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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No.29287-2016
Date of decision: 31.08.2018**

Amrita Mohanty and others ....Petitioners

Versus

M/s Applied Techno Products Pvt. Ltd. ....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Rakesh Gupta, Advocate
for the petitioners.

Mr. Ranvir Singh Arya, Advocate
for the respondent.

RAJ SHEKHAR ATTRI, J.

Petitioners have challenged the complaint bearing No.557 dated 02.06.2014 (Annexure P-1) registered under Sections 138, 141 and 142 of Negotiable Instruments Act (for short 'the Act') and consequent proceedings arising therefrom.

Inter alia contends that petitioners No.1, 3 and 4 along with Sh. Tathagat Mohanty are shareholders of the company being running in the name and style of M/s Powercon Projects and Associates Ltd. It has been asserted that the petitioners are only the sleeping directors and they have no concern with the day to day affairs of the company, and that the said company entered into three separate contracts for supply of goods with the respondent-company and the said contracts were entered on 23.12.2011 bearing purchase dorder No.PO/ SWL/ PPAL/ 02GP/ OPTCL/ T&ME/ ATPPL/25/451, PO/SWL/PPAL/03KL/OPTCL/T&ME/ATPPL/14/450 and PO/MEL/PPAL/01KM/OPTCL/T&ME/ATPPL/26/452 dated 23.12.2011 alongwith its subsequent amendments. Copies of the said purchase orders with amendments are annexed herewith as Annexures P-2 to P-5 respectively.

That the time of delivery of goods was essence of the contract and as per all such contracts, the delivery was supposed to be made on or before 31.12.2013 as the utilisation of the said material was to be done for the purpose of the project which have been undertaken by the company M/s Powercon Projects and Associates Ltd from a government organisation (OPTCL). It is alleged that the said organisation had to release the payment which was to be made to the respondent and it was so mentioned in the contract.

Its also case of the petitioner that as per the orders, the respondent company was supposed to supply those goods, it was only after the delivery of the goods, the payments were to be made. The company was not in a position to supply the goods in time and the deadline of 31.12.2013 was approaching fast, for which on 26.12.2013 the respondent-company insisted, blackmailed and collected the payments with respect to supply of material for three projects by way of three post-dated cheques as security. The said goods were yet to be supplied and the said cheques were given only for the present that the supply may be made and it was made a clear understanding between the complainant-company and M/s Powercon Projects and Associates Ltd that the cheques were to be deposited for clearance only after the materials were supplied/delivered to the respective sites and only after funds were released from OPTCL to M/s. Powercon Projects and Associates Ltd.

That the said three post-dated cheques, which were issued by M/s Powercon Projects and Associates Ltd were for a sum of Rs.24,21,280/- dated 10.02.2014, Rs.8,18,114/- dated 15.02.2014 and Rs.23,98,840/- dated 28.02.2014. The said three cheques were post-dated cheques and were signed by the Managing Director of M/s Powercon Projects and Associates Ltd. namely Sh. Tathagat Mohanty. Subsequently, due to accounting issues, the said cheques were replaced with another three sets of cheques having joint signatures of Sh. Tathagat Mohanty and petitioner No.1. Copies of the said cheques are annexures herewith as Annexure P-8.

Therefore, it is asserted that the petitioners have nothing to do with the business of the company. There is no liability under Section 138 of the Act and learned counsel submitted that petitioner No.1 Amrita Mohanty is also signatory to the cheque, of the petitioners is active in the day to day proceedings. Remaining allegations have been refuted.

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

Hon'ble the Supreme Court in *National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and another*, 2010(3) SCC 330 has made the following observations:-

> *13. Now, let us consider whether the above-mentioned complaint in both cases has satisfied the necessary ingredients to attract Section 141 insofar as the respondents, namely, Directors of the company are concerned. Section 141 of the Act has been interpreted by this Court in various decisions. As to the scope of Section 141 of the Act, a three-Judge*

Bench of this Court considered the following questions which had been referred to it by a two-Judge Bench of this Court in SMS Pharmaceuticals vs. Neeta Bhalla and Anr. (2005) 8 SCC 89:

"(a) Whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfil the requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the company.

(b) Whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(c) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the managing directors or joint managing director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against."

While considering the above questions, this Court held as under:

"18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person 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 the respondent falls within the 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.

19. 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 the question posed in sub-para (b) has to be in the 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 the 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 the 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 the 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 the 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."

Therefore, this Court has distinguished the case of persons who are in-charge of and responsible for the conduct of the business of the company at the time of the offence and the persons who are merely holding the post in a company and are not in-charge of and responsible for the conduct of the business of the company. Further, in order to fasten the vicarious liability in accordance with Section 141, the averment as to the role of the concerned Directors should be specific. The description should be clear and there should be some unambiguous allegations as to how the

> *concerned Directors were alleged to be in- charge of and was responsible for the conduct and affairs of the company.*

A bare perusal of the complaint (Annexure P-1) transpires that all the petitioners have been running and looking after the business of the company jointly. It is specifically averred in Para No.8 that the petitioners are the incharge of and responsible for the day-to-day conduct of business of the company and they actively participated in the transaction with the complainant. Thus, all the accused are jointly and severally liable for commission of the offence. The accused are liable to be prosecuted under the Act.

At this stage, the contents of the complaint are relevant in order to ascertain the role of the petitioners. Hon'ble the Supreme Court in *N. Rangachari Vs. Bharat Sanchar Nigam Ltd., (2007) 5 SCC 108* has observed in Para No.26 as under:-

> *"In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the two dishonoured cheques were issued by the company, the appellant and another were the Directors of the company and were incharge of the affairs of the company. It is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons incharge of the affairs of the company. Obviously, the complaint refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. We have no hesitation in overruling the argument in that behalf by the learned Senior Counsel for the appellant."*

As a result, this court is of the view that this criminal revision is not sustainable in the eyes of law and it cannot be inferred at this stage, that the petitioners are not associated with the business transactions and affairs of the company.

Dismissed.

(RAJ SHEKHAR ATTRI)
JUDGE

31.08.2018
m. sharma

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No