

A

SUNITA PALITA & OTHERS

v.

M/S PANCHAMI STONE QUARRY

(Criminal Appeal No. 1105 of 2022)

B

AUGUST 01, 2022

[INDIRA BANERJEE AND J. K. MAHESHWARI, JJ.]

Code of Criminal Procedure, 1973: s.482 – Quashing of proceedings – Dishonour of cheque – Account Payee Cheque signed

- C *by accused no. 2, who was M.D. of the Company in favour of respondent in discharge of liability – On dishonour of cheque, respondent filed complaint u/s.138 r/w s.141 of NI Act – In the complaint, appellants who were independent/non-executive director were impleaded as accused no. 3 to 5 – Appellants unsuccessfully filed application in High Court u/s.482 praying that the proceeding*
- D *be quashed – Hence instant appeal – Held: Jurisdiction u/s.482 must be exercised if the interest of justice so requires – High Court failed to appreciate that none of these appellants were Managing Director or Joint Managing Director of the Accused Company – Nor were they signatories of the cheque which was dishonoured –*
- E *A Director of a company who was not in charge or responsible for the conduct of the business of the company at the relevant time, will not be liable u/s.139 r/w. 141 of NI Act – The materials on record clearly show that these appellants were independent, non-executive Directors of the company – High Court adopted a hyper technical approach in rejecting the application u/s.482 – High Court erred in law in not exercising its jurisdiction u/s.482 in the facts and circumstances of this case to grant relief to the appellants – Companies Act, 2013 – ss.2(47), 149 and 150 – Negotiable Instrument Act, 1881 – ss. 139,141.*

Allowing the appeal, the Court

G

HELD: 1. Section 482 of the Cr.P.C. protects the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Cr.P.C or to prevent abuse of the process of any Court or otherwise secure the ends of justice. While it is true that inherent jurisdiction under Section

H

482 should be exercised sparingly, carefully and with caution and

only when such exercise is justified by the tests specially laid down in the Section, the Court is duty bound to exercise its jurisdiction under Section 482 of the Cr.P.C. when the exercise of such power is justified by the tests laid down in the said Section. Jurisdiction under Section 482 of the Cr.P.C. must be exercised if the interest of justice so requires. [Paras 34 and 35][473-G-H; 747-A-B] A

2. The High Court failed to appreciate that none of these Appellants were Managing Director or Joint Managing Director of the Accused Company. Nor were they signatories of the cheque which was dishonoured. As held by this Court in, *inter alia*, *S.M.S. Pharmaceuticals Ltd.*, the liability under Section 138/141 of the NI Act arises from being in charge of and responsible for the conduct of the 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. It would be a travesty of justice to drag Directors, who may not even be connected with the issuance of a cheque or dishonour thereof, such as Director (Personnel), Director (Human Resources Development) etc. into criminal proceedings under the NI Act, only because of their designation. [Paras 38 and 42][474-E-F; 475-E-G] B

S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla (2005) 8 SCC 89 : [2005] 3 Suppl. SCR 371 – followed. C

3. Liability depends on the role one plays in the affairs of a company and not on designation or status alone. The materials on record clearly show that these Appellants were independent, non-executive Directors of the company. 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 D

E

F

G

H

- A **would obviously be responsible for the company and/or its business and affairs.** [Para 43][475-G-H; 476-A-B]

Pooja Ravinder Devidasani v. State of Maharashtra and Anr. (2014) 16 SCC 1 : [2014] 14 SCR 1468- relied on.

- B *K.K. Ahuja v. V.K. Vora (2009) 10 SCC 48 : [2009] 9 SCR 1144; National Small Industries Corporation Ltd. v. Harmeet Singh Paintal (2010) 3 SCC 330 : [2010] 2 SCR 805; Pepsi Foods Ltd. v. Special Judicial Magistrate and Ors. (1998) 5 SCC 749 : [1997] 5 Suppl. SCR 12 – referred to.*

Case Law Reference

[2005] 3 Suppl. SCR 371	followed	Para 23
[2009] 9 SCR 1144	referred to	Para 28
D [2014] 14 SCR 1468	relied on	Para 29
[2010] 2 SCR 805	referred to	Para 46
[1997] 5 Suppl. SCR 12	referred to	Para 47

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. E 1105 of 2022.

From the Judgment and Order dated 11.09.2019 of the High Court of Calcutta in CRR No.2835 of 2018.

Sidharth Luthra, Sr. Adv., Saraswat Mohapatra, Akshat Kumar, Ms. S. Janani, Advs. for the Appellants.

F Sanjay R. Hegde, Sr. Adv., Dibyadyuti Banerjee, Abhijit Sengupta, Advs. for the Respondent.

The Judgment of the Court was delivered by

INDIRA BANERJEE, J.

G Leave granted.

