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

% **Pronounced on: 13th April, 2022**

\+ CRL.M.C. 1530/2020, CRL.M.As. 8217/2020 & 8218/2020

SANJIT AMARJIT SINGH OBERAI ..... Petitioner

Through: Mr. Yash Chaturvedi, Advocate

versus

INDIABULLS FINANCIAL SERVICES LTD ..... Respondent

Through: Mr. Ashish Sheoran and Ms. Smita Bankoti, Advocates

\+ CRL.M.C. 1531/2020, CRL.M.As. 8221/2020 & 8222/2020

SANJIT AMARJIT SINGH OBERAI ..... Petitioner

Through: Mr. Yash Chaturvedi, Advocate

versus

INDIABULLS FINANCIAL SERVICES LTD ..... Respondent

Through: Mr.Ashish Sheoran and Ms.Smita Bankoti, Advocates

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

JUDGMENT

1. These petitions have been filed under Sections 482 Cr.P.C. for quashing of two complaints being complaint Nos.16416/2017 and 16412/2017 filed under Section 138 of Negotiable Instruments Act, 1881 ('N.I. Act', for short) qua two dishonoured cheques pending before the learned Metropolitan Magistrate, Patiala House. Since the parties are the

same and the pleas taken are materially the same, these two petitions are being disposed of by this common order.

2. The respondent/Indiabulls Financial Services Ltd. instituted the two complaints against Internet (India) Technologies Ltd. arrayed as accused No.1 in the complaint they had filed under Section 138 of N.I. Act. They also arrayed the Directors too as the accused in the said complaint.

3. The stand taken by the petitioner in both the cases is that it was the company that had availed the loan facility against the pledge of shares in terms of the Loan-cum-Pledge Agreement dated 25th June, 2007, to the extent of Rs.1,89,23,046/-, as on 20th July, 2008. Two cheques had been issued by the accused/company bearing Nos.879266 & 879267 both dated 21st July, 2008 drawn on Bank of India, Mumbai, Main Branch, Mumbai for Rs.50,00,000/- and Rs.32,04,401/- respectively in favour of the respondent No.1 towards partial discharge of its liability. The cheques on presentation with the HDFC Bank Ltd., Forte Branch, Mumbai, were returned unpaid due to 'insufficiency of fund' in the account of the accused/company.

4. It is submitted by Mr. Yash Chaturvedi, learned counsel for the petitioner, that the petitioner had resigned from the Directorship of the Company and there was not one averment in the complaints, specifically disclosing how the petitioner was a necessary party to the proceedings. There was only a single sweeping averment in the complaint that the accused Nos.1 to 4 are Directors of the accused/Company and hence were responsible for the day-to-day functioning and affairs of the

accused/Company. This, according to the learned counsel, did not meet the requirements of Section 141 of the N.I. Act.

5. Reliance has been placed on the decision of the Supreme Court in ***SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla***, (2005) 8 SCC 89, where, it has been held that if a person, who was a Director of the accused/Company, apart from the signatory and a Managing Director of a company, was sought to be prosecuted, then, there has to be specific averments in regard to the role played by that particular Director who is sought to be prosecuted. Else the averment would not justify the summoning of such a Director as an accused.

6. Reliance has also been placed on the judgments of the Supreme Court in (i) ***Sabitha Ramamurthy & Ors. Vs R.B.S. Channabasavaradhya*** (2006) 10 SCC 581, (ii) ***Saroj Kumar Poddar Vs. State,*** (2007) 3 SCC 693, (iii) ***N.K. Wahi Vs. Shekhar Singh***, (2007) 9 SCC 481 & (iv) ***N.S.I.C. Ltd. Vs. Harmeet Singh Paintal***, (2010) 3 SCC 330.

7. According to the learned counsel for the petitioner, the signatory of the impugned cheques was Mr. Mahesh Jain, who is arrayed as accused No.5 in the complaint. The petitioner had resigned from the company on 31st March, 2007, well before the cheques had been issued as also much before the loan was sanctioned. Reliance has been placed on the resignation letter placed on the record as Annexure-I. Hence, it was prayed that the complaint case be quashed with regard to the petitioner.

8. A short reply has been filed by the respondent in both the matters. The stand taken by the respondent and as submitted by the learned

counsel for the respondent, is that the loan document had been signed by the petitioner whose PAN Card details, were also duly furnished. It is further submitted that the stand taken by the petitioner, that he was not a Director at the time when the loan was availed of by the accused/Company, was false. A copy of the loan agreement has been placed on the record as Annexure R-2.

9. Further, it is submitted that the so-called resignation letter was not supported by any Board Resolution nor Form 32 has been placed on the record to prove the factum of resignation having been accepted by the Company. No intimation had also been given to the respondent in response to the legal notice issued to the accused, when the cheques were dishonoured. Thus, it was submitted that this was only an attempt to prolong the litigation and ought to be dismissed.

10. While it is correct that the courts have taken the view that a Director of a company who was sought to be prosecuted must be assigned a clear role in the commission of the offence, this is not a case where the mere claim of the petitioner that he had resigned as a Director well ahead of the sanctioning of the loan can be accepted at face value. It is not a case where the documents produced by the petitioner is of such sterling quality that the court would be prompt in accepting the stand of the accused, to hold that to continue proceedings against him would be an abuse of the process of the court.

11. In the first place, the 'Registration Kit Loan Against Shares' placed on the record as Annexure R-2, lists out the Full Time Directors of the Company at page 12 of the e-file and the petitioner has been named as

one such Full Time Director. Had he resigned before the execution of the said document, why would his name be included? If the petitioner has an explanation, he can offer it but only at his turn, during trial. The document, it may be noted once again, is signed on 25th June, 2007. It includes details of the petitioner's documents. His shareholding has also been disclosed i.e. that the petitioner is holding 300 shares. It would be for him to prove during trial that such a shareholding did not allow him to conduct the business of the Company or that despite being a Full Time Director, he had no say in the conduct of the Company's business.

12. Secondly, the claim of the resignation is founded on a letter placed on the record as Annexure-I, which reads as under :

31st March, 2007

To:
The Board of Directors
Internet India Technologies Limited
Nariman Point
Mumbai-400 021.

Sir,

Sub: Resignation

On account of my taking up assignment elsewhere, it is not possible for me to continue with your esteemed organization. I, therefore, tender my resignation from the company with immediate effect. My resignation may kindly be accepted and Form No. 32 be filed with Registrar of Companies utmost expeditiously.

Thanking you

Yours faithfully

(SANJIT SINGH OBERAI)

13. It is addressed to the Board of Directors. It only bears an endorsement of receipt by some undisclosed person. There is nothing to show that the resignation has been accepted. No Board Resolution has been annexed nor has a certified copy of Form 32 filed with the Registrar of the Companies been placed on the record. Thus, *prima-facie* without proof that such a letter had been written on the date stated on the letter and in the absence of evidence of statutory compliance for the acceptance of the resignation and change in the constitution of the Board of Directors, no credibility can be attached to this so-called letter of resignation to exonerate the petitioner from criminal liability.

14. There is no merit in the present petitions. The same are dismissed alongwith the pending applications with cost of Rs.10,000/- in each petition, to be deposited with the "Saket Bar Association Welfare Fund" [Account No.32895685000, SBI Bank, Saket Courts], within a week. The receipts be filed in the Registry.

6. In the event, the receipts are not filed within the date fixed, the Registry is directed to place these matters again before the court.

15. Copy of this order be sent to the learned Trial Court.

16. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

APRIL 13, 2022
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