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

\+ **CRL.M.C. 3000/2019 & CRL.M.A. 12071/2019, CRL.M.A. 13477/2019**

SANJAY KACKAR .....Petitioner

Through: Mr. Parveen Kumar, Mr. Nishil & Ms. Chahat Gupta, Advs.

versus

SHAHI REALTECH PVT. LTD. .....Respondent

Through: Ms. Ridhima Goyal, Ms. Vidhi Jain, Mr. Tanzeela Farheen, Mr. Hitesh Lodwal & Ms. Ruchi Gusain, Advs.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **04.10.2024**

1. By the present petition, the petitioner challenges the proceedings in Complaint Case No. 8673/2018 filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (**NI Act**).

2. The complaint was filed alleging that the petitioner and other co-accused persons, acting on behalf of the accused company namely, M/s Celebration City Projects Pvt. Ltd. (hereafter '**CCPPL**'), approached the complainant for development of a Shopping Mall cum Multiplex in Ghaziabad.

3. It is alleged that on representations made by the accused persons, a Joint Development Agreement (hereafter '**JDA**'), was entered into between CCPPL and the complainant on 21.07.2008.

4. It is claimed that CCPPL failed to fulfil its obligation, pursuant to which the complainant raised demand for certain amounts and initiated winding up proceedings against CCPPL before this Court.

5. It is claimed that accused persons, including the petitioner, induced the complainant to enter into a settlement agreement, whereby it was agreed that CCPPL shall pay an amount of ₹35 Crores to the complainant in view of satisfaction of its obligation arising out of JDA. A sum of ₹3,50,00,000/- was paid upfront and the balance amount was to be paid in four equal instalments for which four post-dated cheques for a sum of ₹7,87,50,000/- were issued. The settlement was entered into on 25.05.2017.

6. It is claimed that on 14.12.2017, an Amendment Agreement was also entered into between the complainant and the accused persons.

7. The present petition is filed on the ground that the petitioner had resigned from CCPPL on 08.10.2017. The petitioner relies upon Form DIR-12, which was submitted with the Registrar of Companies.

8. The complaint was filed by the complainant on dishonour of two cheques bearing Nos. 001088 and 002390, both dated 15.04.2018. It is alleged that the said cheques were issued pursuant to the settlement agreement dated 25.05.2017.

9. The petitioner is sought to be made vicariously liable on account of him holding a post of Director at the time when settlement agreement was entered into between the complainant and CCPPL.

10. A general allegation has been made in the complaint that all the accused persons were involved in the affairs of CCPPL

and had issued the cheques acting jointly and severally.

11. The petitioner is sought to be implicated in the present case by virtue of Section 138 read with Section 141 of the NI Act on account of being the director of the accused company when the settlement agreement was entered into and post dated cheques were issued.

12. 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.*
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> *[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.]*
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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.*
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> *Explanation.—For the purposes of this section,—*
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> *(a) "company" means any body corporate and includes a firm or other association of individuals; and*
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> *(b) "director", in relation to a firm, means a partner in the firm."*

13. In accordance with Section 141 of the NI Act, in instances where the principal offender under Section 138 of the NI Act is a company, every person who at such time when the cheque was dishonoured, and no subsequent payment was made, was in charge of the business of the company, and was responsible for the conduct of business, is deemed to be guilty of the offence under Section 138 of the NI Act.

14. It is pertinent to note however that merely because a person is a director of the company, does not make him vicariously liable under Section 138 read with Section 141 of the NI Act. It is imperative that such director is also responsible in the management of the day to day affairs of the company. The Hon'ble Apex Court in ***K.K. Ahuja v. V. K. Vora*** **: (2009) 10 SCC 48** observed as under:

> *"20. Section 291 of the Companies Act, 1956 provides that subject to the provisions of that Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do. A company though a legal entity can act only through its Board of Directors. The settled position is that a Managing Director is prima facie in charge of and responsible for the company's business and affairs and can be prosecuted for offences by the company. But insofar as other Directors are concerned, they can be prosecuted only if they were in charge of and responsible for the conduct of the company's business."*
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> (emphasis supplied)

15. Similarly, the Hon'ble Apex Court in ***Susela Padmavathy Amma v. M/s. Bharti Airtel Limited*** **: 2024 INSC 206** while quashing the proceedings under Section 138 read with Section 142 of the NI Act against the director of the company observed as under:

> *"10. It was held that merely because a person is a*

director of a company, it is not necessary that he is aware about the day-to- day functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence."

16. It must be borne in mind that Section 141 of the NI Act is a penal provision that aims to creates vicarious liability on the accused. For this reason, the provisions ought to be strictly construed.

17. In the present case, to impute liability on the petitioner under Section 138 read with Section 141 of the NI Act, it must be established that the petitioner was responsible for the day to day affairs of CCPPL. It is undisputed that the petitioner had resigned from CCPPL on 08.10.2017. While the petitioner was a Director of CCPPL at the time when the settlement agreement was entered into, the petitioner had neither signed the settlement agreement in the capacity of authorized representative of CCPPL nor had consequently issued or signed the post dated cheques. Further, post the resignation of the petitioner from CCPPL on 08.10.2017, a time extension letter dated 29.11.2017 was signed between the CCPPL and the respondent to enable CCPPL to fulfil the terms of the settlement agreement.

18. Subsequently, an Amendment agreement dated 14.12.2017

was also entered into between the complainant and the accused persons whereby CCPPL proposed to make payment of the first instalment on or before 31.05.2018 instead of 30.11.2017 as initially agreed under the settlement agreement. Further, in terms of the Amendment Agreement, CCPPL also agreed to pay a sum of ₹14,00,000/- to respondent to compensate for the delay, and issued two cheques being Cheque No. 002389 dated 14.12.2017, and Cheque No. 002390 dated 15.04.2018 each for a sum of ₹7,00,000/- were also issued.

19. It is undisputed that at the time of dishonour of two cheques bearing Nos. 001088 and 002390, both dated 15.04.2018, the petitioner had ceased to be a director of CCPPL. The accused company had entered into Amendment Agreement dated 14.12.2017 to defer payment of the first instalment, and the petitioner had admittedly resigned on 08.10.2017.

20. Even otherwise, even at the time that the petitioner was a director at CCPPL, he was neither the signatory to the settlement agreement nor had issued or signed the cheques issued pursuant to the settlement agreement. A mere bald perfunctory statement that the petitioner was a director of CCPPL is not sufficient to impute liability on the petitioner under Section 138 read with Section 141 of the NI Act. A director who has resigned from his post cannot be made liable for the dishonour of cheques issued by the accused company [Ref: ***Rajesh Viren Shah vs. Redington (India) Limited*** **: 2024 INSC 111**]

21. In terms of Section 141 of the NI Act, a director can be made liable only if it is shown that he is involved in the day to day affairs and the conduct of the business of the company. In the present case, only a bald allegation with regard to the

involvement of all the accused persons in the CCPPL has been made. In the absence of any specific averment indicating the role of the petitioner in the transaction and his involvement in the day to day affairs of CCPPL, no liability can be imputed on the petitioner, especially since he resigned from CCPPL on 08.10.2017.

22. In the light of the aforesaid, the present petition is allowed, and the proceedings emanating from CT Case No. 8673/2018 and the summoning order dated 27.06.2018 passed by the learned MM for offence under Section 138 of the NI Act *qua* the petitioner is quashed.

AMIT MAHAJAN, J

OCTOBER 4, 2024
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