



2024:DHC:3000



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

Date of decision: 15.04.2024

+ **CRL.M.C. 2057/2022 & CRL.M.A. 8725/2022 & CRL.M.A. 10798/2022**

MRS MITHLESH GUPTA Petitioner
Through: Mr.T.V.George, Adv.

versus

M/S NATIONAL INDUSTRIAL CORPORATION LIMITED
..... Respondent
Through: Mr.Vikas Kumar, Mr.Ayush
Kapur, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking quashing of the complaint filed by the respondent herein under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'), being CC No.3635/2018, titled ***M/s National Industrial Corporation v. M/s Hillstar Distributors***, as against the petitioner, who has been arrayed as accused no.3 in the said complaint.
2. The above complaint has been filed by the respondent impleading the accused no.1- M/s Hillstar Distributors as a



proprietorship concern through its proprietor- Mr.Sandeep Gupta, who has been impleaded as the accused no.2 in the said complaint. The petitioner has been impleaded in the Complaint as the accused no. 3, stating her to be the Authorized Signatory.

3. In the complaint, the respondent/complainant has averred as under:

"4. That the Accused No.1, proprietorship firm represented through the Accused Nos.2 & 3 claims to be engaged in distribution and marketing of Indian Made Foreign Liquor (I.M.F.L) under the name and style 'M/s Hillstar Distributors' having its office at 218, Vardhman Industrial Estate, Bahadurpur, Saini, Roorkee, Haridwar, Uttarakhand-249402 and branch office at H.No. 56/K, Madhuban Colony, Baghpat Road, Meerut, Uttar Pradesh-250002.

5. That the Accused No.2 on behalf of the Accused No.1 approached the Complainant and represented himself to be the Proprietor and Authorized Signatory of the Accused no.1 and offered their services for promotion, marketing and maximizing the sale of the Complainant's brands namely Dimpy Whisky, Black Bull XXX Rum and Golden Barrel Reserve Whisky bottled at the Complainant's Bilari unit situated in Uttar Pradesh for the territory of Uttarakhand through the Bonded Ware House of the Accused situated at Haridwar.

6. That the Complainant under bonafide belief and good faith agreed to take the services of the Accused No.1 and also to supply its brands to the Accused and accordingly an agreement dated 13th June, 2017 was signed by and



between the Complainant and the Accused No. 1 represented through the Accused Nos. 2 & 3 with retrospective effect from 1st June, 2017 to 31st March, 2018.....

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10. That in continuance of the same the Accused No. 1, through the Accused No. 2 issued six cheques for total amount of Rs. 20,40,000/-.....The Accused No. 1, represented through the Accused Nos. 2 and 3, issued the aforesaid cheques against invoices mentioned hereinabove to discharge their admitted liabilities.....

11. That the Accused No. 1, represented through the Accused Nos. 2 and 3, issued the aforesaid cheques under the signatures of the Accused No. 2 with the consent of the Accused No. 3 to discharge their admitted liabilities as per the contract, with commitment that the same will be honoured on presentation. That the Accused No. 2, is the Proprietor and authorized signatory of the Accused No. 1 and Accused No. 3 is also the Authorized Signatory of Accused No. 1. Therefore, the Accused Nos. 2 and 3 being part of the senior management of the Accused No. 1 are in-charge of the day to day business and operational affairs of the Accused No. 1 and hence are liable to pay any debt or amount legally payable by the Accused No. 1 and also to discharge the liabilities of the Accused No. 1.

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18. That the Accused No. 2 is the authorized signatory and Proprietor of the Accused No. 1 firm alongwith the Accused No. 3 authorized signatory of Accused No. 1, who are the persons responsible for the day to day affairs and other business operations of the



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Accused No. 1 at the time of commission of the offence and as such their liability is joint, several and co-extensive with the liability of the Accused No. 1.”

(Emphasis supplied)

4. The learned counsel for the petitioner submits that the petitioner is neither the proprietor nor the signatory of the cheque in question. He submits that in terms of Section 141 of the NI Act, it is only where the offence is committed by a company or a firm or other association of individuals, that the person, who is in-charge of or responsible for the company, is additionally made liable to face prosecution under Section 138 of the NI Act. He submits that as the accused no.1 is only a proprietorship concern, and in terms of Section 138 of the NI Act, only its proprietor and the signatory of the cheque, that is, the accused no.2, can face the prosecution.
5. On the other hand, the learned counsel for the respondent submits that the petitioner herein had also signed the agreement, that is, the distributorship agreement on behalf of the accused no.1 with the respondent. He submits that the respondent was not aware if the accused no.1 is a proprietorship concern and what is the relationship of the petitioner with the accused no.1. He submits that the petitioner had represented herself to be the authorized signatory on behalf of the accused no.1.
6. I have considered the submissions made by the learned counsels for the parties.
7. Section 138 of the NI Act reads as under:



“138. Dishonour of cheque for insufficiency, etc., of funds in the account.— Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless--

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, “debt or other liability” means a



legally enforceable debt or other liability.”
(Emphasis supplied)

8. A reading of the above provision would show that it makes only the drawer of the cheque liable for prosecution under the said Section. Reference in this regard can also be made to the judgment of the Supreme Court in ***Aparna A. Shah v. Sheth Developers (P) Ltd.***, (2013) 8 SCC 71.
9. Section 141 of the NI Act creates vicarious liability in case the offence under Section 138 of the NI Act has been committed by a company or by a firm or other association of individuals. It 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 company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.



