



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

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Date of Decision: 05.03.2024

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CRL.M.C. 738/2023, CRL.M.A. 2827/2023

PAWAN SINGHAL

..... Petitioner

Through: Mr. Shivam Goel, Mrs. Ramya S.
Goel and Mr. Akash Katiyar,
Advocates.

versus

STEEL INDIA CORPORATION & ORS.

..... Respondents

Through: Mr. Rahul Sood, Advocate for
respondent No.1.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C. read with Article 227 of Constitution of India, the petitioner seeks setting aside of the summoning order dated 31.03.2022 passed by learned MM (NI Act), Patiala House Courts, New Delhi in CC NI Act 4384/2021 titled as 'M/s Steel India Corporation v. Taurus Polymers Pvt. Ltd. & Ors.' as well as quashing of the complaint case itself.
2. The proceedings pending before the learned MM relate to business transactions taking place between *M/s Steel India Corporation*/complainant company (respondent No.1 herein) and *M/s Taurus Polymers Pvt. Ltd.*/accused company (respondent No.2 herein), wherein the former supplied goods to the latter and raised bills in this regard. It has been further



alleged that the petitioner is the director of the accused company. In the complaint, it has been alleged that the authorized signatory of the accused company, in order to discharge the liability as regards the bills raised, issued five cheques totalling Rs.4,99,882/-, which when presented for encashment were dishonoured vide returned memo dated 21.06.2021 with the remarks 'exceeds arrangement'. Consequent to such dishonour, legal notice dated 16.07.2021 was issued, and upon failure to repay the aforementioned amount, the complaint came to be filed.

3. The petitioner has raised multi-fold contentions, primary among them being that he was appointed as a non-executive additional Director on 04.11.2019 for a period of one year. He resigned on 04.11.2020 and that his resignation was accepted and forwarded to the Registrar of Companies. The information was also uploaded on the Master Data of the accused company. *De hors* the aforesaid submission, it is also contended 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.

4. The petition is contested by the respondent by contending that the petitioner has not responded to the legal notice and that the complaint has the necessary averments and consequently, a trial would be required to determine the liability of the petitioner.

5. I have heard learned counsels for the parties and have also gone through the material placed on record.

6. The criminal complaint has been filed under Section 138 read with Section 141 of the NI Act. The petitioner has been impleaded in the capacity of Director of the accused company. The present petition is accompanied by



the Master Data of the accused company as well as Form Nos. DIR-11 and DIR-12. The said documents i.e. DIR-11 and DIR-12 indicate that the petitioner was appointed as a non-executive additional Director on 04.11.2019 and that he resigned on 04.11.2020. A receipt dated 28.01.2021 issued by the Ministry of Corporate Affairs towards fees for issuing copy of Form No. DIR-11 has also been placed on record.

7. The above would show that while the cheques were presented for encashment and dishonoured on 21.06.2021, the petitioner had resigned from his position as non-executive additional Director almost seven months prior i.e., on 04.11.2020.

8. Examining the other contention as to whether the necessary ingredients of the offence are alleged in the complaint, it is noted that in the criminal complaint, it is alleged that the authorized signatory had issued the subject cheques in the presence of the present petitioner and co-accused (respondent No.3 herein). It is further alleged that despite repeated demands, the petitioner and the other Directors failed to clear the liability and further that they were aware that when the subject cheques would be presented, they would be dishonoured, and therefore all the accused were jointly and severally liable for the offence of dishonour of cheques. In one of the paragraphs i.e. paragraph No.2, it has been alleged that the present petitioner and the other co-accused are the Directors of the company and that they are engaged in day-to-day affairs. It has also been alleged that the petitioner had extended an oral guarantee.

9. In the present case, the petitioner has placed on record unimpeachable and uncontroverted material in the form of DIR-11, which is also accompanied by receipt issued by the Ministry of Corporate Affairs of



issuance of the said form. The said form indicates that the petitioner who even otherwise was only a non-executive additional director, had resigned from the said post much prior to the date on which the subject cheques came to be dishonoured. The Form DIR-11 as well as the other documents placed on record have not been disputed by learned counsel for the respondent during the course of arguments.

