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

\+ **<u>CRL.M.C. 4405/2022 & CRL.M.A. 17965/2022</u>**

MR. SUNIL KESWANI .....Petitioner
Through: Mr. Gagan Kumar, Adv.

versus

REGISTRAR OF COMPANIES, ...Respondent
Through: Mr. Anil Soni (CGSC) with Mr. Devvrat Yadav, Adv. for UOI.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
% **21.10.2024**

1. The present petition is filed seeking quashing of the order dated 11.05.2022 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), Dwarka Courts, New Delhi in CC No. 1266/2020.

2. By the impugned order, the learned ASJ took cognizance of the offence and summoned all the accused persons for facing prosecution for violation of Section 134 (3)(f) of Companies Act, 2013 ('**the Act**').

3. The complaint in the present case was filed at the behest of the respondent. Pursuant to the letter No. 4/298/2013-CL-II (NR) by the Ministry of Corporate Affairs dated 31.01.2014, an inspection of the record of the accused company – Unitech Limited was ordered. It is alleged that during the course of such inspection, the Inspecting Officer observed a violation of Section 134(3)(f) of the Act.

4. It is alleged that the directors failed to give fullest information as to the qualifications given in the audit report

thereby consequently violating Section 134 of the Act.

5. The complaint was filed against the accused company – Unitech Limited and five other accused persons in the capacity of them being directors of the accused company and responsible for the compliance of various provisions of the Act.

6. The petitioner is aggrieved by the summons issued in a complaint filed by the respondent for violation of Section 134 (3)(f) of Act. It is the case of the petitioner that while he served as an employee in the accused company for a period of three years, he was not a director but only the Chief Financial Officer (CFO) of the accused company. It is the case of the petitioner that he is sought to be implicated in the present case for non-compliance of Section 134 of the Act, however, the same cannot be done for the reason that he was the CFO in the accused company.

7. Section 134(3) of the Act reads as under :-

> *(3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—*
> *(a) the web address, if any, where annual return referred to in sub-section (3) of Section 92 has been placed;*
> *(b) number of meetings of the Board;*
> *(c) Directors' Responsibility Statement;*
> *(ca) details in respect of frauds reported by auditors under sub-section (12) of Section 143 other than those which are reportable to the Central Government;*
> *(d) a statement on declaration given by independent directors under sub-section (6) of Section 149;*
> *(e) in case of a company covered under sub-section (1) of Section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of Section 178;*
> ***(f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—***
> ***(i) by the auditor in his report; and***
> ***(ii) by the company secretary in practice in his secretarial audit report;***

(g) particulars of loans, guarantees or investments under Section 186;
(h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of Section 188 in the prescribed form;
(i) the state of the company's affairs;
(j) the amounts, if any, which it proposes to carry to any reserves;
(k) the amount, if any, which it recommends should be paid by way of dividend;
(l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
(m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;
(n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
(o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;
(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal [annual evaluation of the performance of the Board, its Committees and of individual directors has been made];
(q) such other matters as may be prescribed.

8. It is apparent that Section 134(3) of the Act lays down the responsibility of Board of Directors. In terms of Section 134(3) of the Act, in the statement laid before a company in a general meeting, there has to be a report by the Board of Directors. Further, Section 134(3)(f) of the Act provides that such report should include explanations or comments by the Board on every qualification, reservation or adverse remarks or disclaimer made by the Auditor and by the Company Secretary.

9. From a bare perusal of Section 134, it is apparent that the responsibility is fastened on the Board of Directors to comply with the provisions of Section 134(3) of the Act. Further, from a

perusal of the complaint, it is evident that the accused persons are sought to be implicated on the ground of them being directors of the accused company and failing to provide fullest information as to the qualifications given in the audit report. No specific role has been ascribed to the petitioner apart from him being a director and failing to comply with the provisions of Section 134(3)(f) of the Act.

10. Concededly, the petitioner is not part of the Board of Directors and was only the CFO in the accused company. Consequently, liability for violation of Section 134(3)(f) of the Act cannot be fastened on the petitioner.

11. The petition is, therefore, allowed and the summoning order dated 11.05.2022 is quashed as far as it relates to the petitioner.

AMIT MAHAJAN, J

OCTOBER 21, 2024

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