



2023:DHC:7130



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

% **Date of order: 12th September, 2023**

+ **W.P.(C) 8110/2017, CM APPL. 33357/2017 & CM APPL.
33359/2017**

PREM BEHL

..... Petitioner

Through: **Mr. Sanjeev Anand, Sr. Advocate
with Mr. Akshay Thakur, Advocate**

versus

LALIT CHANANA AND ORS

..... Respondents

Through: **Mr. Naveen Nagarjuna, Advocate for
R-4**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of petitioner, now deceased represented through LR's (hereinafter for the sake of convenience referred to as "the petitioner"), seeking the following reliefs:-

"(a) quash/set aside the impugned order dated 24th July, 2017 passed by the Authority under the Delhi Shops & Establishment Act, 1954 qua the petitioner.

(b) award costs of the present petition to the petitioner and against the respondents.



(c) pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The course of events which has led to the filing of the instant case is discussed hereunder for better appreciation of the dispute before this Court:

a) The petitioner was co-opted as an independent Director of the Company, namely, M/s Sai Infosystems (India) Limited (hereinafter "the Company"), on 30th May 2009, wherein Sh. Sunil S. Kakkad is the Chairman and Managing Director.

b) The petitioner resigned from the Board of Directors of the Company on 17th May 2013, and the said information was uploaded by the Company in Form No. DIR-12 on the website of the Registrar of Companies.

c) On 2nd July 2013, the respondent no. 1 to 10 along with other individuals, made a complaint to the Authority under the Delhi Shops & Establishment Act, 1954, thereby, seeking action against the Company's management to release their salaries.

d) Vide letter dated 3rd July 2013, the Authority concerned called upon Sunil S Kakkad, the Chairman and Managing Director of the Company, in pursuance of the aforesaid complaint, to appear on 9th July 2013.

e) Thereafter, the complainant employees, in furtherance of suggestions of the Authority concerned, furnished the list of all the



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Directors of the Company, including the name of the petitioner, vide the communication dated 10th July 2013. On the said date, the Authority concerned issued a notice to the Chairman and Managing Director as well as to the other Directors, named by the complainant employees, including the petitioner.

f) The petitioner replied to the notice dated 10th July 2013, on 29th July 2013, and by way of the said reply, he objected to the complaints on the ground that, first, he was the Independent Director of the Company, secondly, he was never involved in the day-to-day conducting of the business operations in any manner and lastly, he had already resigned from the Board of Directors.

g) On 25th September 2013, the petitioner was served summons and consequently, he furnished his reply dated 29th September 2013.

h) Subsequently, both the parties, the respondents no. 1 to 10 and the petitioner, filed their evidence by way of affidavit before the Authority concerned. The Authority heard the arguments of the parties on 3rd August 2016.

i) Ultimately, on 24th July 2017, the Authority concerned passed the order holding that the Chairman and Managing Director, Additional Director, and others as well as the petitioner jointly and severally omitted in not paying salaries to the employees of the Company on time and were liable to deposit the salaries of the said



employees and an additional lumpsum compensation @25% of the entitled relief granted to each of the employee/claimants in terms of Section 21(3) of the Delhi Shops and Establishment Act, 1994 within 30 days of passing of the said order, failing which the ordered amount shall be recovered as per the provisions of Section 21(5) of the Act.

j) The petitioner, thus, has approached this Court assailing the order passed by the concerned Authority on 24th July 2017.

3. The learned counsel for the petitioner and respondent no. 4 are present and were heard at length. The pleadings of all the parties placed before this Court record the submissions on their behalf and are discussed hereafter.

4. Mr. Sanjeev Anand, the learned senior counsel appearing on behalf of the petitioner submitted that the observations and findings *qua* the petitioner in the impugned order passed by the concerned Authority are patently illegal and without jurisdiction.

5. It is submitted that no liability can be fastened upon the petitioner and no directions can be made against him because of his role as an Independent Director of the Company. Neither was the petitioner named in the complaints moved by the employees, nor was he responsible for the wages and salaries of the employees since he had no role in the day-to-day affairs of the Company.

