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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 10th SEPTEMBER, 2024IN THE MATTER OF:+ **CRL.M.C. 6744/2022 & CRL.M.A. 26191/2022, CRL.M.A. 26192/2022**

VINEET KUMAR GUPTA

.....Petitioner

Through: Mr. Himanshu Upadhyay, Advocate.

versus

INTEC CAPITAL PVT. LTD.

.....Respondent

Through: Mr. Divyansh Arora and Mr. Vipul Talwar, Advocates.

Dr. M.K. Gahlaut, Advocate for R-2 and 3.

CORAM:**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT (ORAL)**

1. The Petitioner has approached this Court seeking quashing of the proceedings in Complaint Case No.3240/2020 and summons issued to the Petitioner by the learned Metropolitan Magistrate, Saket Courts, *vide* Order dated 20.12.2021 in the said complaint.

2. The facts, in brief, as stated in the Complaint filed by the Respondent No.2 herein reveals that the Petitioner herein is a Director of M/s Olympia Fitness Pvt. Ltd. Other than the Petitioner herein, other co-accused in the complaint filed by the Respondent No. 1 herein are M/s Olympia Fitness Pvt. Ltd., which is arrayed as accused No.1; Mr. Rahul Narang, who is the Director of M/s Olympia Fitness Pvt. Ltd. has been arrayed as accused No.2;



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Ms. Shalu Sharma, who is also the Director of M/s Olympia Fitness Pvt. Ltd. has been arrayed as accused No.4. The Petitioner herein is also a Director of M/s Olympia Fitness Pvt. Ltd. and has been arrayed as accused No.3 in the complaint. It is stated that the Accused No. 1 i.e., the Accused Company, through Accused No. 2, 3 & 4, including the Petitioner herein, approached the Respondent No. 1 herein for financial assistance in the capacity of Co-borrower/Co- applicant/Guarantor of “M/s The fitness Club” in the form of a loan amounting to Rs. 1,32,00,000/-. It is stated that the said Loan was sanctioned to M/s The fitness Club under loan account No.LNNHP03415-1600059926 and loan agreement No.CBL11005 dated 31.07.2015 and the loan was to be repaid within 84 months. It is stated that the loan amount was disbursed to M/s The fitness Club and the Accused No.1 herein through its Directors were the co-borrowers/co-applicants/guarantor to the said loan. It is stated that M/s The fitness Club committed breach of terms and conditions of the loan agreement by not honouring the EMI/ECS/ACH. Accordingly, the Respondent No.1 herein issued a loan recall notice to the M/s The fitness Club. It is stated that in discharge of their legal liability co-borrowers/co-applicants/guarantor, Accused No.1 through its Directors, including the Petitioner herein, issued a cheque bearing No.353073 dated 15.01.2020 for an amount of Rs.96,53,115/- drawn on Federal Bank, in favour of Respondent No.1 herein.

3. It is stated that when the said cheque was presented by the Complainant to its banker, the cheque was returned on 18.01.2020 with endorsement “*Funds insufficient*”. It is stated that the Respondent No.1 sent a demand notice to the Accused No.1/Company on 17.02.2020. However,



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the Accused Company failed to repay the amount.

4. The Respondent No. 1 herein, then filed Complaint Case No.3240/2020 under Section 138 read with Section 141 and 142 of the Negotiable Instruments Act against the Accused persons, including the Petitioner herein.

5. Summons were issued by the Ld. Magistrate vide Order dated 20.12.2021.

6. Learned Counsel appearing for the Petitioner states that specific averments have not been made against the Petitioner in the complaint as to how is he responsible for the conduct and business of the company and in the absence of any specific averments, the Petitioner cannot be held vicariously liable. It is further stated by the Counsel for the Petitioner that the Petitioner is not a signatory to any of the Loan documents, Security documents of the transaction in question and the cheque which was dishonoured.

7. Heard the counsels for the parties and perused the material on record.

8. The Petitioner is a private limited company. There are only three directors in the company, namely, Mr. Rahul Narang, Ms. Shalu Sharma and the Petitioner herein. Paragraphs No. 3 & 8 of the complaint specifically states that accused No.2 to 4, being the directors of accused No.1 company are actively participating and are responsible for the day-to-day affairs of the company.

9. There are averments against all the directors indicating as to how they were involved at the time when the loan transaction was entered into. There are, therefore, specific averments against all the directors.

10. The Apex Court in Monaben Ketanbhai Shah v. State of Gujarat,



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(2004) 7 SCC 15 has observed as under:

“3. Section 138 of the Act makes dishonour of the cheque an offence punishable with imprisonment or fine or both. Section 141 relates to offences by the company. It provides that 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. Thus, vicarious liability has been fastened on those who are in charge of and responsible to the company for the conduct of its business. For the purpose of Section 141, a firm comes within the ambit of a company.

