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

\+ CRL.M.C. 264/2023 and CRL.M.A. 1068/2023

MR VIBHOR JINDAL .....Petitioner

Through: Mr.Alok Bhachwat and Mr.Ishan Jain, Advocates

versus

M/S GLOBE CAPITAL MARKETS LTD AND ORS......Respondents

Through: Ms.Dipika Prasad, Advocate for respondent No.1

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **23.08.2024**

1. By way of the present petition, the petitioner seeks quashing of the Criminal Complaint No. 1834/2021 titled 'Globe Capital Market Limited v. Vineet Securities Private Limited' filed by respondent No. 1 under Section 138 of the Negotiable Instruments Act (hereinafter, referred to as *"NI Act"*) as well the summoning order dated 17.12.2021 passed by learned Judicial Magistrate First Class (JMFC) (NI Act), Patiala House Courts, Delhi and consequent proceedings emanating therefrom.

2. As per the complaint, respondent No. 2 (accused No.1 in the complaint) is a company incorporated under the Companies Act and respondent No. 3 & 4 (accused No.2 & 3 in the complaint) as well as the petitioner (accused No. 4 in the complaint) have been arrayed in their capacity as Directors of respondent No. 2.

3. Succinctly put, the facts of the case, as discernible from the complaint, are that it is claimed that respondent No. 2 was admitted as Trading Member, inter-alia, of Futures and Options Segment of National

Stock Exchange of India Limited (NSEIL) and were required to "Clear and Settle" the deals. Respondent No. 1/complainant was duly appointed Clearing Member of the NSE, authorized to carry on the activities of clearing and settlement of deals/trades, on behalf of Trading Members of NSEIL. Being desirous of clearing and settling the deals executed, respondent No. 2 and respondent No. 1 entered into a Clearing Member-Trading Member Agreement dated 07.11.2005 (hereafter, "the Agreement"), to avail the clearing and settlement services from respondent No. 1. Respondent No. 2 and its Directors failed to adhere to the terms of the payment, as contemplated in the aforesaid Agreement and resultantly, a sum of Rs. 4,46,37,953/- alongwith the interest had become outstanding and payable by respondent No. 2 to respondent No. 1. In partial discharge of the liability, respondent No. 2 issued the following cheques in favour of respondent No. 1:

S.NO.	CHEQUE NOS.	CHEQUE DATE	AMOUNT
1.	015415	28.12.2020	Rs. 1,00,00,000/-
2.	015700	28.12.2020	Rs. 10,00,000/-
3.	015487	28.12.2020	Rs. 25,00,000/-
4.	015414	28.12.2020	Rs. 1,00,00,000/-
5.	015413	28.12.2020	Rs. 50,00,000/-
6.	015699	28.12.2020	Rs. 20,00,000/-
7.	013824	28.12.2020	Rs. 15,00,000/-
8.	015488	28.12.2020	Rs. 25,00,000/-
9.	015698	28.12.2020	Rs. 20,00,000/-

All the above cheques were drawn on HDFC Bank, Kailash Building, K.G. Marg, New Delhi-110001. Upon presentment, the abovementioned cheques got dishonoured and the same were returned unpaid vide return memos dated 29.12.2020, with remarks "Payment Stopped by Drawer". Subsequently, a legal notice dated 18.01.2021 was issued to the petitioner and respondent No. 2 to 4. However, upon failure to pay the amount under the subject cheques, the said criminal complaint under Section 138 NI Act came to be filed and the petitioner has been arrayed as an accused by alleging that he was the Director of respondent No. 2/accused company.

4. On the basis of the above averments, the learned Trial Court has summoned the petitioner along with the other accused persons vide the impugned order dated 17.12.2021.

