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

\+ CRL.M.C. 3355/2022, CRL.M.A. 14099/2022, CRL.M.A. 4216/2023

M/S DIAT AGRO HOLDING PVT. LTD. VS VIJAY KUMAR SALUJA AND ANR ..... Petitioners

Through: Mr. R K Tarun, Ms.Aditi Shivadhatri, Capt. Subedita Rani advocates (VC)

versus

VIJAY KUMAR SALUJA & ANR. ..... Respondent

Through: Ms. Prapti Singh, Ms Parthvi Ahuja, Advocates for R- 1 & 2 (VC)

% ***Date of Decision:22nd August, 2023***

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

JUDGMENT

DINESH KUMAR SHARMA, J. (Oral)

1. Present petition has been filed under section 482 CrPC seeking to set aside the order of the Ld. ASJ, THC, dated 07.07.2022 passed in Crl. Rev Pet No. 286/2022 titled ***Whitefield Overseas Ltd. vs. M/S Diat Agro Holdings Pvt. Ltd.***, whereby, the Ld. Court partially allowed the revision petition filed by the respondents herein and set aside the

order of the Ld. MM to the extent of summoning the present respondents for the alleged offence under section 138 NIA. The petitioner thus seeks to restore the summoning order dated 28.01.2022 passed in CC No. 2352/2021 vide which the respondents along with others were summoned for the offence alleged under section 138 NIA.

2. Petitioner company is engaged in the sale, purchase, import and export of rice and is stated to have been supplying consignments of rice to Whitefield Overseas Ltd (hereinafter referred to as accused company of which the respondents were directors) since 2013-14, as and when demanded. These consignments were usually delivered at the warehouse of the accused company and were received by the accused company's warehouse In-charge after doing quality checks. For these, due considerations were made by way of postdated cheques.

3. Likewise, sometime in the year 2020, several such consignments of rice were delivered to the accused company upon which a total of 11 postdated cheques were issued for a sum of Rs. 85,26,520.39/- drawn on Woori Bank, Sikanderpur, in favour of the petitioner company. Upon presentation, the said cheques came to be dishonoured after which the MD of the accused company namely Mr. Sumeet Saluja assured the petitioner that the cheque amount, balance amount along with interest shall be paid. However, since the accused company failed to discharge its liability, the petitioner was constrained to serve

demand notice dated 06.01.2021 upon the accused company. In response, vide letters dated 04.01.2021 and 15.01.2021 the accused company denied such liability and also disputed the supply and quality of rice. The petitioner also issued their response vide letter dated 14.02.2021.

4. Thus, since no payment was made within the stipulated time, the petitioner instituted a complaint case under section 138 NIA against the said 11 cheques. However, the Ld. MM upon perusal of the complaint, vide order dated 28.01.2022, held that 4 out of the 11 cheques were outdated, and the case was thus limited to the issue of only 7 cheques. Ld. MM taking cognizance of the offence under 138 NIA summoned the respondents herein, Mr. Sumeet Saluja (MD of the accused company) and the accused company.

5. Thereafter revision petition was moved by the above said accused persons and the revisional court partly allowing the revision petition set aside the summoning qua the respondents herein (petitioner Nos. 2 & 4 therein) while upholding the summoning of the accused company (petitioner No. 1) and Mr. Sumeet Saluja (petitioner No. 3). Ld. Court held that admittedly Mr. Sumeet Saluja is the MD and authorized signatory of the accused company, and the respondents herein are the directors of the accused company.

6. In the reply to the present petition, it has been vehemently argued that the cheques in question were neither signed by the respondents, nor

were there any specific averments in the complaint to hold them responsible for any offence u/s 138 NI Act. It has been stated in the reply that the Respondent No 1/Vijay Kumar Saluja is the father of the MD and is an independent director of the company. Attention has been brought to the provisions contained under Section 196 (3)(a) of the Companies Act, 2013, which enumerates that any company cannot continue or appoint the employment of any person as a managing director or a whole-time director who is below the age of 21 years or has attained the age of seventy years.

7. It has been submitted that the above provision makes it clear that the allegations u/s 138 NI Act cannot be made out against the Respondent No. 1/ Vijay Kumar Saluja as his age is 86 years as per his passport. It has been submitted that thus he could not have possibly been handling the day-to-day affairs of the company. Further, no specific averments qua him have been made in the complaint.

8. With respect to the respondent No. 2/ Rupa Saluja it has been submitted that she is the wife of the MD namely Mr. Sumeet Saluja. It has been submitted that she is merely a namesake director of the accused company and plays no role in the day-to-day affairs off the company. Further, she was not even the signatory of the subject cheques issued. Furthermore, there are no specific allegations mentioned against the Respondent No 2 in the complaint. It has been

submitted that thus Ld. ASJ rightly set aside the summoning of the present respondents.