10. Reference in this regard may be made to the decision of Sunita Palita v. Panchami Stone Quarry¹, wherein it was observed:-

“xxx

42. Liability depends on the role one plays in the affairs of a company and not on designation or status alone as held by this Court in S.M.S. Pharmaceuticals. The materials on record clearly show that these appellants were independent, non-executive Directors of the company. As held by this Court in Pooja Ravinder Devidasani v. State of Maharashtra, a non-executive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsible for the day-to-day running of the accused Company. Moreover, when a complaint is filed against a Director of the company, who is not the signatory of the dishonoured cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint, that such Director was in charge of and responsible for conduct of the business of the Company or the Company, unless such Director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and/or its business and affairs.

xxx”

11. Reference may also be made to the decision of this Court in Sunita

¹ (2022) 10 SCC 152



Palta & Ors. v. Kit Marketing Pvt. Ltd.², while dealing with a situation wherein the petitioners claimed to be non-executive, observed:-

“xxx

16. Admittedly, the petitioners are neither the Managing Directors nor the Authorized Signatories of the accused company. The accused company and the Managing Director are arrayed as accused No. 1 and 2 along with others in the complaint pending before the concerned Metropolitan Magistrate. A perusal of the complaint filed under Section 138 r/w Sections 141/142 of NI Act filed by the complainant shows that except for the general allegation stating that the petitioners were responsible for control and management and day to day affairs of the accused company, no specific role has been attributed to the petitioners. To fasten the criminal liability under The Negotiable Instruments Act, 1881, the above generalised averment without any specific details as to how and in what manner, the petitioners were responsible for the control and management of affairs of the company, is not enough.

xxx”

12. The second issue whether a written guarantee or a letter of guarantee by an erstwhile Director would make him vicariously liable came up before the Supreme Court in Pooja Ravinder Devidasani v. State of Maharashtra & Anr.³ wherein it was held that the same may amount to a civil liability but not vicarious liability under the NI Act. Even this Court had the occasion to deal with the said issue in Sanjeev Kumar Aggarwal v. IFCI Factors Ltd. & Ors.⁴ It is also pertinent to take note of another decision of Supreme Court in Ashutosh Ashok Parasrampuriya & Anr. v. Gharrkul Industries Pvt. Ltd. &

² 2020 SCC OnLine Del 2592

³ (2014) 16 SCC 1

⁴ 2021 SCC OnLine Del 5496



Ors.⁵, wherein the Court enunciated the circumstances under which a case under Section 138 read with Section 141 NI Act can be quashed in exercise of powers under Section 482 Cr.P.C:-

“xxx

23. In the light of the ratio in S.M.S. Pharmaceuticals Ltd. (supra) and later judgments of which a reference has been made what is to be looked into is whether in the complaint, in addition to asserting that the appellants are the Directors of the Company and they are incharge of and responsible to the Company for the conduct of the business of the Company and if statutory compliance of Section 141 of the NI Act has been made, it may not open for the High Court to interfere under Section 482 CrPC unless it comes across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of Court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the particular Director for which there could be various reasons.

xxx”

13. The Court even otherwise, is also convinced that the complaint is bereft of appropriate pleadings alleging that the petitioner was in charge of, and responsible for the conduct of the business of the accused company.

14. In the totality of the facts and circumstances, the petitioner cannot be made responsible for the dishonour of cheque, 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

⁵ 2021 SCC OnLine SC 915



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against the petitioner is quashed. As a necessary sequitur, the summoning order dated 31.03.2022 is also set aside. Pending application is disposed of as infructuous.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 05, 2024/rd

Signature Not Verified

Digitally Signed
By:NIJAMUDDIN ANSARI
Signing Date:16.03.2024
19:12:08

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