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

\+ CRL.M.C. 5223/2022, CRL.M.A. 20828/2022

VIPUL KANT UPADHYAY ..... Petitioner

Through: Mr. Shyam Babu, Adv.

versus

STANDARD CHARTERED BANK ..... Respondent

Through: Mr. Sanjeev Sagar, Standing counsel for SCB with Mr. Shivang Bansal, Adv.

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

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. This is a petition seeking quashing of the summoning order dated 08.03.2018 passed by Ld. Sr. Civil Judge, Patiala House Court, Delhi in complaint case bearing CT No. 1504/2018 titled as "*Standard Chartered Bank vs. IAP Company Pvt. Ltd. & Ors.*", summoning the petitioner under Section 25 of the Payment and Settlement Systems Act, 2007 (hereinafter referred as the PSS Act, 2007).

2. The brief facts of the case are that M/S IAP Company Pvt. Ltd. (hereinafter referred as the said company) availed a business loan vide

loan agreement no. 50359738 from bank/respondent, in pursuance to the said loan, the bank initiated Electronic Clearing System (ECS) for the payment of Rs.1,81,390/- (one lakh eighty-one thousand and three hundred ninety rupees only/-). The above said EMI amount got bounced and was returned on 01.12.2017 with the remarks "Balance insufficient". Thereafter, the respondent sent a legal notice on 05.01.2018 and further filed a complaint under section 25 of the PSS Act, 2007 against all the Directors and the said company.

3. Learned counsel for the petitioner submits that the respondent bank issued a legal notice to the petitioner incorrectly as the petitioner was neither the director nor was involved in day-to-day affairs of the said company at the time of default of ECS and also at the time of issuance of the legal notice.

4. Learned counsel for the respondent as per instructions submits that he does not want to file the reply.

5. Further, the learned counsel for the respondent has very fairly submitted that as per DIR XII, the petitioner ceased to be a Director of M/s IAP Company Pvt. Ltd. before the ECS was bounced on 01.12.2017.

6. I have gone through the records, it is an admitted fact that the ECS of Rs. 1, 81, 390/- (one lakh eighty-one thousand and three hundred ninety rupees only/-) got bounced on 01.12.2017 and returned with the remarks "Balance Insufficient". Further, a perusal of Form No. DIR-12, of the accused company, M/s IAP Company Pvt. Ltd. shows

that the petitioner ceased to be a Director at the time of the commission of the offence. In view of Section 141 of the Negotiable Instruments Act, 1881 and Section 149 of the Companies Act, 2013 petitioner could have been held vicariously liable only if it was shown that he was in charge of and was responsible for the conduct of the business of the said company at the time of the commission of offence, and not otherwise.

7. It is pertinent to note that Section 25(5) of PSS Act, 2007 attracts the applicability of Chapter XVII of the Negotiable Instruments Act, 1881 to the dishonouring of an electronic funds transfer. Section 138 of the NI Act expressively provides gives provisions concerning the penalisation of dishonoured cheques. Both these sections make the dishonouring of electronic funds and cheques an offence punishable with imprisonment with, a fine or both.

8. In the case of ***Ritu Jain v. The State Through Standing Counsel Crl.M.C.555/2016, Crl.M.A.2315/2016***, this court *inter alia* held that by virtue of Section 25(5) of the Payments and Settlement Act, the provisions of Chapter XVII of the Negotiable Instruments Act, 1881 (26 of 1881) shall apply to the dishonour of an electronic funds transfer to the extent the circumstances admit. Therefore, when Section 25 of the Payment and Settlement Act is invoked, Section 138 of the NI Act is also applicable as the case may be.

9. Further, a Coordinate bench of this Court in the case titled as ***"Sanjay Aggarwal vs State & Anr." Crl. M.C. 5852/2019*** and case titled as

"Sourabh Garg vs State & Anr." Crl. M.C. 5799/2019 vide order dated 16.08.2022 has quashed the summoning order with regard to the petitioners therein, on the ground that they were not even the directors in the accused company at the relevant point of time and had resigned even before the agreements were entered into between the accused company and complainant.

10. In view of the above, and taking note of DIR XII, the present petition is allowed and the summoning order qua the present petitioner is set aside.

DINESH KUMAR SHARMA, J

MAY 22, 2023
Pallavi