6. It is submitted that the complaints were made under Section 21 of the Delhi Shops & Establishment Act, 1954 and as per the Scheme of the said



Act, the liability for payment of wages is only of the employer of the establishment/commercial establishment, which, in the present case, is the Company. The Authority thus, had no jurisdiction and authority to proceed against the petitioner, hence, the entire proceedings against him are vitiated and the impugned order is null and void.

7. It is also submitted that the respondent no. 1 to 10, in their statements, accepted that the petitioner had no role in the day-to-day affairs of the Company. Therefore, the petitioner, not being an incharge of the daily affairs of the Company is not responsible or liable for any claims of wages or salaries which may be sought by the employees. It is also strongly urged that the respondents decided not to cross-examine the petitioner, thus have admitted the averments made by the petitioner in his affidavit,

8. It is further submitted that once the Company is impleaded and is also represented by the Managing Director, there is no requirement for impleading any other Director and as such the concerned Authority failed to appreciate this fact. Moreover, the Authority failed to consider that the principles of law to this effect stands settled in so far as the Directors of a Company cannot be made personally liable for the debts of the Company. Reliance has been placed upon the judgments stated below:

- a. ***P.C. Aggarwala vs. Payment of Wages Inspector, M.P., (2005) 8 SCC 104.***
- b. ***Indian Overseas Bank vs. R. M. Marketing and Services Pvt.***



Ltd., 2001 SCC OnLine Del 536.

- c. ***V.K. Uppal vs. Akshay International Pvt. Ltd., 2010 SCC OnLine Del 538.***
- d. ***Tristar Consultants vs. Vcustomer Services India Pvt. Ltd., 2007 SCC OnLine Del 359.***
- e. ***Space Enterprises vs. Srivivasa Enterprises Ltd., 1998 SCC OnLine Del 243.***

9. In view of the above, it is prayed that the impugned order be set aside *qua* the petitioner since he has no role in distributing the salaries or paying the arrears and debts of the Company in his capacity as a Director.

10. The learned counsel for respondent no. 4 appeared and vehemently objected the submissions made on behalf of the petitioners submitting to the effect that there is no error or illegality in the order impugned by the petitioner.

11. The learned counsel for respondent no. 4, Mr. Naveen Nagarjuna, submitted that the concerned Authority rightly appreciated that the petitioner was not merely a non-executive Director but also represented himself as the Head of the North Region of the Company. He was also well-aware of the fact of non-payment of salaries to the respondents. Moreover, the website of the Company reflected the name of the petitioner as a Director after filing of the complaint.



12. It is submitted that the petitioner failed to submit any documents that delineated his role or responsibilities in the Company, including his employment and appointment terms. He has also failed to produce copies of the Memorandum and Articles of Association of the Company to support his contention that he was never involved or responsible *qua* the day to day affairs of the Company for the conduct of its business.

13. It is also submitted that although no statutory liability has been fixed on the directors under the Delhi Shops & Establishments Act, 1954, it is a well settled principle of law that the courts are empowered to pierce the corporate veil and affix personal liability on the directors for the actions of the company in cases where the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workman or against the public interest. The present case is one fit for the application of the said doctrine and there is thus, no infirmity in impugned order.

14. To give force to his arguments, the learned counsel for respondent no. 4 placed reliance upon the judgments passed in *State of U.P. and Ors. vs. Renusagar Power Co. and Ors.*, AIR 1988 SC 173, and *Kapila Hingorani vs. State of Bihar*, (2003) 6 SCC 1. It is also submitted that the judgments relied upon on behalf of the petitioner are not applicable to the facts of the instant case.

15. The learned counsel for respondent no. 4 hence, submitted that the instant petition, being devoid of merit, is liable to be dismissed.



16. Despite service of notice and the matter being pending for over 5 years, none appear for the remaining respondents, i.e. respondent no. 1 to 3 and 5 to 10. However, the counter affidavits on behalf of the remaining respondents are on record which bring forth *inter alia* the following objections:

- a. There is no error or illegality in the impugned order since it has been passed after consideration of the entirety of the matter.
- b. Relying upon the doctrine of preponderance of probabilities, it is contended that the instant petition is liable to be dismissed for the want of maintainability.
- c. The petitioner was aware of the fact that the salaries of the complainant employees were not paid to them. The Company and its Board are responsible for the consequences of the actions taken by the officers of the Company and the law does not make a distinction between directors who are incharge of the day to day affairs of the Company and those who are non-executive directors.
- d. The petition is liable to be dismissed as the petitioner has failed to demonstrate that he was not liable to make the payment of the arrears of the salaries as claimed by the respondents.