(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 any body corporate and includes a firm or other association of individuals; and

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

(Emphasis supplied)

10. The provision of Section 141 of the NI Act, however, cannot be extended in case where the offence under Section 138 of the NI Act is committed by a proprietorship concern. In such a case, only the proprietor or at best the signatory of the cheque may be made liable to face the prosecution under Section 138 of the NI Act, but not a person who is neither the proprietor of the proprietorship concern, nor is a signatory to the cheque.
11. In ***Raghu Lakshminarayanan v. Fine Tubes***, (2007) 5 SCC 103, the Supreme Court has clarified this position as under:

“7. A bare perusal of the complaint petition would show that Accused 1 was described therein as “a business concern”. It was not described as a company or a partnership firm or an association of persons.

8. The concept of vicarious liability was introduced in penal statutes like the



Negotiable Instruments Act to make the Directors, partners or other persons, in charge of and control of the business of the company or otherwise responsible for its affairs; the company itself being a juristic person.

9. The description of the accused in the complaint petition is absolutely vague. A juristic person can be a company within the meaning of the provisions of the Companies Act, 1956 or a partnership within the meaning of the provisions of the Partnership Act, 1932 or an association of persons which ordinarily would mean a body of persons which is not incorporated under any statute. A proprietary concern, however, stands absolutely on a different footing. A person may carry on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a company. Company in terms of the Explanation appended to Section 141 of the Negotiable Instruments Act, means any body corporate and includes a firm or other association of individuals. Director has been defined to mean in relation to a firm, a partner in the firm. Thus, whereas in relation to a company, incorporated and registered under the Companies Act, 1956 or any other statute, a person as a Director must come within the purview of the said description, so far as a firm is concerned, the same would carry the same meaning as contained in the Partnership Act.

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11. The appellant herein categorically contended that Accused 1 was a proprietary concern of Accused 2 and he was merely an employee thereof.

12. If Accused 1 was not a company within the meaning of Section 141 of the Negotiable Instruments Act, the question of an employee being proceeded against in terms thereof would not arise. The respondent was aware of the difference between a "partnership firm"



and a “business concern” as would be evident from the fact that it described itself as a partnership firm and Accused 1, as a business concern. Significantly, the respondent deliberately or otherwise did not state as to in which capacity the appellant had been serving the said business concern. It, as noticed hereinbefore, described him as in-charge, Manager and Director of Accused 1. A person ordinarily cannot serve both in the capacity of a Manager and a Director of a company.

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14. We, keeping in view the allegations made in the complaint petition, need not dilate in regard to the definition of a “company” or a “partnership firm” as envisaged under Section 34 of the Companies Act, 1956 and Section 4 of the Partnership Act, 1932 respectively, but, we may only note that it is trite that a proprietary concern would not answer the description of either a company incorporated under the Companies Act or a firm within the meaning of the provisions of Section 4 of the Partnership Act.

15. A Constitution Bench of this Court in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla (2005) 8 SCC 89 furthermore categorically stated that the complaint petition must contain the requisite averments to bring about a case within the purview of Section 141 of the Act so as to make some persons other than the company vicariously liable therefor. (See also Sabitha Ramamurthy v. R.B.S. Channabasavaradhya (2006) 10 SCC 581 and S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla (2007) 4 SCC 70)”

12. Applying the above principles to the facts of the present case, it is apparent that, in the Complaint, the respondent itself has pleaded that the Accused No. 1 is the proprietorship concern of which the Accused No. 2 is the proprietor. The cheque in



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question is also signed by the Accused No. 2 as proprietor of the Accused No. 1. The petitioner/Accused No. 3 has been arrayed as an accused on the premise that she is the authorized signatory of the accused no. 1 and that she signed the Agreement between the Accused No. 1 and the respondent along with the accused no. 2. That itself is not sufficient to invoke the vicarious liability of offence under Section 138 of the NI Act, in terms of Section 141 of the NI Act, on the petitioner.

13. In view of the above facts and the principles of law, the complaint against the petitioner cannot be sustained. Accordingly, the same is quashed as against the petitioner. However, it is clarified that this Order shall have no effect on the maintainability of further proceedings in the complaint case as filed against the other accused.
14. The petition is disposed of in the above terms. The pending applications are also disposed of being rendered infructuous. There shall be no order as to costs.

NAVIN CHAWLA, J

APRIL 15, 2024
RN/AS

[Click here to check corrigendum, if any](#)