



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

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Date of Decision: 13.03.2024.

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CRL.M.C. 2034/2024 & CRL.M.As. 7840-7841/2024

SUMAN ARORA

..... Petitioner

Through: Mr. Rajat Nair, Mr. Manan Popli, Ms. Paruni Sharma, Mr. Gaurav Jain, Ms. Karuna Sharma and Ms. Akshita Goyal, Advocates.

versus

B C GUPTA HUF

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks quashing of Complaint Case No. 8140/2019 filed against her under Section 138 read with Sections 141/142 of the Negotiable Instruments Act, 1881 (for short, the 'NI Act') titled 'B.C. Gupta HUF vs M/s KSBL Securities Limited & Ors.' pending before the learned Metropolitan Magistrate, Patiala House Court, New Delhi.
2. The subject proceedings arise out of the complaint filed by the respondent/complainant wherein it has been alleged that M/s KSBL Securities Ltd./accused company had approached the respondent to enter into business transaction seeking investment in the nature of term loan. Accordingly, the parties entered into a Memorandum of Understanding



(‘MOU’) dated 10.04.2018, wherein it was specifically stated that the investment would partake the character of a term loan alongwith capital protection. It was further agreed that the loan of Rs.30 lacs would carry fixed interest @ 15% per annum, which would be disbursed as committed returns by the accused company. On the basis of the said understanding, the complainant invested an amount of Rs.30 lacs, which was transferred through RTGS drawn on HDFC Bank on 10.04.2018. In terms of the MoU, the complainant received payments towards interest component till September, 2018, whereafter the accused company committed default. In the said background, a cheque bearing No. 004746 for an amount of Rs.30 lacs drawn on HDFC Bank, Kailash Building, K.G. Marg, New Delhi dated 12.04.2019 came to be issued towards discharge of the liability. The said cheque, on presentation, was dishonoured vide memo return dated 15.04.2019, with the remark “funds insufficient”. Consequently, a demand notice was issued on 26.04.2019 and upon failure of the accused company and its Directors to pay the same, the subject complaint came to be filed.

3. Learned counsel for the petitioner has contended that though the petitioner is sought to be arrayed in the complaint in the capacity of Director, she is only a sleeping Director and as such was not involved in the day-to-day affairs of the accused company. It is further contended that the complaint is bereft of specific averments against the petitioner. It has been further contended that the petitioner was not a signatory to the said MoU and cannot be held liable with the aid of Section 141 of the NI Act. Lastly, it is contended that the petitioner had resigned from the Directorship of the company with effect from 06.03.2020 and in this regard, a communication addressed to the Board of Directors has been placed on record.



4. 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. In S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla & Anr.¹, the Supreme Court while dealing with the aforesaid, discussed in detail the role of a Director in a company as well as their liability. The relevant extract of the said judgement reads as under:-

“xxx

8. The officers responsible for conducting the affairs of companies are generally referred to as directors, managers, secretaries, managing directors, etc. What is required to be considered is: Is it sufficient to simply state in a complaint that a particular person was a director of the company at the time the offence was committed and nothing more is required to be said. For this, it may be worthwhile to notice the role of a director in a company. The word “director” is defined in Section 2(13) of the Companies Act, 1956 as under:

“2. (13) ‘director’ includes any person occupying the position of director, by whatever name called;”

There is a whole chapter in the Companies Act on directors, which is Chapter II... There is nothing which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company but he may not know anything about the day-to-day functioning of the company... What emerges from this is that the role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a company is in charge of its everyday affairs... Therefore, mere use of a particular designation of an officer without more, may not be enough by way of an averment in a complaint. When the requirement in Section 141, which extends the liability to officers of a company, is that such a person should be in charge of and

¹ (2005) 8 SCC 89



responsible to the company for conduct of business of the company, how can a person be subjected to liability of criminal prosecution without it being averred in the complaint that he satisfies those requirements...

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10. ...What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action... The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status...

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12. The conclusion is inevitable that the liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company. Therefore, in order to bring a case within Section 141 of the Act the complaint must disclose the necessary facts which make a person liable.

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5. The said dicta of Supreme Court continue to form the bedrock for the principles surrounding vicarious liability of Directors under Section 138



read with Section 141 NI Act and has been reiterated with approval in a number of judgements including but not limited to S.M.S. Pharmaceuticals v. Neeta Bhalla & Anr. (II)², K.K. Ahuja v. V.K. Vora³, Pooja Ravinder Devidasani v. State of Maharashtra & Anr.⁴, Gunmala Sales Pvt. Ltd. v. Anu Mehta & Anr.⁵, Standard Chartered Bank v. State of Maharashtra⁶, Ashok Mal Bafna v. Upper India Steel Manufacturing and Engineering Co. Ltd.⁷, Ashutosh Ashok Parasrampuriya v. Gharrkul Industries Pvt. Ltd. & Ors.⁸, and most recently in Susela Padmawathy Amma v. Bharti Airtel Ltd.⁹

What arises from the conspectus of decisions provided above is that while a Director of a company indeed holds a special/unique position in the company, having authority to take decisions, however, the mere nomenclature or mention of an individual as a Director of a company cannot itself be the basis for bringing him/her into the fold of Section 138 by assistance of Section 141 NI Act.

6. Section 141 of the NI Act dealing with offences by companies, contains the provision related to vicarious liability of Director and reads as under:-

“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

² (2007) 4 SCC 70

³ (2009) 10 SCC 48

⁴ (2014) 16 SCC 1

⁵ (2015) 1 SCC 103

⁶ (2016) 6 SCC 62

⁷ (2018) 14 SCC 202

⁸ 2021 SCC OnLine SC 915

⁹ 2024 SCC OnLine SC 311



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

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(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.”

7. As has been observed in a catena of judgements, Section 141 being a penal provision, has to be strictly construed. Resultantly, not every Director can be brought into the fold of the said provision merely due to the aforesaid reason. 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 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.¹⁰ 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.

8. 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 Quarry¹¹ and S.P. Mani & Mohan Dairy v. Snehalatha Elangovan¹². 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 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.

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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

¹⁰ Girdhari Lal Gupta vs. B.H. Mehta, (1971) 3 SCC 189

¹¹ (2022) 10 SCC 152

¹² (2023) 10 SCC 685



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.

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9. 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 cheque.

10. As noted above, the petitioner has denied liability by arguing that the complaint is bereft of the necessary averments against the petitioner, to bring her into the net of Section 141 NI Act. However, upon a reading of the criminal complaint placed on record, this Court is of the considered opinion that the complaint contains the necessary averments in line with Section 141 NI Act inasmuch as it has been stated that the petitioner alongwith the other Directors was jointly and severally responsible and in-charge for the conduct of the business as well as in control of the management of the affairs of the accused company. Faced with this position, it has been argued that the petitioner had resigned from the Directorship of the company with effect from 06.03.2020, and reference in this regard has been made to an internal communication to the Board of Directors, although no material has been placed on record showing that the same was communicated to the Registrar of Companies. Even otherwise, the same would be of no consequence inasmuch as concededly, on the date of dishonour of the cheque, the



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petitioner was a Director of the accused company.

11. Resultantly, this Court finds no merit in the petition and the same is dismissed alongwith pending applications.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 13, 2024

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