17. Heard the learned counsel for the parties and perused the record.

18. The concerned Authority, i.e., the Authority under the Delhi Shops and Establishment Act, 1954 was approached by certain employees of M/s



Sai Infosystems (India) Limited, seeking arrears of their salaries, which as per their claim, had not been paid to them for more than six months. On the said complaint, while taking cognizance the Authority had asked the complainants to furnish a list of the Directors of the Company, which was supplied by the complainants and which included the name of the petitioner herein. Upon the conclusion of the proceedings, the Authority passed the impugned order holding the respondents therein jointly and severally made the omission by not paying the petitioners and accordingly, directed them to pay the amount so ordered in favour of the petitioners within a period of 30 days from the date of the order. The relevant portion of the order is reproduced hereunder:

“7. As regards fixing of liability of unpaid earned wages upon the company and/or its directors, it is a settled law that the company as juristic person is liable for payment of unpaid dues of the employees. The company and the board are responsible for all the consequences of actions taken by the officers of the company. The law does not make a distinction between directors who are incharge of the day-to-day affairs of the company and non-executive members attending only the board meetings once in three months. It does look unreasonable to make such non-executive directors liable for the actions and decisions of the company they may not be aware of Independent directors are invited to sit on the board purely for their special skills and expertise in particular fields and they represent the conscience of the investing public. As long as they show due diligence, the law should exempt them from all types of liabilities for the actions of the board or the managing director they may not be aware of.

10. While going through the list of signatory details of the



company as on 17.10.2012 as filed by the petitioners having CIN/LLPIN ID No. U30007GJ2003PLC041786, it is understood that five directors including MD was given the signatory right in the company. The name of Shri Prem Behl as a director of the company was available at Serial No.1 of this list. The R-5 has stated that he has resigned from the directorship of the company w.e.f 17.05.2013. He also claims to have ceased to be the director from such date. Regarding submission of Form-32 with the ROC, he has informed that he has no obligation inform the same. Such information was to be provided by the company itself as per Section 303 of the Company Act. R-5 has not produced copy of the appointment/contractual terms under which he was appointed as a director including his roles and responsibilities in the company. He has also not filed copy of Memorandum and Articles of Association which could otherwise prove that he was not responsible for the conduct of the business of the company. Therefore, the R-5 cannot be safely said to be out of ambit of charge and responsibility for conduct of the company business. R-5 has also failed to prove that the violation of law by the company by not paying earned wages was committed without his knowledge or consent or connivance. The Hon'ble Supreme Court (SC) judgment SMS Pharmaceutical Vs. Neeta Bhalla & Ors. is not applicable in this case as it was related to the scope of NI Act. Also the SC judgment National Small Industries Corporation Ltd. Vs. Harmeet Singh Paintal and Ors. is also not attracted in this case as it is related to criminal liability upon a director who has knowledge about the transaction. Although the R-5 has resigned from directorship on 17.05.2013, it cannot be said that no cause of action arose against him in respect of unpaid salary claims, as claims are related to the period during which he was director of the company. The claimants have submitted that although as per ROC/MCA records, he was the director of the company but he represented himself as head of the north region and he was well aware of the fact that the salaries of the



applicant were unpaid by the management for many months. Further the liability of employees does not fall under the definition of contractual liability of the company. The concept of lifting the corporate veil has not been applied in this case and the Authority has ignored the corporate entity and treated individual directors as liable for its act of omission. The lifting of veil is unwarranted in this case as the company has already ceased its operation and when another director Sh. Sunil Kakkad was already arrested by Interpol from Liberia in the year 2014.

11. In view of above, this Authority is of the opinion that all the Respondents i.e. R-1 to R-6 have jointly and severally made omission by not paying salaries to the claimants on time, leading to filing of this claim petition before the Authority. The liability of R-5 can at most be restricted to the extent of period he served as director in the company.

