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

\+ CRL.M.C. 1215/2017

LATA AGRWAL ..... Petitioner

Through: Mr. Rahul Rathore and Mr. Karunesh Kumar Shukla, Advs.

versus

M/S MICROMAX ..... Respondent

Through: Mr. Mudit Sharma, Mr. Parvez Alam Khan and Mr. Mukesh Kumar, Advs.

AND

CRL.M.C. 1514/2017

RAJEEV GARG ..... Petitioner

Through: Mr. Rahul Rathore and Mr. Karunesh Kumar Shukla, Advs.

versus

MICROMAX INFO LTD ..... Respondent

Through: Mr. Mudit Sharma, Mr. Parvez Alam Khan and Mr. Mukesh Kumar, Advs.

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

**ORDER**

% **20.02.2018**

By these petitions under Section 482 of the Code of Criminal Procedure, 1973, petitioners have prayed for quashing of the summoning order dated 17th November, 2016 passed by the learned Metropolitan Magistrate, Delhi in a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') filed by the respondent. Petitioner-Lata Agrawal has been arrayed as accused no. 3; whereas petitioner-Rajiv Garg as accused no.4 in the complaint under Section 138 of the Act.

Learned counsel for the petitioner has contended that petitioner-Lata Agarwal is partner in the accused no.1-M/s Gayatri Infotel (for short, the Firm). However, she is a house wife. At no point of time she was 'incharge' of the business affairs of the firm. She has not signed the cheque. Petitioner-Rajiv Garg was employed in a private company which had no concern or involvement in the business affairs of accused no.1. Rajiv Garg had briefly assisted in the business of accused no.1 from January, 2013 to August, 2014. He was not involved in the business affairs of the accused no.1 when the cheque was issued. Rajiv Garg was neither incharge nor in control of the business of the accused no.1. Accordingly, petitioners cannot be held vicariously liable under Section 141 of the Act for the offence allegedly committed by the firm under Section 138 of the Act. Statutory requirements, as envisaged in Section 141 of the Act, have not been complied with thus, learned Metropolitan Magistrate ought not have summoned the petitioners. Reliance has been placed on Katta Sujatha (Smt) vs. Fertilizers & Chemicals Travancore Ltd. & Anr. (2002) 7 SCC 655, S.M.S Pharmaceuticals Ltd. vs. Neeta Bhalla and Anr. (2005) 8

SCC 89, N.K. Wahi vs. Shekhar Singh & Ors. (2007) 9 SCC 481, Saroj Kumar Poddar vs. State (NCT of Delhi) and Another (2007) 3 SCC 693 and Ramrajsingh vs. State of Madhya Pradesh and Another (2009) 6 SCC 729.

Per contra, learned counsel for the respondent (complainant) has contended that specific averments have been made in the complaint that accused nos. 2 and 3 were partners of the firm and accused no. 4 was the authorised signatory and were responsible for the day to day activities of the firm. It has been further averred in the complaint that accused nos. 2, 3 and 4 had been personally dealing with the complainant on behalf of the accused no.1. Accordingly, statutory requirements, as contained in Section 141 of the Act, stands complied with and learned Metropolitan Magistrate has rightly summoned the petitioners. It is further submitted that disputed facts cannot be looked into at this nascent stage and are subject matter of trial. Complaint case cannot be quashed against the petitioners, in view of the specific averments made in the complaint against them. He has placed reliance on Standard Chartered Bank vs. State of Maharashtra and Ors. MANU/SC/0409/2016, Rallis India Limited vs. Poduru Vidya Bhushan and Others (2011) 13 SCC 88, K.K. Ahuja vs. V.K. Vora and Another (2009) 10 SCC 48 and Shashi Jindal and Ors. vs. Govt. of NCT and Ors.

MANU/DE/3286/2015.

I have considered the rival contentions of both the parties and perused the material placed on record as also the judgments relied upon by the learned counsel for the parties.

Section 141 of the Act reads as under :-

> "(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]
> (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.— For the purposes of this section,—
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> (a) "company" means anybody corporate and includes

a firm or other association of individuals; and
(b) "director", in relation to a firm, means a partner in the firm."

A perusal of aforesaid Section makes it clear that if the person committing the offence under section 138 is a company /firm then every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, shall be liable to be proceeded against and punished besides the company/firm. Obviously, to attract the provisions of Section 141 of the Act averments have to be made in the complaint against such accused that he/she was incharge or responsible for the business affairs of the firm/company or that offence was committed with his consent, connivance or negligence. In K.K. Ahuja (Supra), Supreme Court has summarised the position emerging from Section 141 of the Act in the following manner:-

> "(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix `Managing' to the word `Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.
> (ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no

> need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under Sub-section (2) of Section 141.
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> (iii) In the case of a Director, Secretary or Manager (as defined in Section 2(24) of the Companies Act) or a person referred to in clauses (e) and (f) of Section 5 of Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1). No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that Sub-section.
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> (iv) Other Officers of a company can not be made liable under Sub-section (1) of Section 141. Other officers of a company can be made liable only under Sub-section (2) of Section 141, be averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

In this case, a perusal of complaint makes it clear that specific averments have been made against the petitioners, who have been arrayed as accused nos. 3 and 4. In para 2 of the complaint, it has been specifically averred that accused no.1 is a partnership firm and accused nos. 2 and 3 are the partners of the said firm and accused no. 4 is authorised signatory of the firm and were responsible for the day to day activities of the said firm. In para 3 of the complaint also, it has been stated that the accused nos. 2, 3 and 4 had been personally dealing with the complainant on behalf of the accused no.1. These averments are specific and meets the requirements as contained in Section 141 of the Act. The judgments relied upon by the learned counsel for the petitioner are in the context of different facts and are of no help to the petitioner. In Katta Sujatha (Supra), no averment in the complaint was made that petitioner was incharge of and was responsible to the firm for, the conduct of the business of the firm, inasmuch as, no averment was made that the offence was committed in connivance with the petitioner or that the same was attributed to any neglect on the part of the accused in the matter of issuance of the cheque. In S.M.S. Pharmaceuticals (Supra), it has been held that it is necessary to aver that at the time of offence committed the accused was incharge and responsible for the conduct of the business of the company and without this averment requirement of Section 141 of the Act cannot be said to be satisfied. In other cases also, it has been held that specific averments are required to be made to satisfy the requirements of Section 141 of the Act.

As already stated above, in this case, specific averments have been made against the petitioners which meet the statutory requirement of Section

141 of the N.I. Act. The pleas taken by the petitioner that they were neither incharge of the firm nor responsible for managing the day-to-day affairs of the firm, are subject matter of trial. Accordingly, both the petitions are dismissed with costs of ₹25,000/- to be paid by each of the petitioners to the complainant. Costs be recovered by the trial court and made over to the complainant. Miscellaneous applications are disposed of as infructuous.

**A.K. PATHAK, J.**

**FEBRUARY 20, 2018**
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- Crl MA 2890/18 for Placing on record
- D/o Matter