



2025:DHC:452



\$~15

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

%

Date of decision: 13th January, 2025

+

CRL.M.C. 809/2021**N. VIJAYA KUMAR**

.....Petitioner

Through: Mr. Aman Gaur, Mr. Kumar Balram,
Mr. Tabrez Malawat and Mr. Syed
Hamza, Advocates.

versus

1. TECHNOLOGY DEVELOPMENT BOARD

Through Authorised Representative

Sh. Akshay Lal

S/o Sh. A.G. Lal

having Office At:

Wing-A Ground Floor, Vishwakarma Bhawan,

Shaheed Jeet Singh Marg,

New Delhi- 110016

... RESPONDENT NO. 1

2. M/S SELCO INTERNATIONAL LTD.

Through Director

having Office At:

H. No. 1-1-336149, Viveknagar,

Chikkadapally

Hyderabad-500020

... RESPONDENT NO. 2

**3. DR. VENAKATA RAMA KRISHNA GOVINDRAJU A.K.A.
DR. G.V. RAMA KRISHNA**

Authorised Signatory, Chairman

and Managing Director,

M/s Selco International Ltd.

H. No. 1-1-336149, Viveknagar,

Signature Not Verified

Digitally Signed
By: VIKAS AKORA
Signing Date: 27.01.2025
17:49:28

CRL.M.C. 809/2021

Page 1 of 10



2025:DHC:452



Chikkadapally, Hyderabad
Telangana- 500020

... RESPONDENT NO. 3

4. MS. RADHA GOVIND RAJU

Din No 00540330
Director and Authorised Signatory
M/s Selco International Ltd.
H. No. 1-1-336149, Viveknagar,
Chikkadapally, Hyderabad
Telangana- 500020

... RESPONDENT NO. 4

5. SH. C.S. ANANTH KUMAR

Director, Signatory and Guarantor
M/s Selco International Ltd.
R/o Flat No. 14, AshryayaApartements
12-7-273 & 274 Mettuguda,
Secunderabad- 50001

... RESPONDENT NO. 5

Through: Ms. Shubhangda Singh and Mr.
Anshuj Dhingra, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The Petition under *Section 482 & 483 of the Criminal Procedure Code, 1973* has been filed by the Petitioner to challenge the *Summoning Order dated 18.05.2018* passed in Complaint Case bearing No.12892/2017 instituted by the Respondent Complainant under *Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act (hereinafter 'N.I. Act')* in respect of dishonour of



2025:DHC:452



cheque dated 31.07.2017 in the sum of Rs.4,26,72,257/- drawn in favour of the Complainant by *M/s. Selco International Ltd, Respondent No.2.*

2. The fundamental grounds for challenge by the Petitioner are that a pre-condition for an offence to be made out under *Section 141* of the *N.I.Act* is that the person accused should be *in charge and responsible for the conduct of the business of the Company at the time when the offence is committed under Section 138 of N.I.Act.* However, the words of *Section 141* indicate that the criminal liability of a Director must be determined on the date on which the offence is alleged to have been committed. The Petitioner was not admittedly holding a position of a Director in the Company on the date of dishonour of the cheque on 23.08.2017; therefore, no prima facie case is made out against the Petitioner under *Section 141* of the *N.I.Act*.

3. It is further submitted that the Legal Notice dated 06.09.2017 is addressed only to Respondent No.2/*M/s Selco International Ltd.*, and Respondent No.3/*Dr. Venkata Ramakrishna Govindaraju a.k.a. Dr. G.V.Rama Krishna* wherein the averments have been made only against *M/s. Selco International Ltd* and it specifically mentions that the Company was dealing through its Managing Director/*Dr. G.V. Rama Krishna*. In the entire Notice, there is not a whisper about any role of the present Petitioner. Moreover, it is not even addressed to the Petitioner. It is, therefore, submitted that Petitioner is entitled to be discharged and the proceedings against him under *Section 138 of the*



2025:DHC:452



N.I.Act, are liable to be quashed.

