



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

% Reserved on : 05.08.2024
Pronounced on : 05.11.2024

+ CRL.M.C. 3778/2023

YASHOVARDHAN BIRLA

.....Petitioner

Through: Mr. Madhav Khurana, Mr. Pulkit Agrawal, Ms. Smriti Churiwal, Mr. Jaiveer Kant and Mr. Hardik Khatri, Advocates.

Versus

KAMDHENU ENTERPRISES
LIMITED AND ANR.

.....Respondents

Through: Mr. Vijay Aggarwal and Mr. Mukul Malik, Advocates for respondent No.1

AND

+ CRL.M.C. 3779/2023

YASHOVARDHAN BIRLA

.....Petitioner

Through: Mr. Pulkit Agrawal, Ms. Smriti Churiwal, Mr. Jaiveer Kant and Mr. Hardik Khatri, Advocates.

Versus

M/S JADS SERVICES PVT. LTD. AND ANR

.....Respondents

Through: Mr. Ajeet Shukla, Advocate for respondent No.1.

AND

+ CRL.M.C. 3780/2023

YASHOVARDHAN BIRLA

.....Petitioner

Through: Ms. Smriti Churiwal, Mr. Jaiveer



Kant and Mr. Hardik Khatri,
Advocates.

Versus

KAMDHENU ENTERPRISES
LIMITED AND ANR

.....Respondents

Through: Mr.Vijay Aggarwal and Mr.Mukul
Malik, Advocates for respondent
No.1.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present petitions, the petitioner seeks quashing of the Criminal Complaints bearing Nos. 31528/2016, 31517/2016 and 31829/2016 pending before the learned Judicial Magistrate First Class, Patiala House Courts, Delhi, qua the petitioner as well as to quash the order of framing of Notice under Section 251 Cr.P.C dated 30.10.2021 and order of issuance of summons dated 09.11.2012 against the petitioner in each complaint case.
2. The above-noted petitions arise out of different complaints filed under Section 138 read with Sections 141/142 of the Negotiable Instruments Act, 1881 (hereinafter, referred to as '*the N.I. Act*') however, involve the same parties and the same factual matrix. Accordingly, the petitions were taken up for hearing together and are being disposed of by a common judgment.
3. The subject proceedings arise out of the complaint filed by the respondent No. 1/complainant wherein *M/s Birla Power Solutions Ltd.*, a Company incorporated under the Companies Act, 1956 has been arrayed as accused No. 1, while its Managing Director is arrayed as accused No. 2,



accused No. 3 to 7 are directors of the accused company and accused no. 8 is the Company Secretary. Accused No. 3 to 8 are stated to be in-charge and responsible for the day-to-day affairs of the accused company. It is alleged in the complaint that the accused company/respondent No. 2 (hereinafter the 'accused company') had approached the complainant/respondent no.1 by way of request letters dated 16.04.2012, 04.04.2012 and 03.04.2012 respectively in each complaint to advance a loan in the shape of Inter Corporate Deposit (ICD). The said loan was advanced on an assurance of the accused company and on mutually agreed terms. Subsequently, in discharge of its liability, the accused company/respondent No. 2 issued three different cheques each drawn on drawn on Indian Overseas Bank, New Marine Lines Branch, Mumbai. The said cheques, on presentation, were dishonoured vide return memos with the remark "Exceeds Arrangement". Consequently, demand notices were issued and upon failure of the accused company and its Directors to pay the sum under demand, the subject complaints came to be filed.

The details of the aforesaid complaints as well as the respective cheques are summarized in the table given below:-

Criminal Complaint No.	Number and Date of Cheque	Amount of Cheque	Date of Return Memo	Date of posting of Legal Notice
31528/2016	294602 dated 14.08.2012	Rs.3 crores	16.08.2012	23.08.2012
31517/2016	291867 dated 12.08.2012	Rs.2 crores	16.08.2012	23.08.2012
31829/2016	291866	Rs.3 crores	16.08.2012	23.08.2012



	dated 01.08.2012			
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4. On basis of the above averments, the learned Trial Court issued summons dated 09.11.2012 against the present petitioner, who is arrayed as accused no.3.

