present case as in that case, it has been held that in the complaint against Director, the fact that he was Incharge of and responsible to the Company for conduct of business, has to be stated as a fact otherwise, there is no deemed liability of a Director but in the present case in hand, there is averment that present petitioner-Director along with other Director and authorized signatory approached the complainant for the loan and executed various documents etc. as mentioned in the complaint. Therefore, there is no question of deemed liability of Director.

Learned counsel for the petitioner, on the same point, placed reliance upon the judgment passed by the Hon'ble Supreme Court in ***National Small Industries Corp. Ltd. vs. Harmeet Singh Paintal and another, 2010(2) RCR (Criminal) 122***. This cited judgment also goes against the petitioner as it is held in that case that it came in the evidence that he was not the Director when the cheques were signed and in that case, there was no specific averment in the complaint as to the role of the Director but in the present case, the petitioner resigned after issuance of the cheques and even in one complaint, after sending of the legal notice. As already discussed, the role of the present petitioner has been specifically mentioned in the complaint.

Learned counsel for the petitioner further placed reliance on the judgments passed by the Hon'ble Supreme Court of India in ***Pooja Ravinder Devidasani vs. State of Maharashtra and another, 2015(1) RCR (Criminal) 271*** and ***Yogendra Pratap Singh vs. Savitri Pandey and another, 2014(4) RCR (Criminal) 321***. I have gone through both the above-cited judgments but the same having distinguished facts, will not apply in the present case and no benefit can be given to the present petitioner.

In view of the above discussion, I find that no ground is made out to quash the complaint etc.

Therefore, finding on merit in both the petitions, the same are dismissed.

May 02, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**