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

\+ **CRL.M.C. 2307/2016**

% Decided on: October 04, 2016

RAMANI TANGRI & ORS ..... Petitioners
Represented by: Mr.Kailash Pandey, Advocate.

versus

M/S NUTECH PACKAGING ..... Respondent
Represented by: None.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. A complaint case under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (in short 'NI Act') was filed by the respondent M/s Neutech Packaging (in short 'Neutech') against M/s Webtech Packaging (I) Pvt. Ltd. (in short 'Webtech') and its four Directors.

2. In the complaint the respondent alleged that on the specific purchase orders of the accused/petitioners herein seeking printing, manufacturing and supply of cigarette packets of the make "Mono American Legend" and "Multi American Legend" the complainant manufactured, printed and supplied the cartons/cigarette packets and raised five invoices for a sum total of ₹12,94,685/-. Since earlier part/advance payment of ₹4,83,516/- had been received by the complainant a net sum of ₹8,11,169/- was still due and payable by Webtech. In part discharge of liability, the accused issued cheque bearing No.492444 dated 23rd July, 2015 for a sum of ₹7,75,659/- drawn on Bank of India, Okhla Industrial Estate, New Delhi Branch. When presented

the cheque was returned with the cheque return advice dated 13th August, 2015 stating "Exceeds Arrangement". Neutech sent a demand notice dated 18th August, 2015 dispatched on 22nd August, 2015 through speed post demanding payment of cheque amount within 15 days however, despite receipt of the statutory notice the accused failed to pay the cheque amount and furnished a reply dated 14th September, 2015 through the counsel.

3. In the complaint it was also alleged that the accused No. 1, that is, Webtech was a company incorporated under the Companies Act, 1956 and accused Nos. 2 to 5, that is, Sunil Tangri, Ramani Tangri, Aditya Tangri and Saurabh Tangri were its Directors and in-charge and responsible for day-to-day affairs and day-to-day business of accused No.1 company. It was thus alleged that the accused persons have committed the offence punishable under Section 138 NI Act.

4. On the authorized representative of the company being examined, the learned Trial Court summoned the accused persons/petitioners herein vide order dated 21st November, 2015. Hence the present petition by Ramani Tangri, Aditya Tangri and Saurabh Tangri.

5. Learned counsel for the petitioner relying upon the decision of the Supreme Court reported as JT 2010 (2) SC *National Small Industries Corporation Ltd. vs. Harmeet Singh Paintal & Anr.* submits that since no overt act has been attributed to the petitioners herein, the order summoning them is illegal and thus liable to be set aside. It is contended that the primary responsibility is of the complainant to make specific allegations against each accused person and having failed to do so the complaint qua the petitioners is not maintainable.

6. Though in the complaint it is stated that the petitioner Nos. 2 and 3,

that is, Aditya Tangri and Saurabh Tangri were no more the Directors, however, it is not clarified as to when the offence was committed, whether they were Directors or not and when they ceased to be the Directors. The Supreme Court in National Small Industries (Supra) laid down the principles regarding necessary averments in the complaint and how and in what manner the accused in a complaint under Section 138 read with Section 141 NI Act can be held guilty of consent and connivance or negligence. It was held:

> *"25. From the above discussion, the following principles emerge:*
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> *(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.*
>
> *(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.*
>
> *(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.*
>
> *(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.*

(v) If accused is Managing Director or Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.

(vii) 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."

7. It is evident that Supreme Court reiterated that vicarious criminal liability on the Directors could only be fastened if they were in-charge and responsible for the conduct of the business of the company. As noted above in the complaint filed, the averments that the three petitioners herein were the Director, In-charge and responsible for the day-to-day affairs and conduct of the business of Webtech has clearly been made.

8. Considering the fact that the averments in the complaint are within the four corners of the principle laid down by the Supreme Court in the decision of *National Small Industries* (Supra) and it is not shown that the petitioners were not Directors at the time when the offence was committed, I find no reason to quash the order summoning the petitioners.

9. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

OCTOBER 04, 2016/'vn'