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

\+ CRL.M.C. 7086/2024 & CRL. MA 27046/2024

TATA CAPITAL LIMITED .....Petitioner

Through: Mr. Rajat Katyal, Advocate.

versus

SANDEEP GROVER & ORS. .....Respondents

Through: Mr. Gaurav Arora, Advocate for respondent No.1.

**CORAM:**
**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**O R D E R**

**% 07.11.2024**

1. By way of present petition, the petitioner seeks quashing of the order dated 05.07.2024 passed by learned Special Judge (NDPS)-02, Dwarka Courts, Delhi in Criminal Revision bearing No. CR/17/2020 titled '*Tata Capital Financial Service Ltd. Versus Sandeep Grover & Ors.*', vide which the summoning order dated 09.07.2019 issued against the petitioner in Complaint Case bearing No. 25586/2019 registered under Section 138/142 NI Act, 1881, was upheld.

2. The allegations in the complaint are with respect to the dishonour of a cheque bearing No.182184 for a sum of Rs.5,05,385/- dated 05.03.2019 issued in favour of complainant/respondent No.1 by respondent No.2 through its signatories. As per the allegations levelled by complainant, respondent No.2 company is associated with the facilitation services of disbursal of loans and respondent Nos. 3 and 4 are statedly the Directors of respondent No.2 company.

3. As per the complaint, the complainant approached respondent No.2 i.e, *Finheal Finserve Pvt. Ltd.* for top up loan to purchase a used car. Respondent No.2, being the Direct Selling Agent (DSA) of the petitioner herein, forwarded the loan documents to the petitioner for scrutiny, approval and sanction of a loan of Rs.10,76,000/- in the favour of complainant. Accordingly, on 12.02.2019, complainant's loan account was opened. The loan was sanctioned and disbursed through respondent No.2 and its Directors/respondent Nos. 3 and 4 herein. Thereafter, respondent Nos. 2 to 4 credited sum of Rs.2,00,000/- in complainant's account. A cheque bearing No.182150 for a sum of Rs.2,05,385/- dated 05.03.2019 drawn on the account of respondent No.2 was issued in the name of the firm of complainant, Upon presentation, the said cheque came to be dishonoured vide return memo dated 06.03.2019 bearing the remarks, '*payment stopped by drawer*'. Subsequently, another cheque bearing No.182184 (hereinafter, '*subject cheque*') for a sum of Rs.5,05,385/- dated 14.03.2019 was issued in the name of the firm of complainant, drawn on the account of respondent No.2 company, however, the same was also dishonoured vide return memo dated 18.03.2019 with the remarks, '*funds insufficient*'. The subject cheque was again presented on 23.04.2019 and returned vide return memo dated 24.04.2019 with the remarks, '*funds insufficient*'. Resultantly, the complainant sent the statutory demand notice dated 21.05.2019 to respondent Nos. 2 to 4 as well as to the petitioner. The demand remaining unanswered, on complaint being filed, the impugned order came to be passed. Against all the accused persons, including the petitioner herein.

4. Petitioner contends that neither the subject cheque was issued from its account nor it owed any debt to the complainant. Thus, even the basic

ingredients of constituting the commission of the offence under Section 138 NI Act are not made out against it. Moreover, even the complaint lacks specific allegations in this regard. It is further submitted that respondent No.2 was a Direct sales agent (DSA) and the subject cheque issued by respondent No.2 which is a distinct juristic entity. Neither petitioner nor any of its Directors/office bearers have control or position in respondent No.2. In this regard, reliance is placed on the Master Data of respondent No.2. The trial court without appreciating the said facts passed the impugned summoning order mechanically and without due application of mind.

5. Complainant, on the other hand, would contend that the loan applied by it was sanctioned by petitioner. The loan amount was disbursed in the account of respondent No.2 with the intention to defraud the complainant. EMIs towards the repayment of loan amount are debited from the complainant's account by the petitioner. In this regard, reference is made to para No.5 of petitioner's reply dated 01.07.2019 to the legal notice.

6. It is well settled that in order to constitute an offence under Section 138 NI Act, the essential ingredients that need to be met are three-fold; *firstly*, the person sought to be made an accused must have drawn the cheque; *secondly*, the cheque must have been drawn towards discharge of any debt or liability, in whole or in part; and *thirdly*, the cheque has to be returned unpaid. If any of these conditions are not satisfied, no action can lie under Section 138 NI Act. [Ref: MSR Leathers v. S. Palaniappan & Anr., reported as **(2013) 1 SCC 177**, Charanjit Pal Jindal v. L.N. Metalics, reported as **(2015) 15 SCC 768** and N. Harihara Krishnan v. J. Thomas, reported as **(2018) 13 SCC 663**.]

7. Pertinently, the very first precondition for prosecution under Section

138 NI Act is that the accused has to draw the subject cheque on an account maintained by him. In the present case, admittedly, the petitioner herein has not issued the subject cheque and the same was issued on behalf of respondent No.2 company, which has already been arrayed as an accused in the complaint. Further, a perusal of the material placed on record, including the complaint would reveal that there are no specific allegations made against the petitioner to the effect that the petitioner had drawn the subject cheque, much less towards the discharge of any liability owed by the petitioner towards complainant. It is also noted that respondent No.2 company, which had issued the subject cheque in favour of the complainant, had done so not on behalf of the petitioner in any capacity as the only relationship between the petitioner and respondent No.2 is that the latter is the DSA of the former. Merely sanctioning of the loan would not make the petitioner liable herein, as the disbursement of the said amount was through respondent No.2 only.

8. In light of the facts and circumstances this Court is of the considered opinion that no offence is made out against the petitioner under Section 138 NI Act, and consequently, the present petition succeeds and the impugned order dated 05.07.2024 qua the present petitioner as well as consequent proceedings are hereby set aside

9. The present petition, alongwith pending application, is disposed of in the above terms.

**MANOJ KUMAR OHRI, J**

**NOVEMBER 7, 2024/*rd***