4. ***Learned counsel on behalf of the Complainant/Respondent*** has referred to a Pledge Agreement *vide* which the present Petitioner along with two other persons, had pledged his Shares with the Complainant Company and had guaranteed all the outstanding liabilities of the Company. It is, therefore, submitted that being the Guarantor, the Petitioner is equally responsible for dishonour of the cheque in question.

5. It is further argued that it is the defence of the Petitioner that he had resigned from the Company in 2003, though there is no document of resignation or Company Resolution placed on record. Even otherwise, the liability of the Petitioner is not confined to his being a Director in the Company, but is also on account of him being a Guarantor for the liability of the Company.

6. It is, therefore, submitted that there is no infirmity in the impugned Order, Summoning the Petitioner and the present Petition is liable to be dismissed.

7. ***Learned counsel for the Respondent*** has relied upon the judgment in Kirshna Texport & Capital Markets Ltd. vs. Ila A. Agrawal & Ors, Criminal Appeal No. 1220/2009, to argue that for filing a Complaint under *Section 138* of the *N.I. Act*, an individual/separate Notice to the Directors who are *In-charge and responsible for the acts of the Company* need not be given. It was observed that the Company works through the living persons who are



2025:DHC:452



In-charge of the affairs and who guide the actions of the Company and if such juristic entity is guilty, then all those who are responsible for its affairs and who guide its actions, must be held responsible and must be proceeded against. *Section 141* of the *N.I. Act* does not lay down the requirement of service of a separate Notice to the individual Directors under *Section 138* of the *N.I. Act*.

8. It is, therefore, argued that the Petitioner, being the Director and also having stood as a Guarantor for the outstanding liabilities of the Respondent No. 2/Company, cannot seek discharge at this stage.

9. **Submissions heard and the record perused.**

10. To appreciate the contentions raised by the Petitioner, it would be pertinent to refer to the averments made in the Complaint under *Section 138* of *N.I. Act*. It is averred in the Complaint that the Respondent No. 3 Dr. G.V. Rama Krishna is the Managing Director of the Respondent No. 2Company, who is responsible for the day-to-day affairs and management and is also the Authorised Signatory in the bank account of the Respondent No. 2/Company.

11. The accused No. 5 Sh. N. Vijaya Kumar, /Petitioner herein along with accused No. 4/C.S. Ananth Kumar(Respondent No.5), were the *“then Directors and Authorised Signatory of the Company at the time of entering into the Agreement and had made repeated assurances that the money shall be repaid by them as well as by the Company jointly and severally and they even pledged their shares and gave personal as well as corporate guarantee to secure the loan amount”*.



2025:DHC:452



12. Further averments made are that the Complainant had sanctioned a total sum of Rs. 455 lakhs for utilisation by the accused/Company, for the Project. In the Loan Agreement dated 23.11.1998, it was envisaged that the repayment of the loan amount shall be made by the accused persons along with the interest, as and when such conditions arose.

13. The *second Loan Agreement dated 21.03.2002* was executed between the Borrower Company (Respondent No. 2) and the Complainant Board whereby on the request of all the Respondents, a further amount of Rs. 1,400 lakhs was sanctioned for utilisation of the proposed Project.

14. *Two more Supplementary Agreements dated 15.04.2004 and 25.02.2005 respectively* were also executed with the Complainant in addition to Hypothecation Agreement as Corporate Guarantee.

15. Further, *the Supplementary Agreement dated 19.04.2007* was executed whereby the accused-Company and the Respondent No. 3 herein undertook that all the existing and subsisting liabilities under the original Agreement shall stand restructured and payment shall be made by the accused-Company in the manner as stated in this Supplementary Schedule.

16. It was further averred that the Respondent No. 2/accused-Company and the Respondent No. 3, its Managing Director, agreed and acknowledged on 31.03.2006 that Rs. 22,462 lakhs was outstanding and payable by them, towards the repayment of their liability under the original Loan Agreements and the Supplementary



2025:DHC:452



Agreements. Pursuant thereto, the Respondent No. 2/accused-Company issued several post-dated cheques.