5. It is stated that the petitioner was a non-executive Director and was not involved in the day-to-day affairs of the company as he had resigned from the accused company on 27.12.2012. In support of this contention, the petition has also placed on record copy of 27th Annual Report of the company, FORM 32 and the Petitioner's Resignation letter uploaded on the website of the Ministry of Corporate Affairs ("MCA") as filled by the petitioner. Reliance is also placed on the decision rendered by Coordinate Bench passed in **CRL.M.C 1409/2018** titled Yashovardhan Birla v. Cecil Webber Engineering Ltd & Ors., having identical facts as the present case, wherein the complaint was quashed against the petitioner.

6. Additionally, learned counsel for the petitioner contends that the impugned order summoning the petitioner has been passed mechanically and arbitrarily without considering that accused No. 4 to 8, who were in the same position and held the same designation as the present petitioner, were dropped from the array of accused persons by the complainant company. It is further stated that the petitioner was neither a signatory to the aforementioned cheques nor was involved in the day-to-day affairs of respondent No. 2.

7. Also, it is submitted that no specific role has been ascribed to the petitioner in the criminal complaint. The complaint merely contains bald averments and in absence of specific allegations, the complaint lacks the



material averments making out the ingredients of Section 141 NI Act. In this regard, learned counsel has alluded to the decisions in Ashok Shewakramani & Ors. vs. State of Andhra Pradesh & Ors. reported as **(2023) 8 SCC 473**, Siby Thomas v. Somany Ceramics Ltd. reported as **(2023) SCC OnLine SC 1299**, Sunita Palta & Ors v Kit Marketing Pvt. Ltd. reported as **(2020) SCC Online Del 2592** and Pooja Ravinder Devidasani vs. State of Maharashtra reported as **(2014) 16 SCC 1**.

8. *Per contra*, learned counsel of the respondent seeks dismissal of the petition contending that the same has been filed after a significant delay and without any explanation. The summoning order was also not assailed before the Revisional Court in terms of the decision of Supreme Court in State of Andhra Pradesh v. Golconda Linga Swamy and Anr. reported as **Crl.A No. 1180/2003** and of this court in A.K. Dixit vs. Manoj Kumar and Ors. reported as **1999(1) JCC (Delhi) 181**. It is further submitted that the petitioner failed to respond to the legal notice that was duly served upon him and though the petitioner has claimed to be a non-executive Director, there is no cogent material placed on record. Moreover, the petitioner being the Chairman of the accused company by his very designation, can be assumed to be in charge of the affairs of the company and liable to be proceeded against. Lastly, it is stated that the petitioner's resignation on 27.12.2012 is much after the date of dishonour of cheque i.e. 16.08.2012.

9. I have heard the counsels for the parties and perused the material on record.

10. The law as regards the liability of a Director for an offence under Section 138 NI Act committed by a company is no longer *res integra*. In



S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla¹, the Supreme Court while dealing with the aforesaid, discussed in detail the role of a Director in a company as well as their liability. The relevant extract of the said judgment reads as under:—

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8. *The officers responsible for conducting the affairs of companies are generally referred to as directors, managers, secretaries, managing directors, etc. What is required to be considered is : Is it sufficient to simply state in a complaint that a particular person was a director of the company at the time the offence was committed and nothing more is required to be said. For this, it may be worthwhile to notice the role of a director in a company. The word “director” is defined in Section 2(13) of the Companies Act, 1956 as under: “2. (13) ‘director’ includes any person occupying the position of director, by whatever name called;” There is a whole chapter in the Companies Act on directors, which is Chapter II... There is nothing which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company but he may not know anything about the day to-day functioning of the company... What emerges from this is that the role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a company is in charge of its everyday affairs... Therefore, mere use of a particular designation of an officer without more, may not be enough by way of an averment in a complaint. When the requirement in Section 141, which extends the liability to officers of a company, is that such a person should be in charge of and responsible to the company for conduct of business of the company, how can a person be subjected to liability of criminal prosecution without it being averred in the complaint that he satisfies those requirements...*

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10. ...What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action... The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status...

