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

% ***Reserved on:14.09.2023***
Pronounced on: 18.09.2023

\+ **CRL.M.C. 6029/2019, CRL.M.A. 41199/2019**

DEVINDER SINGH ..... Petitioner

Through: Mr. T.R. Sandhu, Advocate

versus

AXIS BANK LTD. ..... Respondent

Through: Ms. Aishwarya Mishra, Mr. Anil Kumar, Ms. Kranti and Mr. S. Surender, Advocates

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 482of the Code of Criminal Procedure, 1973, (*'Cr.P.C.'*) has been filed on behalf of petitioner seeking quashing of Complaint Case bearing no. 9403/2018, filed under Section 138 of Negotiable Instruments Act, 1881 (*'NI Act'*) pending before the Court of learned Metropolitan Magistrate (NI Act)-06, Dwarka Courts, New Delhi.

2. Briefly facts of the case, as per the complaint filed under Section 138 of NI Act, are that the petitioner/accused had availed home loans to the tune of Rs. 12,35,532/- under loan account bearing

no. PHR036101164838 from respondent bank and had executed the loan agreement and other documents and accordingly, the loan amount had got disbursed to the petitioner. The petitioner had issued a cheque bearing no. 787811 dated 06.12.2017 in favour of complainant/respondent bank for a sum of Rs. 12,32,532/- drawn on State Bank of India, New Delhi. The said cheque was deposited by the complainant bank, however, the same had got dishonoured for reasons 'Exceeds Arrangement' *vide* memorandum dated 26.12.2017. Thereafter, the complainant/respondent had sent a demand notice dated 25.01.2018 to the petitioner herein, however, petitioner had failed to make payments against the dishonoured cheque. Accordingly, present case was filed and learned Trial Court had issued summons to petitioner. Thereafter, petitioner had filed an application under Section 251 Cr.P.C. seeking discharge on the ground that special power of attorney has not been executed by respondent/Axis Bank Ltd. in favour of authorized signatory i.e. Sandeep Singh, however, the same was dismissed by learned Trial Court *vide* order dated 21.08.2019. Subsequently, on 11.10.2019, learned Trial Court had framed notice under Section 251 Cr.P.C. against petitioner herein.

3. Learned counsel for petitioner states that present complaint is not legally maintainable since it is not filed by complainant/respondent bank through its duly authorized competent person. It is stated that the complainant in the present case is Axis Bank Ltd and it has not executed any Special Power of Attorney in favour of the person namely Mr. Sandeep Singh who has signed and

filed the present complaint before the learned Trial Court. It is argued that the Special Power of Attorney dated 27.11.2017filed with the complaint is one executed by M/s. Axis Securities Ltd and not by the complainant i.e. Axis Bank Ltd, and these two are different and distinct legal entities registered under Companies Act. It is stated that the holder of Special Power of Attorney has no personal knowledge and has not witnessed the transaction in question whereas law mandate that an explicit assertion as to the knowledge of the Power of Attorney holder about the transaction in question must be specified in the complaint, which is missing in the present case. Therefore, it is prayed that present petition be allowed.

4. Learned counsel for respondent, on the other hand, opposes the present petition and argues that the complaint filed under Section 138 of NI Act is maintainable. It is argued that Axis Security Ltd. is sister company of complainant/respondent bank i.e. Axis Bank Ltd. It is stated that Axis Securities Ltd. had appointed Mr. Sandeep Singh as their lawful attorney to represent respondent/Axis Bank and file cases on behalf of respondent *inter alia* under Section 138 of NI Act. It is also submitted that Axis Securities Ltd. has derived its power to act on behalf of respondent from Board resolution dated 16.01.2015 *vide* which the respondent has appointed it for engaging its employees for filing and attending various court cases to recover money from defaulting borrowers of the respondent, and in this regard, an appropriate service level agreement has also been executed between the respondent and Axis Securities Ltd. Therefore, it is prayed that present petition be dismissed.

5. This Court has heard arguments addressed by learned counsel of petitioner and learned counsel of respondent and has gone through the case file.

6. The short issue for consideration in the present case is that whether the person who had filed the complaint on behalf of respondent/Axis Bank Ltd. was legally competent and authorized to do so.

7. As per petitioner's case, though the complainant in the present case is Axis Bank Ltd., the person who has filed the complaint on its behalf i.e. Mr. Sandeep Singh was authorized to do so by way of a Special Power Attorney executed by a different entity namely Axis Securities Ltd and not Axis Bank Ltd. Conversely, it is the respondent's case that Axis Securities Ltd. is a sister company of Axis Bank Ltd. and as per internal arrangement of the companies, Axis Bank Ltd. has authorized Axis Securities Ltd. to engage its employees in filing cases before different Courts of law including cases under Section 138 of NI Act.

