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

% Judgment delivered on: 16.01.2018

\+ CRL.M.C. 2002/2011

MANOJ KUMAR GUPTA ..... Petitioner

versus

BARCLAYS BANK, PLC. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Arti Bansal, Adv.
For the Respondent : Mr. Jeevan Kumar, Adv. with Mr.Sunny Verma, Adv. for Mr.RP. Agarwal, Adv.

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
16.01.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner impugns order dated 02.04.2011 whereby the petitioner has been summoned in a complaint filed under Section 138 of the Negotiable Instruments Act ("hereinafter referred to as 'the Act') being C.C. No.26713/2010.

2. Learned counsel for the petitioner submits that the petitioner though was a director in the accused company, however had tendered his resignation on 24.03.2010. It is contended that the resignation was

thereafter accepted on 19.08.2010 and the requisite form filed with the Registrar of the Companies. Learned counsel further submits that the subject cheque based on which the complaint has been filed was issued on 21.07.2010, after the petitioner had already resigned and had ceased to participate in any of the board meetings or take part in any decision making of the accused company. Learned counsel further contends that even the averments in the complaint are vague and do not specifically show that the petitioner was in-charge or was responsible to the company for the conduct of its business.

3. Learned counsel for the respondent, on the other hand, contends that the fact that the petitioner was a director on the date when the cheque was issued is established from the fact that the resignation was accepted later. He contends that it would be a disputed question of fact as to whether on the relevant date when the cheque was issued petitioner continued as a director or not and disputed question of fact are not to be gone into at this stage.

4. Though it would be a disputed question of fact as to whether the had tendered resignation prior to the date when the cheque was issued and was dishonoured, however, what is to be seen is whether the complainant has made out a case for proceeding under Section 141 of the Act against the petitioner, who has been styled as a director.

5. It may be kept in mind that liability under Section 141 of the Act is vicariously fastened on a person who is in-charge and

responsible to the company for the conduct of business of the company. The principal liability is of the company and vicariously the same is sought to be fastened on such person under Section 141 of the Act.

6. It may also be noticed that when notice intimating dishonour of cheque was served on the petitioner, the petitioner replied contending that the petitioner had already resigned from the company.

7. About the role of petitioner, the complainant in the complaint has stated as under:-

> *"2. That Accused No. 1 is a company incorporated under the Companies Act, 1956, having its Registered Office at 3rd Floor, Abhishek Complex, Akshar Chowk, Old Padra Road, Vadodra, Gujarat-390020 and deals in the business of Information Technology services. The Accused Nos. 2 to 8 are the directors of the said Accused No.1 company, and as such are in charge of and are responsible for the conduct of the business and day to day affairs of the said Accused No.1 Company.*
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> ***** ***** *****
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> *11. That the aforesaid Cheque was issued by the Accused No.1, in discharge of its legal liability through its director accused No. 2 in respect of the availed Facilities aggregating to INR 75,000,000/- (Rupees Seventy Five Million only) by Accused No.1. The Accused had issued the said cheque with malafide intention of not getting the said cheque cleared/paid when presented for encashment. The said cheque was returned by ICICI Bank Ltd., C-17, C- Block Market, Vasant Vihar, New Delhi-110057, as dishonoured with the remarks*

"Account blocked". In this way, the Accused have cheated the Complainant Bank intentionally and deliberately. For the aforesaid act of the Accused No.1, the Accused Nos. 2 to 8 are also liable as they are the directors and responsible to the Accused No. 1 Company for the conduct of the business and day to day affairs.

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15. The Complainant submits that the Accused Nos. 1 to 8 had the dishonest intention from the very beginning when the aforementioned Cheque was issued in favour of the Complainant."

(underlining supplied)

8. Perusal of the complaint shows that it only states that the petitioner (who was arrayed as accused No.4) is a director in the said company. The allegation that the petitioner was in-charge and responsible for the conduct of business are words that have been simpliciter picked up from the wording of Section 141 of the Act. The averment in paragraph 2 of the complaint shows that the contention that the petitioner is in-charge and responsible for conduct of business is premise solely on the basis that the petitioner is a director of the said company.

9. In paragraph 11, once again the liability is sought to be fastened on the petitioner solely on the ground that the petitioner is a director and responsible to the company for conduct of its business. The averments in paragraph 15 as noticed above are mere bald averments

without any basis being spelt out in the complaint.

10. The Supreme Court in *SMS Pharmaceuticals vs. Neeta Bhalla* (2005) 8 SCC 89 has held that in order to bring the case within Section 141 of the Act, the complaint must disclose necessary facts which makes a person liable. It is necessary to specifically aver in the complaint that at the time when the offence was committed the person accused was in-charge of or responsible for conduct of the business of the company. This averment is a necessary requirement of Section 141 of the Act and has to be made in the complaint.

11. As noticed above, the liability is sought to be fastened on the petitioner solely on the ground that the petitioner is a director in the company. Merely being a director does not make a person responsible or in control of the company.

12. Even though assuming that the resignation of the petitioner was not accepted as on the date when cheque was issued or dishonoured, to my mind, the complaint does not disclose such facts as would show that there is even an allegation that petitioner was in control or in-charge or responsible to the company for the conduct of its business. The averments in the complaint are merely reproduction of the Section and nothing more.

13. As the complaint fails to disclose facts which show that the petitioner was in-charge or responsible, to my mind, the complaint lacks necessary ingredients that have to be pleaded. The Complain

does not satisfy the test as laid down in *SMS Pharmaceuticals (Supra)*

14. In view of the above, the summoning order cannot be sustained. Accordingly, the same is set aside.

15. The petition is allowed in the above terms.

16. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

JANUARY 16, 2018/km