2. This appeal is against a judgment and order dated 11th September 2019 passed by the Calcutta High Court dismissing the Criminal Revisional Application being C.R.R. No.2835 of 2018 filed by the Appellants being the 3rd, 4th and 5th Accused, under Section 482 of

H

the Code of Criminal Procedure, 1973, hereinafter referred to as “the Cr.P.C.”, for quashing the proceedings in Case No. AC/121/2017, *inter alia*, under Section 138/141 of the Negotiable Instruments Act, 1881, hereinafter referred to as “the NI Act”, pending against the Appellants in the Court of the Judicial Magistrate, 2nd Court, Suri, Birbhum, West Bengal.

3. The Respondent M/s Panchami Stone Quarry, hereinafter referred to as “PSQ” filed a petition of complaint, *inter alia*, against the Appellants under Section 138/141 of the NI Act which was registered as Case No. AC/121/2017.

4. In the petition of complaint, PSQ impleaded M/s MBL Infrastructure Limited, a public limited company, within the meaning of the Companies Act 2013 (hereinafter referred to as “the Accused Company”), as Accused No.1. One Mr. Anjanee Kumar Lakhota, Managing Director of the Accused Company was impleaded as the Accused No.2 and the Appellants were impleaded as Accused Nos. 3, 4 and 5. The Appellant No.1 was the fourth accused, Appellant No.2 was the fifth accused and Appellant No.3 was the third accused.

5. In the said petition of complaint, PSQ alleged “*Accused Nos. 2, 3, 4 and 5 are the Directors of Accused No. 1. i.e., M/s MBL Infrastructure Ltd. respectively [and] are responsible to conduct the day-to-day business affairs of the Accused No.1.*”

6. The Accused Company placed orders on PSQ on different dates for purchase, *inter alia*, of Stone Dust and Stone Aggregate. Purchase Orders dated 24.12.2015, 25.05.2016, 07.01.2016 and 09.04.2016 were issued by the Accused Company, specifying the materials required to be supplied, along with the rates and quantity thereof.

7. Pursuant to the aforesaid purchase orders, PSQ supplied materials to the Accused Company, and raised bills totalling Rs.2,31,60,674/- (Rupees Two Crore, Thirty One Lakhs, Sixty Thousand, Six Hundred and Seventy Four only) on the Accused Company.

8. In discharge of its liability against the bills raised by PSQ on the Accused Company, the Accused Company had issued an Account Payee Cheque being No.001174 dated 15th March 2017 for a sum of Rs.1,71,08,512/- (Rupees One Crore, Seventy One Lakhs, Eight Thousand, Five Hundred and Twelve only) drawn on the Park Street Branch of Kotak Mahindra Bank at Kolkata, in favour of PSQ.

- A 9. It is not in dispute that the Accused No.2-Anjanee Kumar Lakhotia is the Managing Director and authorised signatory of the Accused Company. The said Accused No.2, Anjanee Kumar Lakhotia signed the said cheque.
- B 10. In the Petition of Complaint there is a bald averment that the Appellants being the Accused Nos. 3, 4 and 5 were Directors of the Accused Company and responsible for the day-to-day affairs of the Accused Company. This averment is devoid of any particulars.
- C 11. On 10th April 2017, PSQ deposited the cheque in its bank for encashment, but the cheque was dishonoured, with the endorsement 'account closed'. On 3rd May 2017, PSQ received intimation of dishonour of the cheque from its banker. Thereafter, PSQ sent a demand notice dated 29th May 2017 by speed post, calling upon the Accused to make payment of the amount of the dishonoured cheque, as per the provisions of Section 138 of the NI Act.
- D 12. Alleging that the Accused Company had not paid the amount of the dishonoured cheque, that is, Rs.1,71,08,512/- (Rupees One Crore, Seventy One Lakhs, Eight Thousand, Five Hundred and Twelve only) to PSQ within the time stipulated, PSQ filed the aforesaid complaint under Section 138 read with Section 141 of the NI Act, through its proprietor.
- E 13. By an order dated 13th July 2017, the Additional Chief Judicial Magistrate, 2nd Court, Suri, Birbhum registered the petition as a complaint case, and after taking cognizance, directed issuance of summons to the Accused, with liberty to the Accused to adopt plea bargaining. Case records were directed to be transferred to the file of the Judicial Magistrate, 2nd Court, Suri, Birbhum. On the same day, the Judicial Magistrate, 2nd Court, Suri, Birbhum, West Bengal, received the case records for trial and disposal.
- F 14. On 26th March 2018, the Accused appeared through Advocates and filed petitions under Section 205 of the Cr.P.C. and under Section 305 of the Cr.P.C. Sections 205 and 305 of the Cr.P.C. are set out G hereinbelow:-
- H *"Section 205. Magistrate may dispence with personal appearance of accused.- (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader."*

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided." A

"Section 305. Procedure when corporation or registered society is an accused.- (1) In this section, "corporation" means an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860). B

(2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation. C

(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined. D E

(4) Where a representative of a corporation does not appear, any such requirement as is referred to in subsection (3) shall not apply.

