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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 6785/2022 & CRL.M.A. 26345/2022**
RADHA GARG SHAKTI & ANR.Petitioners
Through: Mr. Krish Kalra, Advocate
(Through V.C.).

versus

STATE OF GOVT NCT OF DELHI
& ORSRespondents
Through: Mr. Utkarsh, APP for the
State.
Mr. Suryansh Vashisth,
Advocate for Private
Respondents.

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+ **CRL.M.C. 6811/2022 & CRL.M.A. 26422/2022**
RADHA GARG SHAKTI & ANR.Petitioners
Through: Mr. Krish Kalra, Advocate
(Through V.C.).

versus

STATE OF GOVT NCT OF DELHI
& ORS.Respondents
Through: Mr. Utkarsh, APP for the
State.
Mr. Suryansh Vashisth,
Advocate for Private
Respondents.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **19.11.2024**

1. No reply has been filed by respondent No. 2 as yet.
2. It is thus undisputed that the petitioners were non-executive independent directors. They cannot be held responsible for day to day functioning of the accused company and cannot be held vicariously liable for the dishonor of cheque issued by the accused company.
3. The Hon'ble Apex Court in the case of ***Sunita Palita v. Panchami Stone Quarry, (2022) 10 SCC 152*** held as under:

35. The High Court rightly held that when a complaint was filed against the Director of a company, a specific



averment that such person was in charge of and responsible for the conduct of business of the company was an essential requirement of Section 141 of the NI Act. The High Court also rightly held that merely being a Director of the company is not sufficient to make the person liable under Section 141 of the NI Act. The requirement of Section 141 of the NI Act was that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company. This has to be averred as a fact.

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42. Liability depends on the role one plays in the affairs of a 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]*. **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.

(emphasis supplied)

4. In view of the above, the present petitions are allowed.
5. Petitioners are discharged in complaint bearing C.C. No. (N.I. Act) 3930/2022.
6. It is made clear that this Court has not impeded the learned Trial Court from proceeding against the other accused persons.
7. A copy of the order be placed in both the matters.

AMIT MAHAJAN, J

NOVEMBER 19, 2024/ 'Aman'