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

% Decided on: 17th February, 2017

\+ **CRL.M.C. 2247/2016 & Crl.M.A. 9452/2016 (stay)**

ARUNKUMAR SHRIVASTAVA

..... Petitioner

Represented by: Mr. Hrishikesh S. Chitaley, Adv.

versus

M/S T.C.COMMUNICATIONS PVT.LTD.

..... Respondent

Represented by: Dr. Alok, Adv.

\+ **CRL.M.C. 2256/2016 & Crl.M.A. 9475/2016 (stay)**

MILIND VASANT BODHANKAR

..... Petitioner

Represented by: Mr. Hrishikesh S. Chitaley, Adv.

versus

M/S T.C. COMMUNICATIONS PVT. LTD.

..... Respondent

Represented by: Dr. Alok, Adv.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Complaint case No.4309/2015 was filed by the respondent M/s. T.C. Communications Pvt. Ltd. (in short T.C.) against Abhijeet Projects Ltd. (in short the accused company) and 9 other persons who were its senior DGM, Senior DM, Managing Directors, authorized signatories etc. under Section

138 read with Section 142 of the Negotiable Instruments Act (in short NI Act).

2. In the complaint the authorized representative of M/s. T.C. alleged that the accused company was engaged in the generation of electricity with accused No.2, 3 & 7 its authorized signatory, accused No.4 & 5 its Managing Directors, accused No.6 its Director and accused No.8 & 9 signatories to the cheque and accused No.10 having signed the settlement dated 3rd October, 2013. In the complaint it was stated that M/s. T.C. had earlier initiated a complaint under Sections 420/120B/34 IPC read with Section 138/142 of the NI Act for dishonour of cheque before the learned Metropolitan Magistrate against the accused and during the course of proceedings a settlement was arrived at between M/s. T.C. and accused company on 3rd October, 2013 before the Mediation Centre, Tis Hazari Courts wherein M/s. T.C. agreed to withdraw the complaint subject to payment of ₹74,32,549/-. M/s. T.C. withdrew the complaint. To honour settlement dated 3rd October, 2013 accused company handed-over 7 post-dated cheques for different dates. Out of the 7 cheques, when cheque bearing No.404288 dated 31st March, 2014 for a sum of ₹10 lakhs was presented, the same was dishonoured with the return memo "Funds Insufficient" on 21st April, 2014. A legal notice dated 6th May, 2014 was issued to the accused persons at the addresses which was duly served on accused. Neither any reply was given to the legal notice nor payment made in lieu of the cheque amount. Hence for the dishonour of the cheque bearing No.404288 for a sum of ₹10 lakhs M/s. T.C. filed the above-noted complaint. On the said complaint the two petitioners herein i.e. Arun Kumar Shrivastava and Milind Vasant Bodhankar were summoned besides the other

accused.

3. The two petitioners challenging the order dated 7th October, 2015 summoning them as above filed revision petitions which were dismissed vide impugned order dated 25th May, 2016. Hence the present petition.

4. The grounds taken by the petitioners seeking quashing of the complaint and order summoning them are that the petitioners were non-executive independent director of the accused company with petitioner Arun Kumar Shrivastava being appointed on 5th July, 2010 but resigned on 7th August, 2013 whereas petitioner Milind Vasant Bodhankar appointed on 20th July, 2012 and resigned with effect from 15th March, 2013. It is thus claimed that neither at the time of the settlement nor at the time of issuance of the cheques nor at the time when the cheque in question was dishonoured, the petitioners were the directors of the company much less responsible for the day-to-day affairs of the company. It is also contended that in the other complaints filed, the petitioners were not arrayed as accused. Even with the complaint documents filed by the complainant do not show that the petitioners are the directors of the accused company.

5. Learned counsel for the respondent appearing in the Court stated that the respondent does not wish to file any reply and relies upon the reply filed before the learned Additional Sessions Judge in revision.

6. It is not disputed that the petitioners have been summoned only for offences punishable under Section 138 of the NI Act. The factum that the two petitioners ceased to be the Directors of the company with effect from 7th August, 2013 and 15th March, 2013 respectively has not been denied. Thus, at the time when the cheque in question was dishonoured, the petitioners were not the Directors of the company and were not even liable

when the cause of action arose i.e. non-payment within 15 days of the receipt of the legal notice. Moreover, the petitioners have placed on record impeccable evidence in the form of copy of Form-32 filed before the Registrar of Companies showing their resignation from the dates as noted above. The petitioners have not been summoned for offences under Section 420/120B IPC or dishonour of the earlier cheque. Hence for dishonour of the cheque in question vicarious liability cannot be fastened on the petitioners.

7. Petitions and applications are disposed of quashing the order dated 7th October, 2015 to the extent it summons the petitioners for offence punishable under Section 138 read with Section 142 NI Act.

(MUKTA GUPTA)
JUDGE

FEBRUARY 17, 2017
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