IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Reserved on: 09.02.2024
Date of Pronouncement: 12.03.2024

(1) CRM-M No. 845 of 2023 (O&M)

Dilip Aggarwal .... Petitioner

Versus

G4S Secure Solutions (India) Pvt. Ltd. .... Respondent

(2) CRM-M No. 913 of 2023 (O&M)

Dilip Aggarwal .... Petitioner

Versus

G4S Secure Solutions (India) Pvt. Ltd. .... Respondent

CORAM: **HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. Suneet Pal Singh Aulakh, Advocate
for the petitioner (in both cases).

Mr. Pankaj Gupta, Advocate
for the respondent (in both cases).

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HARKESH MANUJA, J.

1. This order of mine shall dispose of the aforesaid two petitions as the common question of law and facts are involved. For convenience, facts are being taken from CRM-M-845-2023, titled *"Dilip Aggarwal Versus G4S Secure Solutions (India) Pvt. Ltd."*.

2. By way of present petition filed under Section 482 Cr.P.C. the petitioner prays for quashing of complaint case No. NACT-28586-2018 (Annexure P-1), titled *"G4S Secure Solutions (India) Pvt. Ltd. Versus PME Power Solutions (India) Ltd. and others"*, besides the

summoning order dated 12.01.2021 *(Annexure P-4)* passed by learned Judicial Magistrate Ist Class, Gurugram.

3. Briefly stating, on account of dishonour of cheques bearing Nos. (i) 509049, dated 10.04.2018 for Rs. 10,48,496/-; (ii) 509050, dated 10.05.2018, for Rs. 10,62,476/-; (iii) 509799, dated 10.06.2018 for Rs. 10,78,413/-; and (iv) 509800, dated 10.07.2018 for Rs.11,10,981/-, respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short "NI Act") against the petitioner with the averments that the petitioner happened to be the Chief General Manager (Commercial) of M/s. PME Power Solutions (India) Ltd., i.e. the drawer company and thus, was liable to be prosecuted for offence under Section 138 of NI Act.

4. Learned Judicial Magistrate Ist Class, Gurugram vide order dated 12.01.2021 summoned the petitioner and others under Section 138 read with Section 141 of NI Act.

5. By way of present petition, the complaint as well as the summoning order have been challenged.

6. Learned counsel for the petitioner submitted that the petitioner happened to be the Chief General Manager (Commercial) of the drawer company, i.e. M/s. PME Power Solutions (India) Ltd. and thus, being neither in charge nor responsible to the company for the conduct of its business, was not liable to be prosecuted under Section 138 read with Section 141 of NI Act. He further submitted that the averments made in the complaint as regards the submission of an affidavit by the petitioner before the National Company Law

Tribunal, Principal Bench at New Delhi, even could not implicate him as the affidavit was submitted by him being an authorized person on behalf of the company and not being a debtor.

7. On the other hand, Learned Counsel for the respondent submitted that even if the petitioner is not a director, in accordance with provisions under Section 141(2) of NI Act, even persons, who are not director, manager or secretary can be prosecuted for an offence u/s 138 of NI Act provided consent, connivance or negligence on their part can be shown. He further submitted that in view of the affidavit submitted by the petitioner before the NCLT, there cannot be any difficulty in reaching a conclusion that the cheques were issued with the consent of the petitioner and therefore, present petition for quashing of the complaint as well as summoning order is liable to be dismissed.

8. I have heard learned counsel for the parties and gone through the paper book and I don't find substance in the submissions made on behalf of the petitioner.

9. To examine the contentions by both the sides, it is necessary to peruse the definition of section 141 of NI Act, which deals with offences by companies. Relevant portions of the said section are extracted below:-

> *"141. **Offences by companies**. - (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the*

conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

xxxxx xxxxx xxxxxx

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

Explanation-For the purposes of this section, -

(a) "company means anybody corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm."

10. A three judge Bench of the Hon'ble Apex Court in **"S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla"**, reported as 2005(8) SCC 89, referred three questions, which are as below:-

"(a) whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfill the requirements of the said section and it is not necessary to specifically state in the complaint that the persons accused was in charge of, or responsible for, the conduct of the business of the company?

(b) whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary?

(c) even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors of Joint Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against ?"

While interpreting section 141 of the NI Act, these questions were answered by the bench in the following manner:

"21. In view of the above discussion, our answers to the questions posed in the Reference are as under :-

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be

in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

11. Relying upon the interpretation provided in **SMS Pharmaceuticals's case** (supra), section 141 was further elaborated by the Hon'ble Apex Court in "**K.K. Ahuja v. V.K. Vora**", reported as (2009) 10 SCC 48 and it was held as under:-

"20. The position under section 141 of the Act can be summarised thus :

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to

make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix 'Managing' to the word 'Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, Secretary or Manager (as defined in Section 2(24) of the Companies Act) or a person referred to in clauses (e) and (f) of Section 5 of Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under section 141(1). No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under section 141(2) by making necessary averments relating to consent and

connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) ***Other Officers of a company can not be made liable under sub-section (1) of section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, be averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.****"*
(emphasis supplied)

12. In **"Nitin Meshram v. Softmart Solutions"**, bearing Crl.M.C. No. 2586 of 2007 decided on 22.9.2009, Delhi High Court was of the view that meaning of the expressions "consent", "connivance" and "neglect" as appear in section 141 of the Negotiable Instruments Act, can be drawn from the Legal Glossary issued by the Government. Relevant para from this judgment is reproduced here under

"16. So far as the expressions "neglect", "consent" and "connivance" are concerned, the same have been described in the legal glossary of the Government of India thus:
"Neglect: to disregard; to pay little or no attention to; to fail to perform, render, discharge (a duty) to take (a precaution).
Consent: a concurrence of will
Connivance: passive consent; a corrupt or guilt assent to wrong doing not involving actual participation in it, but implying knowledge of and failure to prevent or oppose it"

These meanings would guide the consideration of the acts and omissions attributed to the petitioner under sub-section 2 of Section 141 of the statute.