8. To appreciate the rival contentions raised before this Court, it shall be appropriate to take note of judicial precedents, relevant for the adjudication of present case.

9. The Hon'ble Apex Court in ***National Small Industries Corporation Ltd. v. State (NCT of Delhi)*** *(2009) 1 SCC 407*, had observed as under on the meaning of 'complainant' under NI Act:

> "14. The term `complainant' is not defined under the Code. Section 142 NI Act requires a complaint under section 138 of that Act, to be made by the payee (or by the holder in due course). It is thus evident that in a complaint relating to

dishonour of a cheque (which has not been endorsed by the payee in favour of anyone), it is the payee alone who can be the complainant. The NI Act only provides that dishonour of a cheque would be an offence and the manner of taking cognizance of offences punishable under section 138 of that Act. However, the procedure relating to initiation of proceedings, trial and disposal of such complaints, is governed by the Code. Section200 of the Code requires that the Magistrate, on taking cognizance of an offence on complaint, shall examine upon oath the complainant and the witnesses present and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses.The requirement of section 142 of NI Act that payee should be the complainant, is met if the complaint is in the name of the payee. **If the payee is a company, necessarily the complaint should be filed in the name of the company. Section 142 of NI Act does not specify who should represent the company, if a company is the complainant. A company can be represented by an employee or even by a non-employee authorized and empowered to represent the company either by a resolution or by a power of attorney**...”

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16. Section 142 only requires that the complaint should be in the name of the payee. **Where the complainant is a company, who will represent the company and how the company will be represented in such proceedings, is not governed by the Code but by the relevant law relating to companies.** Section 200 of the Code mandatorily requires an examination of the complainant; and **where the complainant is an incorporeal body, evidently only an employee or representative can be examined on its behalf**, as a result, the company becomes a de jure complainant and its employee or other representative, representing it in the criminal proceedings, becomes the de facto complainant. Thus in every complaint, where the complainant is an incorporeal body, there is a complainant-de jure, and a complainant-de facto. Clause (a) of the proviso to Section 200 provides that where the complainant is a public servant, it will not be necessary to examine the complainant and his witnesses. Where the complainant is an incorporeal body represented by one of its employees, the employee who is a public servant is the de facto complainant and in signing and presenting the complaint, he acts in the discharge of his official duties. Therefore, it follows that in such cases, the exemption under clause (a) of the first proviso to Section 200 of the Code will be available.

(Emphasis supplied)

10. Further, in respect of filing complaints under Sections 138/141 of NI Act by the company through authorized representative, the Hon'ble Apex Court in case of ***TRL Krosaki Refractories v. SMS Asia Private Limited*** *(2022) 7 SCC 612,* has held as under:

> "21. A meaningful reading of the above would indicate that the company having authorised the General Manager (Accounting) and the General Manager (Accounting) having personal knowledge had in fact been clearly averred. What can be treated as an explicit averment, cannot be put in a straitjacket but will have to be gathered from the circumstance and the manner in which it has been averred and conveyed, based on the facts of each case. The manner in which a complaint is drafted may vary from case to case and would also depend on the skills of the person drafting the same which by itself, cannot defeat a substantive right. However, what is necessary to be taken note of is as to whether the contents as available in the pleading would convey the meaning to the effect that the person who has filed the complaint, is stated to be authorised and claims to have knowledge of the same. In addition, the supporting documents which were available on the record by themselves demonstrate the fact that an authorised person, being a witness to the transaction and having knowledge of the case had instituted the complaint on behalf of the "payee" company and therefore, the requirement of Section 142 of the NI Act was satisfied. In Vinita S. Rao v. Essen Corporate Services (P) Ltd., to which one of us (the Hon'ble (JI) was a member of the Bench has accepted the pleading of such a nature to indicate the power to prosecute the complaint and knowledge of the transaction as sufficient to maintain the complaint.
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> 22. Despite our conclusion that the documents available on record would on facts satisfy the requirement relating to delegation of power and also knowledge of the transaction by the person representing the Company in the instant case, **it is also necessary for us to keep in perspective that though the case in *A.C. Narayanan* has taken the centre stage of consideration, the facts involved therein were in the background of the complainant being an individual and the complaint filed was based on the power of attorney issued by the "payee" who**

was also an individual. In such an event, the manner in which the power was being exercised was to be explicitly stated so as to establish the right of the person prosecuting the complaint, to represent the payee i.e. the complainant. **The position that would emerge when the complainant is a company or a corporate entity will have to be viewed from a different standpoint**.