17. The Respondent Nos. 2 and 3 admitted and acknowledged their liabilities to pay the outstanding loans. However, one Cheque dated 31.07.2017 drawn on Andhra Bank, Sultan Bazar Branch, Hyderabad, signed by the Respondent No. 3 for and on behalf of the Respondent No. 2 was issued with the assurance that on presentation, it would be honoured.

18. However, the said Cheque was dishonoured for *insufficient funds* and consequently, after serving a Legal Notice dated on 06.09.2017; the present Complaint under *Section 138* of the *N.I. Act* was filed.

19. From the entire averments made in the Petition, what emerges is that the Petitioner herein was admittedly the Director in the year 1998 at the time when the parties started negotiating initially.

20. There is not an iota of averment made against the Petitioner that he continued to be the Director or was responsible for day-to-day conduct of business at the time in 2017, when the impugned Cheque was issued.

21. *Section 141* of the *N.I. Act* mandates that those Directors/Officials who are responsible for the day-to-day affairs of the Company are responsible for any dishonour of the Cheque issued for and on behalf of the Company.

22. Learned counsel for the Respondent No. 1/Complainant had



2025:DHC:452



tried to rope in the Petitioner by referring to a Pledge Agreement dated 29.12.1998 that had been initially executed by the Petitioner.

23. However, this Pledge Agreement shows that Petitioner had given a Guarantee in his personal capacity and had pledged his shares. Even if it is accepted that the Petitioner had stood as a Guarantor, then it is only a civil liability which can be imposed upon him for recovery of the cheque amount.

However, it cannot be overlooked that the Petitioner has already left the Company from the post of the Director of the Company in the year 2003, and cannot be made an accused under *Section 138 of N.I. Act*, as it is specifically provided in *Section 141 of N.I. Act* that where the Company is an accused, such Directors, who are responsible for the day-to-day affairs of the Company, shall only be responsible for the acts of the Company.

24. In this context, it is also pertinent to refer to the Legal Notice dated 06.09.2017. All the averments made therein, are only in respect of the Respondent Nos. 2 and 3. Even in the Legal Notice, there is no averment made against the Petitioner.

25. The Judgment in *Kirshna Texport & Capital Markets Ltd.* (supra) also reinforces the proposition of law that only such Directors who are responsible for the day-to-day affairs, can be summoned in a Complaint under *Section 138 of N.I. Act* and that only those Directors who are vicariously responsible for the acts of the Company, need not be served with an individual Notice.



2025:DHC:452



26. In the present case, there is not a single averment to show that the Petitioner was in any way responsible for the day-to-day affairs of the Company on the date of issuance of Cheque and cannot be summoned in a Complaint under *Section 138 of N.I. Act*, on the basis of his personal liability. Moreover, the Legal Notice dated 06.09.2017 is addressed only to the Respondent No.2/Company/M/s Selco International Ltd. and Respondent No.3/Dr. Venkata Rama Krishna Govindraju a.k.a. Dr. G.V. Rama Krishna; it is not addressed to the Petitioner.

27. He is neither a signatory to the Cheque nor is a Director in the accused-Company and there is no Legal Notice served upon him; therefore, he is entitled to be discharged.

Conclusion: -

28. Therefore, the impugned Order dated 18.05.2018 summoning the Petitioner Sh. N. Vijaya Kumar, is hereby set aside and the Petitioner is discharged in the C.C. No. 12892/2017 under S. 138 N.I. Act.

29. Accordingly, the Petition along with pending Application(s) is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 13, 2025
rk



2025:DHC:452



Signature Not Verified

Digitally Signed
By: VIKAS AKORA
Signing Date: 27.01.2025
17:49:28

CRL.M.C. 809/2021

Page 10 of 10