

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Order: February 05, 2019
+ **CRL.M.C. 646/2017, CRL.M.A. - 2777/17**

VIPUL GUPTAPetitioner
Through: Mr. Vijay Aggarwal, Mr. Mudit Jain,
Ms. Barkha Rastogi, Mr. Shailesh
Pandey, Mr. Ayush Jindal, Mr. Khurram
Salim & Ms. Shephali Ailawadi,
Advocates.

versus

M/S JAPAN ESTATE PVT LTDRespondent
Through: Mr. Arun Vohra, Advocate.

+ **CRL.M.C. 1323/2017, CRL.M.A.-5339-5340/2017**

HARENDRA SINGH KHOKHARPetitioner
Through: Mr. Vijay Aggarwal with
Mr. Mudit Jain, Ms. Barkha Rastogi,
Mr. Shailesh Pandey, Mr. Ayush Jindal,
Mr. Khurram Salim & Ms. Shephali
Ailawadi, Advocates.

versus

M/S JAPNA ESTATE PVT LTDRespondent
Through: Mr. Arun Vohra, Advocate.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

Since the above captioned petitions arise out of one complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI

Act'), therefore with the consent of learned counsel for the parties, above captioned petitions have been heard together and are being disposed of by this common order.

Impugned order of 7th December, 2015 summons petitioners as accused in complaint under Section 138 of NI Act as they are Directors of the accused company. Against the summoning order, petitioners had preferred a revision petition which stands dismissed vide impugned order of 24th January, 2017.

Learned counsel for petitioners submits that the allegations against the petitioners are contained in paragraph no. 2 of the complaint under Section 138 of NI Act and its bare perusal reveals that the allegations leveled against petitioners are not specific and so no case for the summoning is made out. Reliance is placed upon Supreme Court's decisions in *Pepsico India Holdings Private Limited vs. Food Inspector & Anr.*, (2011) 1 SCC 176; *Ashoke Mal Bafna vs. Upper India Steel Manufacturing and Engineering Company Ltd.*, (2018) 14 SCC 202 and *Standard Chartered Bank vs. State of Maharashtra & Ors.* 2016 SCC Online SC 304 in support of the above submissions.

Learned counsel for the respondent/complainant supports the impugned judgment and seeks to rely upon the decisions in *Monaben Ketan Shah & Anr. Vs. State of Gujarat & Ors.*, (2004) 7 SCC 15; *A.K.Singhania vs. Gujarat Sate Fertilizer Co.Ltd. & Ors.*, (2013) 16 SCC 630; *Gunmala Sales Pvt. Ltd. Vs. Anu Mehta*, (2015) 1 SCC 103; *Standard Chartered Bank vs. State of Maharashtra*, 2016 SSC Online SC

304; *Shashi Jindal & Ors. Vs. State of NCT of Delhi & Ors.*, CrI.M.C.3074/2011 (Delhi High Court); *Shree Raj Travels & Tours Ltd. & Ors. Vs. Destination of the World Pvt. Ltd.*, (2010) 119 DRJ 75 (Delhi High Court); *Rallis India Ltd. Vs. Poduru Vidya Bhushan & Ors.*, (2011) 13 SCC 88; *Paresh P. Rajda vs. State of Maharashtra* (2008) 7 SCC 442; *SMS (I) - S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr.*, (2005) 8 SCC 89; *SMS (II) - S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr.*, (2007) 4 SCC 70; *N.K.Wahi vs. Shekhar Singh & Ors.*, (2007) 9 SC 481 and *N. Rangachari vs. Bharat Sanchar Nigam Ltd.*, (2007) 5 SCC 108.

Upon hearing and on perusal of revisional order, trial court order, complaint in question and the decisions cited, I find that the averments made in the complaint in question are to the effect that petitioners as Directors were actively participating in day-to-day affairs of accused company and were responsible for the conduct of day-to-day affairs and were managing the accused company.

The afore-referred averments made in the complaint in question do justify the summoning of petitioners in the complaint in question as during the course of hearing, copy of Board Resolution dated 27th July, 2015 of the accused company was produced before this Court and its perusal reveals that petitioner- *Harendra Singh Khokhar* was designated as authorized signatory of bank account of accused company and he was authorized to honour the cheques etc. Revisional Court in the impugned order had extracted paragraph 4 of the complaint in question and its perusal reveals that petitioners were very much active in issuance of

cheques in question, thereby justifying their summoning in the complaint in question.

In the face of the afore-referred Board Resolution of 27th July, 2015 and the averments made in paragraph 4 of the complaint in question, I find that the decisions relied upon by petitioners' counsel are of no avail to the case of petitioners.

Finding no infirmity in the impugned order as well as trial court order, both these petitions are accordingly dismissed without commenting on the merits of the case.

Both the petitions and applications are accordingly disposed of.

FEBRUARY 05, 2019
ak

(SUNIL GAUR)
JUDGE

भारतमेव जयते