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12. The conclusion is inevitable that the liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company. Therefore, in order to bring a case within Section 141 of the Act the complaint must disclose the necessary facts which make a person liable.

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11. The said dicta of the Supreme Court continue to form the bedrock for the principles surrounding the vicarious liability of Directors under Section 138 read with Section 141 NI Act and has been reiterated with approval in a number of judgments which have followed. What arises from the above is that though a Director of a company indeed holds a special/unique position in the company, having authority to take decisions, the mere nomenclature or mention of an individual as a Director of a company cannot itself be the



basis for bringing him/her into the fold of Section 138 with aid of Section 141 NI Act.

12. Further, with respect to the respondent's contention that the petitioner being the Chairman of the accused company by his very designation, was in-charge of the affairs of the company and liable to be proceeded against, this court deems it apposite to refer to the case of Yashovardhan Birla v. Cecil Webber Engineering Ltd & Ors(*supra*) wherein under similar circumstances the Co-ordinate Bench of this Court quashed the complaint against the petitioner and observed as under:

23. The phrase "Chairman"/"Chairperson" of a company is not specifically defined under the Companies Act and the reference to the word "Chairman" has been made in Section 175 of the Companies Act, 1956 (Section 104 of the Companies Act, 2013) where the Chairman of a meeting is appointed by its members unless otherwise provided in the articles of the company. Reference may also be made to Section 203 of the Companies Act, 2013 which prescribes the roles of key managerial personnel of a company and makes a distinction with the post of a "chairperson".

24. It is common knowledge that very large business conglomerates spawn and sustain hundreds of companies under them which may be ultimately held by a particular business family or a group of investors, but officers and professionals are appointed to run the day-to-day affairs of such companies. The whole purpose of having a Managing Director and Executive Directors appointed for a company is to ensure that all executive decisions are resident with that Managing Director and his/her team of Executive Directors. A number of non-Executive Directors or Directors who are not Executive Directors are present on the Board of the Companies for their expert independent advice or oversight of the functioning of the company. Even the role of "Chairman"/"Chairperson" is not typically of an executive nature since the Chairperson presides



over the general meetings or of the functioning of the company and guides its business policies and need not interfere in the day-to-day affairs of the company. Chairperson of large business conglomerates are in fact even further removed from the minutiae of everyday operations of the company and distant from the micromanagement which is required to be done by the Executive Directors and officers of the company. Needless to say, this has to be assessed in context of the peculiar facts of each case.

25. In this regard reference may also be made to a decision of the High Court of Karnataka in Shamanur Shivashankarappa v. India Sugars and Refineries Ltd. [Shamanur Shivashankarappa v. India Sugars and Refineries Ltd., 2014 SCC OnLine Kar 8179] regarding liability of a Chairperson of a company in context of the Essential Commodities Act, where it was noted: (SCC OnLine Kar paras 26 and 28)

“26. The term Chairman is not defined under the Companies Act, 1965. The Chairman is a necessary person in company meetings and is usually appointed by the articles of the company. Generally, Chairman is the highest post in the company, who represents the name and fame of the company. Chairman's role is to attend the meetings and to act according to the bye-laws of the company and also exercise any defined or reserved rights or duties. Regulation 76(1) of table A to Schedule I to the Companies Act, 1956, provides that the Board may elect a Chairman and determine the period for which he has to hold the office. Generally, the directors elect one of them to be the Chairman of the Board who continues to be as such until he ceases to be a director or some other director who is appointed as a Chairman. Normally, the Chairman is a Director who is authorised to preside over the Board and general meetings. In some companies, it is a practice to appoint an Executive Director, namely, the Managing Director or whole-time Director as Chairman of the Board, to conduct meetings or general meetings and there are some



