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

% *Date of Decision : September 14, 2016*

+ **CRL.M.C. 7/2013**

P P MAINRA Petitioner
Represented by: Mr.Vineet Tayal, Advocate

versus

STATE &ANR. Respondents
Represented by: Mr.Akshai Malik, APP
Ms.Chandni Mehra, Advocate for R-2

CRL.M.C. 564/2014

P P MAINRA Petitioner
Represented by: Mr.Vineet Tayal, Advocate

versus

STATE &ANR. Respondents
Represented by: Mr.Akshai Malik, APP
Ms.Chandni Mehra, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. The matter was listed for September 13, 2016 which was declared a holiday and therefore is being taken up today.
2. The petitioner by way of present petition prays quashing of the criminal complaint bearing CC No.1780/1 (old number CC 3864/11) and CC No.1781/1 (old number CC 3864/11/2011) under Section 138 read with Section 141 of the Negotiable Instruments Act (hereinafter referred to as

‘Act’), titled Countrywide Promoters Pvt. Ltd. Vs. Era Landmarks Ltd. & Ors and the summoning order(s) dated March 01, 2011 and May 14, 2013 and all proceedings arising there from.

3. The brief facts necessitating the disposal of the present petitions are that the accused company, in which the petitioner was alleged to be a director, entered into an MOU with the Complainant Company/respondent No.2 for development of a parcel of land in Haryana. Pursuant to the MOU, a Development Rights Agreement dated April 13, 2007 was entered into between the parties and subsequently a Share Purchase Agreement dated May 05, 2008 was entered into between the parties. It is the case of the complainant that vide letter dated August 14, 2010 the accused company communicated to the complainant company that an amount of ₹2458.39 Lacs shall be paid by the complainant company as External Development Charges to the Government Department on behalf of the accused company, which shall be repaid by the accused company along with 18% interest to the complainant company. It is alleged that in lieu of part payment of the aforesaid liability in sum of ₹2458.39 Lacs, post dated cheques bearing Cheque No.291473 dated December 31, 2010, Cheque No.291474 dated December 31, 2010, Cheque No.291477 dated December 31, 2010 and Cheque No.291476 dated December 31, 2010 of the amounts ₹500 Lacs, ₹500 Lacs, ₹229.195 Lacs and ₹74.196 Lacs respectively totalling ₹13,03,39,100/-, were handed over by the accused company to the complainant company on August 14, 2010 itself. The cheques were presented for encashment on January 07, 2011 but were returned unpaid by the banker vide return memo dated January 08, 2011 stating the reason for dishonour of the cheque as ‘payment stopped by the drawer’. The

complainant company sent a demand notice to the accused company vide letter dated January 17, 2011 demanding the payment of the aforesaid amount of ₹13,03,39,100. The accused company replied to the demand notice stating that the cheques were handed over to the complainant merely as security and not for the satisfaction of any debt or liability. It resulted in above noted complaints as also another complaint, with which I am not concerned, being filed by the complainant in the Court of the learned Metropolitan Magistrate, in which after recording pre-summoning evidence the company and its Directors, including the petitioner have been summoned.

4. It is the case of the petitioner that at the time when the alleged offences were committed he had ceased to be a director of the company evidenced by Form No.32 submitted to the Registrar of Companies which shows that the petitioner ceased to be a director of the company with effect from November 12, 2009.

5. It is the further case of the petitioner that the complaint contains bald allegations against the petitioner that he had interacted and participated in various negotiations between the parties in regard to the land development project. Relying upon the decision reported as 2007 (9) SCALE 371 K. Srikanth Singh Vs. North East Securities, it is the case of the petitioner that mere participation in the transaction does not infer that the director was responsible for the day-to-day affairs of the company. Vicarious liability has to be pleaded and proved and cannot be inferred. It is further the case of the petitioner that since there is no specific allegations qua the petitioner as to the role played by him in the subject matter the requirements of Section 141 of the Act are not satisfied. The petitioner relies upon the decisions reported

as AIR 2007 SC 1454 N.K. Wahi Vs. Shekhar Singh & Ors., (2008) UTR 276 (Delhi) (PG 84) J.N Bhatia & ors. Vs. State & Anr. and CrI.MC 4110/2011 Bikash Chakraborty Vs. Reliance Structures, to substantiate his arguments.

6. Per Contra the case of the complainant company is that the allegations in the complaint stating that the petitioner had participated in the negotiations to the agreements between the parties were not vague so as to discharge the petitioner from the ambit of Section 141 of the Act. Relying upon the decision reported as AIR 2005 SC 3512 S.M.S Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr., it is the case of the complainant company that liability under Section 141 of the Act can be cast on the persons who may have something to do with the transaction complained of. A person who is incharge of and responsible for conduct of business of the company would naturally know why the cheque in question was issued and why it got dishonoured. It is the case of the complainant company that in the present case the complaint clearly states that the petitioner played an active role in the transaction between the parties and hence can be held vicariously liable under Section 141 of the Act.

7. It is the case of the complainant company that whether the petitioner ceased to be a director of the accused company is a matter of evidence.

8. Needless to state the facts of each case have to be considered. In SMS Pharmaceutical's case (supra) the Supreme Court had held:-

“15. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a persons can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the

principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That respondent fails within parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141 he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

16. 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 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 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 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.”

9. In Crl.A.No.592/2007 N.Rangachari Vs. BSNL, the Supreme Court had held:-

“A person in the commercial world having a transaction with a Company is entitled to presume that the Directors of the Company are in charge of affairs of the Company. If any restrictions on their powers are placed by the memorandum or Articles of the Company, it is for the Directors to establish it at the trial. It is in that context that Section 141 of the Negotiable Instruments Act provides that when the offender is a Company, every person, who at the time when the offence was committed was in charge of and was responsible to the company for the conduct of the business of the Company, shall also be deemed to be guilty of the offence along with the Company. It appears to us that an allegation in the complaint that the named accused are Directors of the Company itself would usher in the element of their acting for and on behalf of the company and of their being in charge of the Company. A person normally having business or commercial dealings with a Company, would satisfy himself about its creditworthiness and reliability by looking at its promoters and Board of Directors and the nature and extent of its business and its memorandum or articles of association. Other than that, he may not be aware of

the arrangements within the Company in regard to its management, daily routine, etc. Therefore, when a cheque issued to him by the Company is dishonoured, he is expected only to be aware generally of who are in charge of affairs of the Company. It is not reasonable to expect him to know whether the person who signed the cheque was instructed to do so or whether he has been deprived of his authority to do so when he actually signed the cheque. Those are matters peculiarly within the knowledge of the Company and those in charge of it. So, all that a payee of a cheque that is dishonoured can be expected to allege is that the persons named in the complaint are in charge of its affairs. The Directors are prima facie in that position. In fact, an advertence to Sections 138 and 141 of the Negotiable Instruments Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or Officers in charge of affairs of the Company to show that they are not liable to be convicted. Any restriction on their power or existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial such a restriction or to show that at the relevant time they were not in charge of the affairs of the Company.”

10. In view of the fact that the petitioner had ceased to be a director of the accused company on November 12, 2009, which fact is apparent from Form 32 submitted to the Registrar of Companies, the fact that he was a director of the company when the negotiations took place would be irrelevant.
11. I note that Crl.M.C.No.3060/2011 filed by the instant petitioner concerning three cheques which were issued to the complainant company was allowed and summoning order qua him was quashed.
12. Thus, the two petitions are allowed. The two criminal complaints which have been challenged and quashing whereof is prayed for as also the

two summoning orders qua the petitioner are quashed.

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 14, 2016

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