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18. From the above it appears that the respondent-complainant has not merely reproduced the words of the statute merely but has actually attributed certain acts of commission and omission against the petitioner. Apart from the averment that the petitioner is a director, it has been specifically averred that the petitioner negotiated and participated in the dealings and transactions with the complainant. It has also been contended that despite the service of the legal notice upon the petitioner, the petitioner has failed to make payment of the same. In addition to the above, it has been urged that the offence alleged by the company has been committed with the consent and connivance of the accused nos.2 to 5 with one another. No reply was even sent by the petitioner to the legal notice.

19. It needs no elaboration that while testing the maintainability of a complaint on the ground that it fails to disclose any commission of offence or the order of summoning by the trial court, it is trite that the complaint has to be examined and the averments made therein have to be taken as true at their face value."

13. Thus a conjoint perusal of section 141(2) and judgment of the Hon'ble Apex Court exposits that directors or any other officer of a company can be made vicariously liable under NI Act, if it could be shown that either he was in charge of, and responsible to the

company, for the conduct of the business of the company or there was his consent, connivance or negligence. Now, as argued by Id. Counsel for the respondent that applicability of Section 141(2) is required to be examined in the facts of the present case, in view of the aforesaid discussion.

14. In its reply, respondent has admitted that petitioner was working as Chief General Manager - Commercial at the relevant period of time with PME power solutions India Limited (in short PME). However it has been further averred that Cheques in question were issued by the PME on account of settlement dated 03.02.2018 arrived at with respondent before the NCLT - principal bench. Not only the petitioner was a witness to this settlement deed, but even a personal affidavit dated 26.02.2018 was also filed by him before the NCLT. Few of the relevant paragraphs from that affidavit are reproduced below:-

> *"3. I state that as per the terms of Settlement Agreement dated 03.02.2018, the Respondent/ Corporate Debtor has agreed to pay to the Applicant/ Operational Creditor a sum of Rs. 62,13,311/- (Rupees Sixty Two Lacs Thirteen Thousand Three Hundred and Eleven Only) including interest towards full and final settlement of the amount payable by Respondent/ Corporate Debtor to Petitioner/Applicant/Operational Creditor.*
>
> *4. I state that the Respondent/Corporate Debtor duly undertakes to this Hon'ble Tribunal to pay to the Petitioner/Applicant/Operational Creditor the abovementioned amount in 6 (Six) equal monthly installments through Post Dated Cheques,*

> *commencing from 10.02.2018 ending on 10.07.2018 as perschedule of payment mentioned in clause. 3. of the said Settlement Agreement.*
>
> *5. I state that the Respondent/Corporate Debtor undertakes to this Hon'ble Tribunal that it shall ensure that sufficient funds are available in CTBC bank account no. 608181 so as to assure that the respective Post Dated Cheques issued by Respondent/Corporate Debtor to Petitioner/ Applicant/ Operational Creditor, towards the monthly installments mentioned in clause 3 of the Settlement Agreement dated 03.02.2018 are duly honoured on their respective due dates without any default whatsoever."*

15. In his affidavit dated 26.02.2018 filed by the petitioner before NCLT, not only the liability on part of PME was admitted, but assurance was also provided by him that sufficient funds would be maintained to satisfy the monthly installments for the six cheques given to respondent on account of the settlement. Thus, not only petitioner was privy to the terms of settlement, rather he was instrumental in entire proceedings before the NCLT and *prima facie* it cannot be denied that cheques were issued with his consent. In that eventuality, quashing of the complaint/proceedings at this stage would be against the aim and objectives of the NI Act the purpose of which to bring accountability in case of default.

16. With respect to the petitioner, even specific allegations have been made regarding his role as well as his capacity as being incharge of the company. Relevant para from the complaint is reproduced hereunder:-

> *"That the Accused No. 5 also tendered a duly sworn affidavit before the National Company Law Tribunal, Principal Bench at New Delhi wherein he had stated that a Settlement Agreement was executed between the Complainant Company and Accused No.1 through Accused No. 2 acknowledging the liability of the Accused No. 1 towards the Complainant Company. It is pertinent to mention here that the Accused No. 5 was duly authorized by the Accused persons in this behalf vide Resolution dated 09.01.2018 and as such he is also responsible for day to day business of the Accused Company. Copy of Resolution dated 09.01.2018 and Affidavit is attached herewith."*

17. In view of the discussion made hereinabove, no interference is made out qua petitioner in complaint NACT-28586-2018 and subsequent summoning order dated 12.01.2021, thus both the petitions are dismissed.

18. Pending miscellaneous application(s), if any, shall also stand disposed of.

March 12, 2024
sanjay

(**HARKESH MANUJA**)
JUDGE

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