other companies who elect a non-Executive Director i.e. The Director who is not a whole-time employee or Managing Director, as a Chairman of the Board or General Meeting. If a Managing Director or a Executive Director or the person who has been looking after the day today affairs of the company, if he himself acts as a Chairman, then ipso facto by virtue of the position as a Chairman, he becomes liable for the offences committed by the company vicariously. Otherwise a Chairman is as good as a Director who is only authorised to preside over the Board and general meetings. In some of the provisions under the Companies Act, the word Chairman is used. Section 175 of the Act deals with, election of a Chairman. Section 177 of the Act deals with voting to be by show of hands in first instance to elect a Chairman, Section 178 of the Act refers to Chairman's declaration of result of voting by show of hands to be conclusive, with respect to any resolution conducted in the Board meeting. Section 193 of the Act refers to minutes of proceedings of general meetings and of Board and other meetings, where the Chairman has to conduct the meeting of its Board of Directors. Section 292-A of the Companies Act refers to the Audit Committee wherein under Section 292-A(10) of the Act says that the Chairman of the Audit Committee shall attend the general meetings to provide any clarification on matters relating to audit.

* * *

28. Looking to the abovesaid powers and duties of the Chairman, it goes without saying that the Chairman is as good as a Director, but as he is higher in position, he presides over the meetings of the company. Therefore, unless a specific role is given to a Chairman by virtue of articles of the company to represent the management and participate in the day-to-day business, conduct and affairs of the company, he is not liable for all the offences committed by the company.”

26. Creeping up an escalating liability to Chairpersons of large conglomerates/companies for cheques issued in day-to-day affairs of the business of a company would unfairly and



unnecessarily expand the provisions of vicarious liability under the provisions of the Negotiable Instruments Act.

13. Insofar as the legal position regarding quashing of complaints filed under Section 138 NI Act against the Directors in exercise of the powers conferred under Section 482 Cr. P.C. is concerned, the same has been discussed in detail by the Supreme Court in Sunita Palita v. Panchami Stone Quarry² and S.P. Mani & Mohan Dairy v. Snehalatha Elangovan³. In S.P. Mani (Supra), it has been observed:—

“xxx

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... On the other hand, the first proviso to subsection (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... 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.*

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² (2022) 10 SCC 152

³ (2023) 10 SCC 685



*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 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.
xxx ”*

14. It is a well-settled principle in law that if any Director seeks quashing of a complaint under Section 138 NI Act or any process issued therein, then one must show that the complaint is bereft of the appropriate pleadings/averments which would bring him into the fold of the rigours of Section 141 NI Act and in this regard, one must bring on record, certain sterling and incontrovertible evidence showing that the accused is not concerned with issuance of the said cheques, which can only be seen by the High Court exercising powers under Section 482 Cr.P.C.

15. In the present case, as discernible from the complaint, there is a dearth of any specific averments and only a general mention of accused Nos. 3 - 8 as the Directors of accused company and being in charge and responsible for the conduct, affairs, and business of the company, is alleged. The petitioner is not even a signatory to the subject cheques. It is in fact the Managing Director i.e., accused No. 2, who is deemed in-charge of the day to day affairs of the company and is actively involved and responsible for the affairs of the company, who has also signed the subject cheques.



Indisputably, the other accused persons, who were also Directors of the company, have been dropped from the list of accused. Additionally, the petitioner, being designated as Chairman as per the 27th Annual Report, cannot be deemed to be in-charge of the day to day as per the principles established in the judgment of Yashovardhan Birla v. Cecil Webber Engineering Ltd & Ors (*supra*), in absence of any additional material on record.

16. In view of the uncontroverted fact that the subject complaints lack the necessary averments to endorse as to what was the active role of the petitioner and as to how the petitioner was guilty or responsible for the offence, this Court is of the opinion that continuance of the present proceedings qua the petitioner would amount to abuse of the process of the Court.

17. The present petitions, to that extent, are allowed and the Complaint Nos. 31528/2016, 31517/2016 and 31829/2016, and all consequential proceedings arising therefrom are hereby quashed qua the petitioner.

18. The present petitions are disposed of in the aforesaid terms.

MANOJ KUMAR OHRI, J

NOVEMBER 05, 2024

js/ga