

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203(3)

CRM-M-28418-2022 (O&M)
Date of Decision.:23.08.2023

Harshad Ganesh Kachhara

Petitioner

Vs.

India Infoline Housing Finance Limited

Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. J.S. Mehndiratta, Advocate
for the petitioner.

Mr. Vineet Sehgal, Advocate
for the respondent.

DEEPAK GUPTA, J. (ORAL)

On 11.07.2022, following order was passed:

“Inter alia contends that the petitioner was an Investor Director nominated by IIRF India Realty XXVI Limited and Vistra ITCL (India) Limited (formerly known as IL&FS Trust Company Limited), acting through its Investment Manager and the petitioner was merely a professional employee of IL&FS Company who came to be appointed as the investors' nominated Non-Executive Director on the Board of the accused company on 12.07.2017 and thus, no case is made out against the present petitioner. It is further submitted that on 17.04.2012, a Share Subscription and Shareholders' Agreement was executed between the Investors, accused company and the promoters of the accused company and by virtue of the same, the investors were entitled to nominate the Directors to the Board of the accused company and as per Article 36(b)(ii) and Article 36(b)(iii) of the Articles of Association, the Investor Director was to be a non-executive Director and was not to be categorized as an “officer in

default” or “Occupier” for the purpose of any applicable law. It is contended that the petitioner was nominated by the Board of the accused company on 12.07.2017 as one of the Investor Directors (Non-Executive Director) and the said appointment was not taken up in the General Board Meeting held on 30.09.2017 and before the next general body meeting took place, he had resigned on 07.09.2018 and thus, was not even a full time Director. It is further contended that the petitioner was neither Incharge of the day-to-day affairs of the company nor he had issued any instructions of ECS and the petitioner is based out of Mumbai and it is only after inspection of the file, the petitioner came to know that the statutory notice dated 17.10.2019 under Section 25 of the Payment and Settlement Systems Act, 2007, had not been issued to the petitioner and had only been issued to the accused company and its promoters. It is further submitted that electronic clearing service mandate was issued on 05.02.2016, i.e., prior to the appointment of the petitioner on 12.07.2017. It is further argued that the legal principle applicable to such proceedings is similar to procedure prescribed under Sections 138/141 of the Negotiable Instruments Act, 1881. In support of his abovesaid arguments, learned counsel for the petitioner has relied upon the judgments passed by the Hon'ble Supreme Court in SMS Pharmaceuticals Limited Vs. Neeta Bhalla and another, reported as 2005(8) SCC 89, Pooja Ravinder Devidasani Vs. State of Maharashtra and another, reported as (2014) 16 Supreme Court Cases 1 and Birla Corporation Limited Vs. Adventz Investments and Holdings Limited and others, reported as 2019 SCC OnLine SC 682.

It is further submitted that in similar matters, notice of motion has already been issued and interim orders have also been passed in favour of the petitioner and the same is listed for 24.08.2022.

Notice of motion for 24.08.2022.

To be heard alongwith CRM-M-48523-2019.

In the meantime, the personal appearance of the petitioner

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before the trial Court is exempted, subject to the following conditions:-

- i) Petitioner shall be represented through his counsel;*
- ii) shall not delay/stall the trial proceedings;*
- iii) shall not dispute his identity as accused;*
- iv) shall have no objection if the prosecution evidence is recorded in his absence, but in the presence of his counsel and will never raise a plea either before the trial Court or in appeals/revisions etc. that the prosecution evidence has been recorded in his absence or the proceedings have been conducted in his absence;*
- v) shall appear before the trial Court as and when required by the trial Court;*
- vi) any other condition which the trial Court may impose.*

In the meantime, further proceeding qua the petitioner is stayed. It is clarified that the proceedings against other accused persons may continue.

A photocopy of this order be placed on the files of other connected cases.”

Today learned counsel for the respondent has very fairly conceded the fact that no prior notice as required under Section 25 of the Payment and Settlement System Act, 2007 had been served upon the petitioner before filing the complaint and as such, he has no objection if the petition qua the petitioner is accepted.

In view of the aforesaid statement made by learned counsel for the respondent, the present petition is hereby accepted.

As such, criminal complaint bearing No.NACT-52921-2019 dated 21.11.2019 (Annexure P-6) titled as ‘India Infoline Housing Finance Ltd. Vs. Yamuna Realty Pvt. Ltd. & Others’ along with the summoning

order and all the consequential proceedings arising therefrom are hereby
quashed qua the petitioner.

Pending application(s), if any, also stands disposed of.

August 23, 2023
Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No