4. It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole. If the substance of the allegations made in the complaint fulfil the requirements of Section 141, the complaint has to proceed and is required to be tried with. It is also true that in construing a complaint a hypertechnical approach should not be adopted so as to quash the same. The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of Sections 138 and 141 has to be borne in mind. These provisions create a statutory presumption of dishonesty, exposing a person to criminal liability if payment is not made within the statutory period even after issue of notice. It is also true that the power of quashing is required to be exercised very sparingly and where, read as a whole, factual foundation for the offence has been laid in the complaint, it should not be quashed. All the same, it is also to be remembered that



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it is the duty of the court to discharge the accused if taking everything stated in the complaint as correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking. The present case falls in this category as would be evident from the facts noticed hereinafter.”

11. A perusal of the above paragraphs indicates that vicarious liability can be fastened on those persons who are in charge of and responsible to the company for the conduct of its business and it is not necessary to reproduce the language of Section 141 verbatim in the complaint as the complaint is required to be read as a whole. The Apex Court has held that if substance of the allegations made in the complaint fulfils the requirements of Section 141 then the complaint has to proceed and is required to be tried in accordance with law. The Apex Court has warned against adopting a hyper-technical approach to quash the complaint because it will defeat the laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions which is the purpose of enactment of Sections 138 and 141 of the Negotiable Instruments Act. The Apex Court has also held that the power of quashing is required to be exercised very sparingly and if the factual foundation of the offence has been laid in the complaint, it should not be quashed. In any event, in the facts of this case, there are averments against the three directors, i.e., accused No.2, accused No.3 (Petitioner herein) and accused No.4. It is not the case of the Petitioner that the Petitioner is an independent or a non-executive director who is involved in the day-to-day business of the company. There are only three directors and there is no averment that they are independent directors or non-executive



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directors. The Petitioner herein is one of the directors, and therefore, the ingredient of Section 141 is made out. The Apex Court in K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48 has observed as under:

“27. The position under Section 141 of the Act can be summarised thus:

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix “Managing” to the word “Director” makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of,



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and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.” (emphasis supplied)

12. In the present case, the averments in the complaint indicate that the Petitioner along with two other directors was involved in the transaction for which the cheque in question was issued. The Petitioner continued to be the director at the time when the cheque was dishonoured. The Apex Court in S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685, has analysed Sections 138 and 141 of the NI Act and after discussing various judgments on the concept of fastening of vicarious liability, has observed as under:

“42. Thus, the legal principles discernible from the aforesaid decision of this Court may be summarised as under:

42.1. Vicarious liability can be fastened on those who are in-charge of and responsible to the



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company or firm for the conduct of its business. For the purpose of Section 141, the firm comes within the ambit of a company;

42.2. It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole;

42.3. If the substance of the allegations made in the complaint fulfils the requirements of Section 141, the complaint has to proceed in regard to the law.

42.4. In construing a complaint a hypertechnical approach should not be adopted so as to quash the same.

42.5. The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in the enactment of Sections 138 and 141, respectively, should be kept in mind by the Court concerned.

42.6. These provisions create a statutory presumption of dishonesty exposing a person to criminal liability if payment is not made within the statutory period even after the issue of notice.

42.7. The power of quashing should be exercised very sparingly and where, read as a whole, the factual foundation for the offence has been laid in the complaint, it should not be quashed.

42.8. The Court concerned would owe a duty to discharge the accused if taking everything stated in the complaint is correct and construing the allegations made therein liberally in favour of the



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complainant, the ingredients of the offence are altogether lacking.

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58. Our final conclusions may be summarised as under:

58.1. The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

58.2. The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the Court that at the relevant point of time they were not in charge of the



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affairs of the company. Advertence to Sections 138 and Section 141, respectively, of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

58.3. Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners “qua” the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

58.4. If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling



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incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.”

(emphasis supplied)

13. As stated above, the accused No.1 is a private limited company and there is no averment that the Petitioner is an independent or non-executive director who does not have any role in the day-to-day administration of the company. The Petitioner has not filed any document which is sterling in quality and unimpeachable in nature to substantiate his contention that he is not responsible for the conduct and business of the company.

14. It is for the Petitioner to lead evidence in the trial to substantiate that he cannot be held vicariously liable for the actions of the company. This Court is not making any observations on the role of the Petitioner in the company. The observations made in this Judgment are limited only to the aspect as to whether there were sufficient averments in the complaint against the Petitioner herein for issuing summons against the Petitioner.

15. In view of the above, this Court is not inclined to quash the complaint.

16. The petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 10, 2024

Rahul