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

+ **CRL.M.C. 1238/2023 & CRL.M.A. 4732/2023**

KAPIL PURI

..... Petitioner

Through: Mr. Sandeep Mahapatra, Mr. Sunil
Choudhary and Mr. Praveen Singh,
Advocates.

versus

CISCO SYSTEM CAPITAL (INDIA) PVT LTD

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

22.02.2023

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CRL.M.A. No.4733/2023 (Exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

CRL.M.C. 1238/2023 & CRL.M.A. 4732/2023

By way of the present petition under section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C'), the petitioner seeks quashing of criminal complaint No. 536843/16 filed under section 138 of the Negotiable Instruments Act 1881 ('NI Act'), pending before the court of the learned Metropolitan Magistrate, NI Act-03/Central/Delhi

along with summoning order dated 13.09.2012 made in the matter and all proceedings arising therefrom.

2. At the outset, Mr. Sandeep Mahapatra, learned counsel appearing for the petitioner is queried as to why a summoning order passed in the year 2014 is sought to be impugned more than 08 years later. Counsel offers no cogent answer, except to submit that there is no limitation for invoking the inherent powers and jurisdiction of this court under section 482 Cr.P.C.; and further that the challenge raised here goes to the very root of the summoning order.
3. Mr. Mahapatra submits, that though the original dispute arose from a Master Lease & Finance Agreement dated 25.05.2008 ('MLFA') entered into between M/s. CISCO Systems Capital (India) Pvt. Ltd. ('CISCO' or 'respondent') and M/s. New Delhi Tele Tech. Pvt. Ltd. ('company'), as is evident from the contents of the criminal complaint, those disputes were referred to mediation; which culminated in a settlement dated 06.09.2011. It is submitted that the cheque that is subject-matter of the criminal complaint was issued by the company towards the discharge of part of the debt owed to the respondent/complainant under the mediated settlement agreement and not under the MLFA. This, it is submitted, is clear from a perusal of para 9 of the criminal complaint itself, which reads as under:

“9. That aforesaid cheque issued by the accused was towards the discharge of part of the debts owed to the complainant under the mediation agreement dated 06.09.2011. ...”

4. It is pointed-out that there is no dispute that the cheque was drawn on the account of the company and not on the petitioner's personal

account. It is further submitted that the Form-32 relating to the petitioner filed under the provisions of the Companies Act 1956, a copy of which has been annexed to the present petition, shows that the petitioner had resigned from the directorship of the company with effect from 01.04.2010; whereas the subject cheque was dated 20.07.2012 and was returned unpaid on 21.07.2012.

5. Mr. Mahapatra further submits, that on a plain reading of the text of section 138 of the NI Act, it is clear that the offence arises when a cheque is “...returned by the bank unpaid”, subject to the other conditions prescribed in the provision itself. It is submitted, that in relation to offences by companies as comprised in section 141 of the NI Act, the deeming provision imputing guilt to officers of the company also arises on a person, “...who, at the time the offence was committed” was in-charge of and responsible to the company for the conduct of its business.
6. It is contended, that it stands documented in the present case, that the petitioner had ceased to be a director of the company with effect from 01.04.2010, whereas the cheque came to be returned, and therefore the offence came to be committed, more than 02 years later on 21.07.2012. It is argued that the petitioner has been arrayed as accused No. 2 in the criminal complaint in his alleged capacity of ‘Chairman and Managing Director’ of the company (New Delhi Tele Tech Private Limited); and though the petitioner was never Chairman or Managing Director, even his directorship ended as of 01.04.2010.
7. In the circumstances, it is argued that the complaint is not maintainable against the petitioner at all.

8. Mr. Mahapatra further argues, that while acknowledging the directions laid down by a Co-ordinate Bench of this court in *Sudeep Jain vs. M/s. ECE Industries Ltd*,¹ as to the requirement of calling for Form-32 to ascertain as to who were the directors of a company at the relevant time, the summoning order proceeds to ignore those directions and casually issues summons *inter-alia* to the petitioner, even though he was not a director for several years even before the date on which the offence was committed.
9. Upon a *prima-facie* conspectus of the averments contained in the petition and the submissions made, issue notice.
10. Ms. Chetna Bhalla, learned counsel is present on behalf of the respondent on advance copy; accepts notice; and seeks time to file reply.
11. Let reply be filed within 04 weeks; rejoinder thereto, if any, be filed within 03 weeks thereafter; with copies to the opposing counsel.
12. Ms. Bhalla submits, that in its recent decision in *Sunita Palita and Others vs. M/s. Panchami Stone Quarry*,² the Supreme Court has authoritatively held as under:

“22. The High Court correctly observed that three categories of persons were covered by Section 141 of the NI Act - the company who committed the offence as alleged; everyone who was in-charge of or was responsible for the business of the company and any other person who was a Director or a Manager or a Secretary or Officer of the Company with whose connivance or due to whose neglect the company had committed the offence”

Arguing thereby, that since *everyone in-charge* of the business

¹ (2013) 201 DLT 461

² (2022) 10 SCC 152

of the company and *any director* with whose connivance or neglect the offence was committed is also deemed to be guilty of the offence, the petitioner is very much liable under section 138 read with section 141 of the NI Act and has been correctly summonsed.

13. Though the foregoing *is un-arguably* the clear position of law, the above enunciation of law is to be *applied* in the context of the facts of each case. Surely, *all past directors* of a company cannot be implicated for the offence under section 138, NI Act; and reference to *everyone who was in-charge of, or was responsible for the business of the company, and any other person who was a Director or a Manager or a Secretary or Officer of the Company with whose connivance or due to whose neglect the company had committed the offence*, must necessarily be restricted to those who fall within the ambit of the phrase “*...at the time the offence was committed*”.
14. Furthermore, the Supreme Court in *N. Harihara Krishnan vs. J. Thomas*,³ has held that every person signing a cheque on behalf of a company, on whose account the cheque is drawn, *does not become* the ‘drawer’ of the cheque; muchless would such person become liable for the debt or other liability comprised in such cheque. Reference may be made to the following para of this judgement :

“22. The High Court failed to appreciate that the liability of the appellant (if any in the context of the facts of the present case) is only statutory because of his legal status as the Director of Dakshin. Every person signing a cheque on behalf of a company on whose account a cheque is drawn does not become the drawer of the cheque...”

15. Also, the impugned summoning order appears to be self-contradictory, inasmuch as it reads :

“Except the mere bald and cursory statement, the complainant has not specified or elaborated the role of all the alleged accused in the day-to-day affairs of the Company. Further it is pertinent to mention that no Form-32 and other information as required as per requirement/guidelines laid down by the Hon’ble Delhi High Court in Sudeep Jain vs. M/s. ECE Industries Ltd. (2013) 201 DLT 461. has been furnished and placed on record by the complainant to show whether all the alleged accused persons are directors of accused No.1 at the relevant point of time.

“Therefore there is sufficient material available on record only to summon the accused No.1,2 and 3 only. This court is of the considered opinion that prima-facie case punishable u/s 138 N.I. Act, 1881 is made out against the accused No.1,2 and 3. I, therefore, take cognizance of offence u/s 138 N.I. Act, 1881.”

(emphasis supplied)

16. Upon a *prima-facie* view of the matter, based on the averments contained in the petition, and the submissions made, and as a *sequitur* to the above discussion, further proceedings in criminal complaint No. 536843/16, *insofar as they relate to the petitioner*, are stayed, till the next date of hearing.
17. List on 21st April 2023.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 22, 2023/ak

³ (2018) 13 SCC 663.