

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.M-6955 of 2013 (O&M)

Anil Kumar

...Petitioner

VERSUS

Indiabulls Financial Services Ltd. and others

...Respondents

(ii) CRM No.M-29432 of 2013 (O&M)

Ishwar Chander

...Petitioner

VERSUS

Indiabulls Financial Services Ltd. and another

...Respondents

Date of Decision: May 05, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.D.Bansal, Advocate
for the petitioner (in CRM No.M-6955 of 2013).

Mr.B.D.Sharma, Advocate
for the petitioner (in CRM No.M-29432 of 2013).

Mr.D.R.Singla, Deputy Advocate General, Haryana
for the respondent-State (in CRM No.M-29432 of 2013).

Mr.Kiran Bal Jain, Advocate
for respondents No.1 to 4 (in CRM No.M-6955 of 2013)
and for respondent No.1 (in CRM No.M-29432 of 2013).

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

petitioners Anil Kumar and Ishwar Chand for quashing of complaint No.2396 of 17.04.2012 titled as 'Indiabulls Financial Services Ltd. vs. B.R. Steel Industries and others' filed under Section 138/142 of the Negotiable Instruments Act; summoning order dated 17.03.2011 passed by learned JMIC, Gurgaon and all subsequent proceedings arising therefrom.

Notice of motion was issued in all the cases and learned State counsel and learned counsel for private respondents appeared and contested the petitions.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that the copy of the complaint has been placed on the record. As per the record, Indiabulls Financial Services Ltd. filed a complaint against B.R. Steel Industries, Ishwar Chander, Bal Mukand Rai Garg and Anil Kumar under Section 138/142 of the Negotiable Instruments Act. In para No.3 of the complaint, it is stated that accused No.2 is of accused No.1 i.e. M/s B.R. Steel Industries and is responsible for its day-to-day functioning/affairs. Accused No.1 through accused No.2 approached the complainant-company and requested for loan for business purposes. The complainant-company had sanctioned loan to the accused for a sum of ₹20 lacs under the scheme of Business Loan. It is further stated that accused had promised to make timely and regular payment of schedule EMIs but they did not abide by the terms and conditions. Accused issued cheque bearing No.707215 dated

05.08.2010 for ₹25,18,574/- in favour of the complainant and assured that said cheque would be encashed. When the cheque was presented for encashment, it was returned back dishonoured with the remarks 'account closed'.

At the time of arguments, learned counsel for the petitioner Anil Kumar argued that nothing has been mentioned in the complaint specifically qua accused Anil Kumar, as to whether he is Director or partner in the company B.R. Steel Industries. Similarly, learned counsel for the petitioner Ishwar Chander argued that there is nothing whether Ishwar Chander is owner of the Company. He argued that B.R. Steel Industries is a sole proprietorship firm of Bal Mukand Rai Garg. But there is nothing in the complaint that whether it is a sole proprietorship firm or whether it is a partnership firm and who is the sole proprietor or who are the partners/Directors of the Company.

From the perusal of the record, I agree with the arguments of learned counsel for the petitioners. If the case is to be filed against the company, the complainant is to specifically aver in the complaint regarding the liability of the Directors/partners etc. In the present case, the complainant intentionally has not mentioned anything, as to whether B.R. Steel Industries is sole proprietorship firm or partnership firm or private limited company etc. The complainant has also not mentioned as to who is the sole proprietor/Director/partner of this company. As per the petitioners, Bal Mukand Rai Garg is the sole proprietor. As there is nothing mentioned qua Ishwar Chander and Anil Kumar, they are not liable for the loan amount given to the

company and therefore, they cannot be held liable under Section 138/142 of the Negotiable Instruments Act.

Furthermore, it is admitted at the time of arguments that the cheque in question bear the signatures of Ishwar Chander and this cheque is from his personal account and not from the account of the company. There is no averment in the complaint that Ishwar Chander has taken the loan in his personal capacity or he is the sole proprietor of the company i.e. accused No.1. The allegation is that accused No.1 i.e. B.R. Steel Industries had taken the loan but the cheque in question is not issued from the account of accused No.1. So, from the record, firstly, I find that petitioners Ishwar Chander and Anil Kumar are not stated to be owners/partners/Directors of the company and there is nothing as to how they are liable to pay the loan taken by accused No.1. Secondly, the cheque in question, has not been issued from the account of the company. Thirdly, there is no averment regarding the personal liability of Ishwar Chander as the cheque is from his personal account.

In view of the above facts, the complaint No.2396 of 17.04.2012 titled as 'Indiabulls Financial Services Ltd. vs. B.R. Steel Industries and others' and all subsequent proceedings arising therefrom qua the petitioners are hereby quashed.

Therefore, finding merit in both the petitions, the same are allowed.

May 05, 2016
Vgulati

(INDERJIT SINGH)
JUDGE