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

\+ **CRL.M.C. 2407/2022 & CRL.M.A. 10154/2022**

NILIMA ASHOK MANSUKHANI .....Petitioner

Through: Mr. Aditya Sharma, Mr. Manoj Rajpoot & Mr. Dushyant Sharma, Advs.

versus

ANGAD INDIA PVT. LTD .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **23.12.2024**

1. Yet again, none appears for the respondent. It is seen that none has been appearing on behalf of the respondent since the beginning despite service of notice. This Court *vide* order dated 19.02.2024 had granted an opportunity to the respondent to file reply, if any, within a period of four weeks. However, despite such opportunity being granted, no reply has been filed.

2. The present petition is filed seeking quashing of the summoning order dated 10.08.2018 (hereafter '**impugned order**') passed by the learned Metropolitan Magistrate ('**MM**'), Central, Delhi in complaint case bearing CC No. 14665/2018.

3. The subject complaint was filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') pursuant to the dishonour of the cheque issued by the accused company - M/s. Supreme Infrastructure India Ltd (hereafter '**accused company**'), and subsequent non-payment of the cheque amount within 15 days of the receipt of demand notice. The complaint was filed on an allegation that the respondent had provided equipment, plant and machinery to the accused company and a total outstanding bill for a sum of ₹2,00,75,071/-

was due and payable to the respondent.

4. It is alleged that thereafter the respondent entered into a settlement agreement with the accused company on 28.05.2018 whereby the total amount payable to the respondent was agreed to be ₹1,40,00,000/-. Subsequently, cheque no. 225830 dated 21.05.2018 for a sum of ₹1,70,00,000/- (including compensation for delay and interest on the settlement amount) was issued in favour of the respondent which, on presentation, got dishonoured for the reason "*Kindly Contact Drawer*." It is alleged that thereafter the accused persons refused to speak to the respondent, and did not pay the cheque amount despite the receipt of demand notice. Consequently, the subject complaint was filed.

5. The petitioner has filed Form DIR-12 indicating that the petitioner had been appointed as the Independent Director of the accused company. In the absence of any reply or arguments advanced by the respondent to the contrary, the said fact remains uncontroverted.

6. The petitioner is sought to be implicated in the present case under Section 141 of the NI Act. Section 141 of the NI Act 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."

7. In terms of Section 141 of the Negotiable Instruments Act, 1881, if the subject cheque is issued by a company, then all those persons who are responsible for the day-to-day conduct of the accused company at the time of commission of offence, are vicariously liable.

8. It is pertinent to note that this Court can quash complaints under the NI Act at the pre-trial stage in the exercise of its inherent jurisdiction under Section 482 of the CrPC if such unimpeachable material is brought forth by the accused persons which indicates that they were not concerned with the issuance of the cheques or that no offence is made out from the admitted facts.

9. From the perusal of the complaint, it is apparent that only general allegations have been made against the petitioner.

10. It is settled law that Independent/ Non-Executive Directors do not have specific role in day-to-day functioning of the company, unless specific allegations have been made pointing towards the contrary.

11. The Hon'ble Apex Court in the case of ***Sunita Palita v. Panchami Stone Quarry* : (2022) 10 SCC 152**, relying on a catena of judgments, quashed the proceedings under Sections

138/141 of the NI Act against the appellants therein who were independent, non-executive directors of the accused company. The relevant portion of the aforesaid judgment is reproduced hereunder:

> *"41. A Director of a company who was not in charge or responsible for the conduct of the business of the company at the relevant time, will not be liable under those provisions....It would be a travesty of justice to drag Directors, who may not even be connected with the issuance of a cheque or dishonour thereof, such as Director (Personnel), Director (Human Resources Development), etc. into criminal proceedings under the NI Act, only because of their designation.*
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> *42....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 [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378] 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.***
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> *44...The High Court observed that in the petition it had specifically been averred that all the accused persons were responsible and liable for the whole business management of the accused Company, and took the view that the averments in the complaint were sufficient to meet the requirements of Section 141 of the NI Act.*
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> *45. As held by this Court in National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] quoted with approval in the subsequent decision of this Court in Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378] the impleadment of all Directors of an accused Company on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company, without anything more, does not fulfil the requirements of*

Section 141 of the NI Act.

46. In any event there could be no justification for not dispensing with the personal appearance of the appellants, when the Company had entered appearance through an authorised officer. As held by this Court in Pepsi Foods Ltd. v. Special Judicial Magistrate [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] summoning an accused person cannot be resorted to as a matter of course and the order must show application of mind."

(emphasis supplied)

12. In line with the dictum of the Hon'ble Apex Court in ***Sunita Palita v. Panchami Stone Quarry*** *(supra)*, it is clear that a person cannot be made vicariously liable under the provisions of Section 141 of NI Act, merely by stating that he was in-charge and responsible for the day-to-day-conduct of the accused company at the relevant time when the offence was committed.

13. In view of the uncontroverted fact that the petitioner was an independent, non-executive Director and that the complaint lacks the necessary averments to endorse as to what was the active role of the petitioner and as to how the petitioner was guilty or responsible for the offence, this Court is of the opinion that continuance of the proceedings would amount to abuse of the process of the Court. The present case is a fit case to exercise discretionary jurisdiction under Section 482 of the CrPC.

14. In view of the above, the present petition is allowed and impugned order in so far as it relates to summoning of the petitioner is set aside.

15. Pending application also stands disposed of.

16. It is made clear that this Court has not impeded the learned Trial Court from proceeding further against the other accused persons.

AMIT MAHAJAN, J

DECEMBER 23, 2024/*"SS"*