5. Learned counsel for the petitioner states that the impugned order of summoning has been passed without application of mind inasmuch as the learned Trial Court had failed to consider that the petitioner had resigned and had ceased to be a Director of respondent No. 2/accused company w.e.f. 06.11.2019 and thereafter, the petitioner had no concern with the day-to-day affairs and decisions of the company qua its business transactions. To support the said contention, the petitioner has placed on record a copy of Company Master Data from the site of Ministry of Corporate Affairs *("the MCA")* showing the list of Directors on the website as per which the petitioner is shown to have ceased as Director of the company from 06.11.2019. Therefore, in the complaint, it has been wrongly stated that on the date of issuance of the subject cheques, the petitioner was a Director.

It is further contended by the petitioner that the subject cheques have neither been signed by the petitioner nor he was aware of the amount if any or at all was payable to the complainant, since the cheques were allegedly issued in December 2020, whereas the petitioner had resigned in November, 2019. The complainant, in fact specifically states that the cheques mentioned as Sr. No. 1, 4, and 5 have been signed by respondent No.4 (accused No.3 in the complaint) and rest of the cheques have been signed by respondent No.3 (accused No.2 in the complaint). Moreover, the petitioner while referring to the statement of CW-1/*Pawan Kumar*, submits that the Authoritative Representative of respondent No. 1 was unaware of the true facts and the present complaint has been filed ignoring the fact that the petitioner had resigned as Director of the company much before the issuance of the subject cheques. *De hors* the aforesaid submissions, it is argued that the complaint lacks necessary averments inasmuch as it has not been alleged that the petitioner was in-charge of and responsible to the company for the conduct of business at the time of commission of the offence nor is there any specific role assigned to the petitioner, hence the complaint case is liable to be quashed qua the petitioner.

6. The petition is contested by learned counsel of respondent No.1 by contending that the complaint has all necessary averments and consequently, a trial would be required to determine the liability of the petitioner.

7. I have heard the learned counsels for the parties and have also perused the material placed on record.

8. The law as regards the liability of a Director for an offence under Section 138 NI Act committed by a company is no longer res integra. Starting from the decision in S.M.S Pharmaceuticals Ltd. *v.* Neeta Bhalla & Anr.[1] upto the recent decision of Supreme Court in Susela Padmawathy Amma *v.* Bharti Airtel Ltd.[2], it has been observed that while a Director holds special/unique position in a company, having authority to take decisions, however, the mere nomenclature or mention of an individual as Director cannot itself bring him/her into the fold of Section 138 by assistance of

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[1] 2005 8 SCC 89
[2] 2024 SCC OnLine SC 311

Section 141 NI Act, the latter of which relates to vicarious liability of a Director.

9. As observed in a catena of judgements, Section 141 being a penal provision, has to be strictly construed. It is only those Directors who were in-charge of the day-to-day affairs and responsible for the conduct of the business of the company who can be held liable for the offence under Section 138 NI Act. The word 'in-charge of a business' has been interpreted to mean a person having overall control of the day-to-day business of the company.[3] Thus, for a Director to be vicariously liable, the complainant has to show that the said Director was indeed associated with the day-to-day affairs and management of the business. A Director cannot be arrayed as an accused on the basis of a cursory statement or vague averment. What would be appropriate pleadings/averments would be determined on a case-to-case basis.

10. Insofar as the legal position regarding quashing of complaints filed under Section 138 NI Act against the Directors in exercise of the powers conferred under Section 482 Cr.P.C. is concerned, the same has been discussed in detail by the Supreme Court in Sunita Palita *v.* Panchami Stone Quarry[4] and S.P. Mani & Mohan Dairy *v.* Snehalatha Elangovan[5]. In S.P. Mani (Supra), it has been observed: -

"xxx

> *58. Our final conclusions may be summarised as under:*
> *58.1. The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable… On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the*

[3] Girdhari Lal Gupta vs. B.H. Mehta, (1971) 3 SCC 189
[4] (2022) 10 SCC 152
[5] (2023) 10 SCC 685

offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.
58.2. The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm… The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.
xxx
58.4. If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.
xxx"

11. From the above-mentioned cases, it can be seen that if any Director seeks quashing of a complaint under Section 138 NI Act or any process issued therein, then he would have to show that the complaint is bereft of the appropriate pleadings/averments which would bring him into the fold of the rigours of Section 141 NI Act and in this regard, he would have to bring on record certain sterling and incontrovertible evidence showing that he is not concerned with issuance of the cheques.

