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

+ CRL.M.C. 3707/2018 and CRL.M.A. No. 28641/2018

GANJI PRAVEEN KUMAR Petitioner
Through Mr. K. Gangadharan, Adv.

versus

IFCI FACTORS LTD Respondent
Through Mr. Rishab Raj Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **04.10.2018**

1. By this petition under Section 482 Cr.P.C., petitioner has prayed for quashing of the Complaint Case no. 765/2016 titled IFCI Factors Limited vs. VNR Infrastructures Limited & Ors. pending in the court of learned Metropolitan Magistrate, South East District, Saket Courts, New Delhi.
2. Aforesaid complaint under Section 138 of the Negotiable Instruments Act, 1881 ("the Act", for short) was filed by the respondent against M/s. VNR Infrastructures Ltd. (accused no.1) wherein petitioner has been impleaded as accused no. 3, being Director and CFO of the accused no.1. A categorical assertion has been made in the complaint that petitioner is Director and CFO of accused no.1. Further that the petitioner (besides

accused no.2 and 4 to 9) was Incharge of day-to-day business affairs of accused no. 1 at the relevant time, inasmuch as cheque had been issued by the accused no. 1 at their behest and with their full knowledge. Copies of Form No.20-B, Form No. DIR-12 and Form No.30 were annexed with the complaint to support the contentions that petitioner was the Director on the Board of accused no. 1. It is alleged that petitioner was thus, liable for the commission of offence under Section 138 of the Act read with Section 141 of the Act.

3. During the course of hearing, learned counsel for the petitioner has not disputed that petitioner is whole time Director and CFO of accused no.1.

4. Learned counsel for the respondent, by placing reliance on Form 20-B, has contended that petitioner holds 24,39,024 equity shares of the accused no. 1. In Form no. 20-B also, petitioner has been shown as whole time Director of the accused no. 1.

5. By placing reliance on the National Small Industries Corporation Ltd. vs. Harmeet Singh Paintal, 2010 (2) SCR 805, learned counsel for the petitioner has contended that no specific role of the petitioner has been assigned in the complaint to show that he was Incharge of day-to-day affairs of the accused no. 1. Only bald statement in the complaint that petitioner,

amongst others was responsible for the operational affairs of the accused no. 1, was not sufficient to prove that petitioner was in fact the Incharge of day to day business affairs of the accused no.1. It is further submitted that if Managing Director is there in a company, only he can be prosecuted. In absence of the Managing Director, the whole time Director can be prosecuted by taking aid of Section 141 of the Act. As per the learned counsel petitioner was not liable for prosecution by taking aid of Section 141 of the Act since Managing Director of accused No.1 was already arrayed as accused No. 2.

6. Per contra, learned counsel for the respondent has contended that specific averments have been made in the complaint that petitioner was the Director and CFO of the accused no.1 and was Incharge of day-to-day business and management of operational affairs of accused no.1. By placing reliance on Form no.20-B, it is contended that petitioner was whole time Director of the accused no.1, thus, was liable to be prosecuted for the offence under Section 138 of the Act committed by the accused no.1, in view of the law laid down in the National Small Industries Corporation Ltd. (supra). Reliance has also been placed on Standard Chartered Bank vs. State of Maharashtra and Ors., MANU/SC/409/2016.

7. In Standard Chartered Bank (supra), National Small Industries Corporation Ltd. (supra) has been considered. Supreme Court in para 34 of the Standard Chartered Bank has held as under:-

“considering the totality of assertions made in the complaint and also taking note of the averments put forth relating to the respondent Nos. 2 and 3 herein that they are whole-time Director and Executive Director and they were in charge of day to day affairs of the Company, we are of the considered opinion that the High Court has fallen into grave error by coming to the conclusion that there are no specific averments in the complaint for issuance of summons against the said accused persons. We unhesitatingly hold so as the asseverations made in the complaint meet the test laid down in Gunmala Sales Pvt. Ltd. (supra).”

8. In National Small Industries Corporation Ltd. (supra), Supreme Court in para 24 has held thus:-

“24) [Section 291](#) of the Companies Act provides that subject to the provisions of that Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do. A company, though a legal entity, can act only through its Board of Directors. The settled position is that a Managing Director is prima facie in-charge of and responsible for the company's business and affairs and can be prosecuted for offences by the company. But insofar as other Directors are concerned, they can be prosecuted only if they were in-charge of and responsible for the conduct of the business of the company. A combined reading of [Sections 5](#) and [291](#) of Companies Act, 1956 with the definitions in clauses 24, 26, 30, 31 and 45 of [Section 2](#) of that Act would show that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of

the company:

- (a) the Managing Director/s;
- (b) the whole-time Director/s;
- (c) the Manager;
- (d) the Secretary;
- (e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;
- (f) any person charged by the Board of Directors with the responsibility of complying with that provision;

Provided that the person so charged has given his consent in this behalf to the Board;

- (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

But if the accused is not one of the persons who falls under the category of "persons who are responsible to the company for the conduct of the business of the company" then merely by stating that "he was in-charge of the business of the company" or by stating that "he was in- charge of the day-to-day management of the company" or by stating that "he was in-charge of, and was responsible to the company for the conduct of the business of the company", he cannot be made vicariously liable under [Section 141\(1\)](#) of the Act. To put it clear that for making a person liable under [Section 141\(2\)](#), the mechanical repetition of the requirements under [Section 141\(1\)](#) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under sub-section (2) of [Section 141](#) of the Act."

9. In this case specific assertions have been made in the complaint that

petitioner was Director and CFO of accused no.1 and was responsible for the conduct of day to day business affairs of the accused no.1. Not only this the forms enclosed with the complaint show that petitioner was whole time Director of the accused no.1, inasmuch as this fact has been admitted by the learned counsel for the petitioner during the course of hearing, thus he would be liable for prosecution, in view of the law laid down in National Small Industries Corporation Ltd. (supra).

10. For the foregoing reasons, petition is dismissed with costs of ₹15,000/- to be deposited with the Kerala Chief Minister's Distress Relief Fund within two weeks. Receipt be produced before the Trial Court.

11. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

OCTOBER 04, 2018

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