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

% Date of Decision: 08.05.2024

\+ **CRL.M.C. 6327/2023 & CRL. M.A. 23659/2023**

BHARAT DHIRAJLAL MEHTA ..... Petitioner
Through: Ms. Avnit Kaur, Advocate.

versus

OXYZO FINANCIAL SERVICES PVT LTD. ..... Respondents
Through: Mr. Sanyam Khetrapal, Advocate.

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 who has been summoned as an accused in Criminal Complaint No.3927/2022 titled as 'Oxyzo Financial Services Pvt. Ltd. vs M/s Miku Plymers and Plastics Ltd. & Ors.' seeks quashing of the criminal complaint as well as the order of summoning. The subject complaint case came to be instituted under Section 138 read with 141 of the Negotiable Instruments Act (*'NI Act'*) against one *M/s Mike Plymers and Plastics Pvt. Ltd.*/accused company as well as 4 other individuals including the petitioner, who have all been arrayed in their capacity as Director of the accused company (hereinafter, *'accused persons'*).

2. The facts, as discernible from the material on record, are that in the subject complaint, the respondent/complainant has claimed that it is a non-banking financial company registered with the RBI and is engaged in the

business of providing financial assistance in the form of loan and other financial facilities to its clients. It has been alleged that in the month of October, 2020, the accused persons approached it seeking financial assistance, in consequence of which, a semi secured purchase finance facility of Rs.1.20 crores was granted vide sanction letters dated 15.10.2020. A Master Facility Agreement was also executed on the said date. Thereafter, the loan facility was revised from time to time. A Demand Cum Loan Recall Notice was issued on 27.12.2021 calling upon the accused persons to pay Rs.38,72,662/- as outstanding on 27.12.2021. In discharge of the same, the subject cheque came to be issued on 12.01.2022 for the sum of Rs.38,75,009/- drawn on Bank of Baroda. The said cheque, when presented for encashment, was dishonoured with the remark 'exceeds arrangement' vide return memo dated 14.01.2022. Consequently, a demand notice was issued on 17.02.2022, in response to which the accused persons in their reply email dated 07.03.2022 denied any liability. Resultantly, the subject criminal complaint came to be filed.

3. Learned counsel for the petitioner contends that the petitioner is neither the authorized signatory nor the person who was in-charge and responsible to the day-to-day affairs of the company. It is contended that the petitioner was appointed as an independent additional Director and further that the complaint is bereft of any specific allegations against him. In support of her submission, she has placed reliance upon Form No. DIR-12, a copy of which has been placed on record, which shows the petitioner to be an independent additional Director in the accused company since 13.03.2019.

4. Learned counsel for the respondent, on the other hand, has contested

the present petition and contends in the subject complaint, the necessary averments have been made against all the accused persons including the petitioner.

5. I have heard learned counsel for the parties and have also perused the material placed on record.

6. The issue that arises for consideration is whether necessary and specific allegations have been made against the petitioner, who has claimed that he was only an independent additional Director. The petition is accompanied by copy of Form No. DIR-12, which reflects the same and which is not disputed by learned counsel for the respondent.

7. Upon a perusal of the entire complaint, it is apparent that the petitioner has been arrayed as an accused at serial number 4 in the complaint. The accused No.1 is the company whereas accused Nos.2 and 3 have been arrayed as Directors and for being signatory of the subject cheque. Insofar as the petitioner is concerned, in the entire criminal complaint, only general and sweeping allegations have been made by stating that he is also responsible for the day-to-day affairs. No other role has been ascribed to the petitioner.

8. The issue whether requisite allegations are to be made against Directors and more particularly against the directors who are independent additional Director has come up before the Supreme Court in a catena of decisions. Most recently, the Supreme Court in Sunita Palita and Others *v.* Panchami Stone Quarry[1] has held as under:-

> *"xxx*
>
> *42. Liability depends on the role one plays in the affairs of a*

[1] (2022) 10 SCC 152

company and not on designation or status alone as held by this Court in S.M.S. Pharmaceuticals [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975]... 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.

xxx"

9. Considering the legal position as expounded above as well as the facts of the present case, the petition succeeds and the Criminal Complaint No.3927/2022 titled as 'Oxyzo Financial Services Pvt. Ltd. vs M/s Miku Plymers and Plastics Ltd. & Ors.' is hereby quashed. As a necessary sequitur, the summoning order dated 22.07.2022 is also set aside.

10. The petition is disposed of in above terms along with pending applications.

MANOJ KUMAR OHRI
(JUDGE)

MAY 8, 2024/*rd*