12. In the present case, as noted above, the petitioner has denied liability by contending that he was not the Director in the company at the time of

issuance of the cheques. To support the said contention, the petitioner has placed on record a copy of Company Master Data from the site of MCA showing the list of Directors on the website, as per which the petitioner is shown to have ceased to be a Director of the company with effect from 06.11.2019. The petition is accompanied by the criminal complaint and a reading of the said complaint would show that the petitioner (impleaded as accused No. 4 in the subject complaint) is impleaded by way of vicarious liability by describing him as a Director. The relevant extract of the complaint reads as under:-

> *"xxx*
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> 4. *That the Accused No.1 is a Company incorporated under the Companies Act and the Accused No.2 to 4 are the Directors of the Accused No.1 Company and are incharge of day to day affairs and operations of the Accused No.1 Company.*
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> 9. *That in part discharge of liability of all the Accused Persons towards the Complainant Company, arising with respect to the services availed by the Accused No.1, from the Complainant Company, in terms of the afore referred Clearing Member-Trading Member Agreement dated 07.11.2005, as aforementioned, the Accused No.1 aforenamed, inter-alia, Issued the following cheques in favour of the Complainant Company…*
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> 13. *That the Accused No.1 is a Company incorporated under the Companies Act 1956 and accused Nos.2 to 4 are the Directors of the Accused No.1 Company and are in charge of and responsible for the day-to-day affairs and operations of the Accused No.1 Company. The cheques mentioned as Sr. No.1, 4 and 5 in Para No.9 above, have been signed by Accused No.3 while rest of the six cheques have been signed by the Accused No.2. All the Accused persons are therefore liable to be*

prosecuted for the offence as contemplated in Section 138 read with Section 141 of the Negotiable Instruments Act.
xxx"

13. A perusal of the extract of the complaint hereinabove would show that only a bald averment has been made that the petitioner was responsible for the day-to-day affairs of the company and further, the complaint specifically mentions that the subject cheques have been signed by the other two Directors/respondent Nos. 3 & 4 and not the present petitioner. Merely, by mentioning the name of the petitioner as the Director of the company in the complaint cannot be the basis of bringing the petitioner into the fold of Section 138 NI Act with the aid of Section 141 NI Act. The averment that the petitioner was involved in the transaction of the loan, in the absence of any role played by him at the time of issuance/dishonour of the cheques, does not itself make him liable for the offence under Section 138 NI Act. A copy of the Company Master Data from the MCA website placed on record, is a document of incontrovertible nature and the respondent has failed to place on record any evidence to counter the factual situation as established by the said Form. In these facts, the said Form can indeed be looked into and considered by this Court while exercising its jurisdiction under Section 482 Cr.P.C. Additionally, reading of the statement of CW-1/*Pawan Kumar*, who is authorized representative of respondent No. 1/complainant company would reveal that the authoritative representative of respondent No.1 has been oblivious as to the position of the petitioner at the time of dishonour of the cheques and the complaint has been filed without giving due consideration to the proper facts and circumstances.

14. As such, it is the conceded case of the respondent No.1 that the petitioner was not the Director of the company on the relevant date. From a

reading of the complaint and the supporting documents filed by the petitioner in form of data from the MCA website, the case of the petitioner squarely falls in the ratio of the aforenoted binding precedents. In the totality of the facts and circumstances, the petitioner cannot be made responsible for the dishonour of cheques and the continuation of the criminal complaint against him would be nothing but an abuse of the process of law.

15. Consequently, the petition is allowed and the criminal complaint filed against the petitioner is quashed. As a necessary sequitur, the summoning order is also set aside. Pending application is disposed of as infructuous.

MANOJ KUMAR OHRI, J

AUGUST 23, 2024

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