9. On the contrary, it is the contention of the petitioner that the respondents herein were correctly summoned by the Ld. MM as they are the promoters and directors of the accused company and actively participated in the day-to-day affairs of the accused company. Learnd counsel for the petitioner submits that the individual role of a director in the management of the company is part of the internal affairs of the company. At the nascent stage, the role of the respondents cannot be illustrated specifically to show what their role is, as a director of the company with respect to the transactions made.

10. Learned counsel further submits that the 'doctrine of indoor management' is an important consideration while assessing the averments and to satisfy the requirements of an offence u/s 138/141 NI Act. It has been contended that the directors may be unaware of the cheques being issued, but there is an appropriate responsibility of the directors of the company, being in the internal management of the company.

11. Submissions considered.

12. It is well settled law that Section 141 of the NI Act, which postulates, that 'every person' who was <u>in charge of</u> and <u>was responsible</u> to the Company <u>for the conduct of business of the company</u> <u>at the time the</u>

offence was committed, will be guilty of the offence under Section 138 of the NI Act along with the Company, however, it is vital to make specific averments qua the accused persons in order to extend the principle of vicarious liability.

13. A perusal of the complaint makes it evident that the only averment made with respect to the present respondents is to the extent that they are the promoters and Directors of the accused company and thus have been impleaded. No other averment has been made qua them. The allegations are in fact only towards the MD i.e., Mr. Sumeet Saluja. Thus, beside general averments, no specific role has been ascribed qua the respondents herein.

14. The Hon'ble Apex Court and this court have time and again held that such generalized averments are not enough to attract the offence under section 138 NI Act and specific allegations have to be made qua especially those persons not handling the day-to-day affairs and business of the company to extend the vicarious liability under section 141 NI Act. In the present case, the Respondents were not even a signatories to the cheques in question and therefore, no liability extends to them.

15. In ***Pooja Ravinder Devidasani v. State of Maharastra & Anr.,*** (2014) 16 SCC 1 and ***National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal***, (2010) 3 SCC 330, the Hon'ble Apex Court has held that every person connected with the company will not fall into the

ambit of an offence u/s 138 NI Act. Only those persons who were in charge of and responsible for the conduct of the business of the company at the time of the commission of an offence will be held liable for criminal action. A director, who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable for an offence u/s 138/141 NI Act.

16. Thus, merely mentioning the designation of the accused persons in the company will not be sufficient to attract the offence under section 141 NIA. The law is no longer *res integra* that specific allegations/averments have to be made as to how and in what manner the accused alleged to have committed an offence under section 138 NIA, was responsible for, or had a role in the conduct of the business of the company, at the relevant time, when the offence is said to have been committed. Simply because the accused person was a director or a promoter or was holding some other office in the company, the vicarious liability cannot be extended to such persons.

17. Upon careful examination of the impugned order, it is manifestly clear that the Ld. ASJ has considered all these vital aspects and in light of the dicta in ***SMS Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr***, (2005) 8 SCC 89 held that in the absence of specific averments that the persons accused, was in charge of and was responsible to the company for the conduct of the business of the company at the time when the subject cheques were issued, the liability cannot be

extended. It was held that in absence of this averment in the complaint the summoning qua the respondents ought to be set aside. Ld. ASJ after considering the material on record and upon examination of the complaint *inter alia* held:

> *"14. On holistic reading of the complaint, it is evident that the petitioner No. 3 placed orders for consignments of rice. He made assurance for timely payment of invoiced amount. The complainant contacted him regarding payment of outstanding amount. The complainant sent demand notice to the petitioner No. 1 through the petitioner No. 3. The petitioner No. 2 and 4 were not in charge of, and responsible to the company for the conduct of its business. They are not vicariously liable for non-payment of the said cheques issued by the petitioner No. 3 towards discharge of liability of the petitioner No. 1. Summoning order qua the petitioner No. 2 and 4 deserves to be set-aside."*

18. In light of the above, this Court is of the considered view that there is no infirmity in the order passed by Ld. ASJ vide order dated 07.07.2022. The learned sessions court has passed a detailed and well-reasoned order and has rightly set aside the summons against the present respondents for the alleged offence under Section 138 NIA as no wrong have been committed at their behest or with their knowledge or connivance.

19. Accordingly, the order dated 07.07.2022 is upheld. The petition along with pending applications is dismissed.

DINESH KUMAR SHARMA, J

AUGUST 22, 2023
Pallavi