12. Relying upon the judgment of Hon'ble Delhi High Court order in matter WPC-4748 dated 04.08.2014, para no.21, this Authority consider it a fit case for imposing penalty/compensation under Section 21(3) of the Act upon the respondent to pay additional lumpsum compensation @25% of the entitled relief granted to each of the claimants for defaulting/ delaying in making the payment.

13. In view of the above findings, and in exercise of the power conferred upon this Authority under sub section (3) of Section 21 of the Act, respondents are directed to deposit the ordered amount alongwith compensation/penalty in this Court as per above table separately and individually in the name of each claimants within 30 days of passing of this order. In case of failure to comply with this order, the ordered amount shall be recovered as per provisions of Section 21(5) of the Act."

19. The Authority concerned, while giving its finding, that the petitioner is liable to suffer the rigours of the directions that followed, noted that there



is no distinction between the directors who are incharge of the day-to-day affairs of the company and non-executive members attending only the board meetings once in three months. The observation came from the Authority since the ground had been raised by the petitioner herein that since he was an Independent Director and was not responsible for the day- to-day affairs of the Company, he could not be held liable to make the payment of salary of the aggrieved employees in any manner whatsoever in his individual capacity. The said ground has also been invoked by the petitioner before this Court. To this effect, the learned Authority also noted that the petitioner relied upon Form No. 32, however, he did not produce it before the Authority concerned.

20. Before this Court, the petitioner has furnished Form 32, appended as Annexure P-3 to the petition, which relates to the status of Directors. A bare perusal of the document shows that Form 32 digitally signed by the Chairman and Managing Director categorically states that the petitioner was designated 'Additional Director' in 'Independent' category. Further, the petitioner has placed on record Form No. DIR-12, which is used to record the appointment or resignation of Directors in a company. The said form, appended as Annexure P-7 to the petition, notes that the same was filed for cessation, of the term of the petitioner as Director and also bears the digital signatures of Sh. Sunil Kakkar, i.e., the Chairman and Managing Director.

21. It is a settled law that this Court in its writ jurisdiction cannot conduct a trial and test the veracity of a document or other material. However, upon a



bare perusal of the aforesaid documents it is apparent that the forms which show the nature of appointment of the petitioner and records the fact of his cessation bears the digital signature of the Chairman and Managing Director. Moreover, the respondents in their counter affidavit have also not challenged the authenticity of the documents so placed on record by the petitioner. Therefore, there is no reason to not consider the undisputed documents pertaining to the nature of the appointment of the petitioner.

22. The second question which is before this Court is to look into the findings of the Authority to the extent where it has been noted that there is no distinction between the independent and non-executive directors or those who are responsible for day-to-day affairs and those who do not have an active role in the company.

23. The Hon'ble Supreme Court, on the issue whether directors may be held personally liable for the offences alleged against the company, has observed as under in the judgment passed in *Shiv Kumar Jatia vs. State (NCT of Delhi)*, (2019) 17 SCC 193:

“19. The liability of the Directors/the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] . In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, this Court has held, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence



involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides for. It is further held by this Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

21. By applying the ratio laid down by this Court in Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] this Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a company. It is held that vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further held that statutes indisputably must provide fixing such vicarious liability. It is also held that, even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”



24. The position regarding the role of the directors and companies in criminal law is that a director of a company can be made accused and be proceeded against, only when *firstly*, the statute which has been invoked provides for it, *secondly*, the complainant makes specific allegations against such person/director, and *thirdly*, if there is sufficient evidence to show the involvement and criminal intent on the part of the director.

25. The criminal jurisprudence having stricter implications in terms of punitive action makes way for provisions to limit the liability which may be imposed upon the directors of the company and hence, it can be undoubtedly stated that to show that a director is personally liable for any offence committed by the company, strict evidence is required, which begins at the first instance with the complaint bearing the name of the director so impleaded or sought to be impleaded in the proceedings against the company.

26. The principle by extension applies to the civil jurisprudence as well. The Courts of this Country have time and again held that a director can be made liable for the acts or omissions on the part of the company only when the complainant is able to show that there has been fraud, breach of duty or obligation or negligence on the part of the director himself. Moreover, the liability may be imposed upon the persons concerned and the directors who, *firstly*, have the knowledge of the act or omission so committed, and *secondly*, are responsible to carry out the business affairs of the company.