25. In that view, **the position that would emerge is that when a company is the payee of the cheque based on which a complaint is filed under Section 138 of the NI Act, the complainant necessarily should be the company which would be represented by an employee who is authorised**. Prima facie, **in such a situation the indication in the complaint and the sworn statement (either orally or by affidavit) to the effect that the complainant (Company) is represented by an authorised person who has knowledge, would be sufficient**. The employment of the terms "specific assertion as to the knowledge of the power-of-attorney holder" and such assertion about knowledge should be "said explicitly" as stated in *A.C. Narayanan* cannot be understood to mean that the assertion should be in any particular manner, much less only in the manner understood by the accused in the case. **All that is necessary is to demonstrate before the learned Magistrate that the complaint filed is in the name of the "payee" and if the person who is prosecuting the complaint is different from the payee, the authorisation therefor and that the contents of the complaint are within his knowledge. When, the complainant/payee is a company, an authorised employee can represent the company. Such averment and prima facie material is sufficient for the learned Magistrate to take cognizance and issue process. If at all, there is any serious dispute with regard to the person prosecuting the complaint not being authorised or if it is to be demonstrated that the person who filed the complaint has no knowledge of the transaction and, as such that person could not have instituted and prosecuted the complaint, it would be open for the accused to dispute the position and establish the same during the course of the trial**. As noted in *Samrat Shipping Co.,* **dismissal of a complaint at the threshold by the Magistrate on the question of authorisation, would not be justified.** Similarly, we are of the view that in such circumstances entertaining a petition under Section 482 to quash the order taking cognizance by the Magistrate would be unjustified when

the issue of proper authorisation and knowledge can only be an issue for trial.

(Emphasis supplied)

11. In the present case, a perusal of the complaint filed by the respondent under Section 138 of NI Act reveals that a specific averment has been made in the complaint that the complaint was being filed through Mr. Sandeep Singh who was authorized by Special Power of Attorney dated 27.11.2017 to institute legal proceedings and to sign, verify and file plaints, complaints etc. before the courts of law. It has also been averred that Mr. Sandeep Singh is fully conversant with the facts of the case as per information received and derived from the records and books of the complainant bank which are maintained with it in the regular course of its business and, thus, is competent to depose and verify the facts of the case.

12. This Court has also perused the Special Power of Attorney dated 27.11.2017 *vide* which Mr. Sandeep Singh was appointed as the authorized representative of the respondent for filing and instituting cases including complaints under Section 138 of NI Act. The said power of attorney has been executed by Axis Securities Ltd. and it has been categorically mentioned in the power of attorney that respondent/Axis Bank Ltd. *vide* its board resolution dated 16.01.2015 had appointed Axis Securities Ltd. for engaging its employees for filing and attending various Court cases to recover money from defaulting borrowers. It was also stated that *vide* Board resolution dated 13.04.2015, Axis Securities Ltd. had authorized Mr. Arun Thukral (MD & CEO) and Mr. Anand Kumar Shaha (Whole Time

Director) to execute service level agreements with the Axis Bank Ltd. and also delegate the authority to issue power of attorney in favour of employees of the company as suggested by the Bank. It was also stated that the Axis Securities Ltd. had executed a service level agreement dated 30.07.2015 with the Axis Bank defining the services provided by it to the Bank and other terms and conditions.

13. The other supporting documents placed on record by the respondent have also been perused and considered by this Court. The board resolution dated 16.01.2015 titled 'Representation of Collection Court Cases through Axis Securities Ltd.' mentions that the Axis Bank Ltd. had approved the appointment of Axis Securities Ltd. through appropriate service level agreements for the purpose of recovering loans and advances made by the Bank and representing the Bank before the courts and defending the legal suits or proceedings before the courts and other judicial/quasi judicial forum. The respondent has also placed on record the service level agreement dated 30.07.2015. Furthermore, Axis Securities Ltd. had also passed a board resolution dated 13.04.2015 vide which it was resolved that its MD &CEO as well as Whole Time Director would execute service level agreements with the Axis Bank and delegate the authority to issue power of attorney in favour of its employees for representing Axis Bank Ltd. before courts.

14. In view of the aforesaid documents placed on record by the respondent/Axis Bank Ltd., and having discussed the legal position as settled through judgments of Hon'ble Apex Court, this Court is of the opinion that the complaint filed under Section 138 of NI Act

before the learned Trial Court, signed by Mr. Sandeep Singh who is authorized to act on behalf of the complainant company, is maintainable. As also held by Hon'ble Apex Court in ***TRL Krosaki Refractories*** *(supra),* if the material placed on record is *prima facie* sufficient to show that the complaint has been filed by the authorized person, the Court should issue process and initiate proceedings under Section 138 of NI Act, and if at all there is any serious dispute regarding the authorization, the same can only be adjudicated upon during the course of trial, and complaint case cannot be quashed at the threshold on this ground alone. Thus, there are no grounds to quash the Complaint Case bearing no. 9403/2018, pending before the Court of learned Metropolitan Magistrate (NI Act)-06, Dwarka Courts, New Delhi.

15. Accordingly, the present petition alongwith pending applications stands dismissed.

16. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

17. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 18, 2023/zp