27. The Bombay High Court to this effect while referring to the



provisions of the Companies Act in ***Satvinder Jeet Singh Sodhi vs. State of Maharashtra***, 2022 SCC OnLine Bom 2298, observed as under:

“7. The aforesaid provision indicate that the independent director or non executive director not being a promoter of or key managerial persons shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

11. In the case of Chitalapati Srinivasa Raju v. Securities and Exchange Board of India (Supra) it is held as follows:

“23 Non executive directors are, therefore, persons who are not involved in the day to day affairs of the running of the company and are not in charge and not responsible for the conduct of the business of the company.”

28. Hence, the position which subsists is that an independent director is not responsible for the day-to-day conduct of business and affairs of the company. Further, a director would be liable only with respect to the acts or omissions which have occurred within his knowledge, at his consent, or connivance, or where he had not acted diligently.

29. In the case at hand, there is admittedly no averment, submission or contention alleging fraud or negligence on the part of the petitioner. There is nothing in the pleadings, the order impugned or even in the complaint moved by the aggrieved employees which imposes any liability or responsibility upon the petitioner for the payment of the salaries of the employees.



30. It is observed that the petitioner is not even named in the complaint which has been appended as Annexure P-8 to the petition, which shows that the complainants were not aggrieved by any act or omission by the petitioner and it was only a subsequent thought which ultimately led to the passing of the directions against the petitioner.

31. The respondents have repeatedly stated that the website of the Company showed the name of the petitioner as a Director and hence, he was impleaded. However, this Court does not find force in the submission that merely because the website of the Company was not updated to note the change of Directors, it is sufficient to show that the petitioner was liable for the non-payment of salaries of the aggrieved employees.

32. The findings as made by the concerned Authority laid out that the law should exempt individuals and directors not responsible for the conduct of affairs of the Company, for the actions of the board or the managing director that they may not be aware of. This observation of the Authority concerned applies to the case of the petitioner as well. The petitioner being an Independent Director and having resigned from the position of the Director of the Company may not have had the knowledge that certain employees of the Company were not being paid their salaries on time.

33. It is further observed by this Court that in the impugned order, the concerned Authority has not recorded any evidence to support his findings. The impugned order imposes liability upon the petitioner without there being any submission specifically implicating the petitioner which was



required since the petitioner had contented and objected on the grounds of him being an Independent Director, having been resigned prior to the filing of the complaint. Hence, even the impugned order is not able to show the reasons for imposing the penalty upon the petitioner for the payment of the salaries of the aggrieved employees.

34. In view of the above facts, circumstances, the contentions raised, arguments advanced, the law laid down and the observations in the impugned order, this Court is of the considered opinion that the concerned Authority has committed an error apparent on the face of the record while observing that the petitioner was liable to make the payment of salaries of the aggrieved employees for the reasons that,

first, the petitioner was not named in the complaint, neither was there any supplementary complaint preferred by the complainants, and was impleaded only because his name was reflected on the website of the Company when the concerned Authority had sought the names of the persons responsible according to the complainants. Moreover, the complaint dated 2nd July 2013, made specific mention of the names of the ‘top officials’ of the Company, and the said list did not consist the name of the petitioner.

second, the law in this regard stands settled that the directors of a company cannot be automatically held liable for the acts or omissions of the Company unless the same is proved. It is to be shown that the person sought to be made liable was responsible for the conduct of



day-to-day business of the company or that he had the knowledge of the infringing act or omission or that he had acted negligently or fraudulently, however, in the instant case none of the parameters are met.

third, the impugned order fails to support the findings and directions against the petitioner with any reason or evidence affixing liability upon the petitioner.

35. Therefore, this Court is inclined to set aside the impugned order and the directions therein against the petitioner after considering the entirety of the matter and the observations made in the foregoing paragraphs.

36. Accordingly, the instant petition stands allowed and the order dated 24th July 2017, passed by the Authority concerned under the Delhi Shops & Establishment Act, 1954, stands set aside *qua* the petitioner.

37. In view of the above terms, the instant petition stands disposed of along with pending applications, if any.

38. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 12, 2023

dy/ms/ryp

Click here to check corrigendum, if any