(5) Where a statement in writing purporting to be signed by the Managing Director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is filed, the Court shall, unless the contrary is proved, presume that such person has been so appointed. F G

(6) If a question arises as to whether any person, appearing as the representative of a corporation in an inquiry or trial H

- A *before a Court is or is not such representative, the question shall be determined by the Court."*
- B 15. By an order dated 9th July 2018, the Court of Judicial Magistrate, 2nd Court, Suri, Birbhum declined to dispense with the appearance of the Appellants and directed the accused to appear on 20th August 2018.
- C 16. On 26th March 2018, the matter was adjourned till 16th May 2018 for appearance. The case was heard on diverse dates and ultimately adjourned till 9th July 2018 for Orders. By an Order dated 9th July 2018, the Judicial Magistrate, 2nd Court, Suri, Birbhum rejected the Petitions under Sections 305 and 205 of the Cr.P.C., in the absence of the accused persons. The Court directed the accused persons to remain present in Court positively on next date, that is 20th August 2018 to face appropriate proceedings.
- D 17. The Appellants filed a Criminal Revisional Application in the High Court under Section 482 of the Cr.P.C., *inter alia*, praying that the proceedings in Case No.AC.121/2017 under Section 138 read with Section 141 of the NI Act pending in the Court of the Judicial Magistrate, 2nd Court, Suri be quashed and pending such order, all proceedings in the said case be stayed.
- E 18. In the High Court, it was contended that the Judicial Magistrate, 2nd Court, Suri, dealt with the application under Section 205 of the Cr.P.C. without considering whether any useful purpose would be served by requiring the personal attendance of the Accused or whether the progress of the trial was likely to be hampered on account of their absence.
- F 19. By the judgment and order impugned in this Appeal, a Single Bench of the High Court rejected the application under Section 482 of the Cr.P.C. Being aggrieved, the Appellants have approached this Court. The Appellants claim that they are independent non-executive Directors of the Accused Company, who are in no way responsible for the day-to-day affairs of the Accused Company.
- G 20. Mr. Sidharth Luthra appearing on behalf of the Appellants submitted that Section 205 of the Cr.P.C. confers discretion on the Court to exempt personal appearance of an accused, till such time as his appearance may be considered necessary. In considering an application under Section 205 of the Cr.P.C., the Magistrate has to bear in mind the nature of the case, as also the conduct of the persons summoned. The H Magistrate may not exempt personal appearance, where any useful

purpose would be served by requiring the personal attendance of the accused, or where the progress of the trial was likely to be hampered on account of his absence. A

21. Mr. Luthra pointed out that Section 305 of the Cr.P.C. provides how a body corporate, made accused in a criminal case, may be represented. The Magistrate overlooked the fact that the Accused Company was being represented by an authorized officer. B

22. Mr. Luthra further argued that Section 141 of the NI Act being a penal provision creating vicarious liability, the same must be strictly construed. Mere statement in the complaint that the Appellants were in charge of and responsible to the Accused Company, for the conduct of the business of the Accused Company without any specific role attributed to the Appellants, was not sufficient for proceeding against the Appellants under Section 141 of the said Act. C

23. In *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*¹ cited by Mr. Luthra, this Court held: D

"10. While analysing Section 141 of the Act, it will be seen that it operates in cases where an offence under Section 138 is committed by a company. The key words which occur in the section are "every person". These are general words and take every person connected with a company within their sweep. Therefore, these words have been rightly qualified by use of the words: E

"Who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence, etc." F

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 G

¹ (2005) 8 SCC 89

- A *will be liable for criminal action. It follows from this that if a director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time*
- B *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. If being a director or manager or secretary was enough to cast criminal liability, the section would have said so. Instead of "every person" the section would have said "every director, manager or secretary in a company is liable"..., etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action."*
- C
- D
- E 24. Mr. Luthra emphatically argued that the Appellants are independent, non-executive Directors of the Accused Company and in no way responsible for the day-to-day affairs of the Accused Company. Such Directors are inducted in the company for their expertise or special knowledge in any particular discipline. They are not in charge of the management of the company.
- F
- G 25. Mr. Luthra argued that the Appellants had relied on unimpeachable documents, particularly, Form No. DIR-12 of Appellant No.1 and Appellant No.3, and DRI Form No.32 of the Appellant No.2, which showed the status of the respective Appellants as Non-Executive Independent Directors w.e.f. 01.04.2014. The Appellants being Non-Executive Independent Directors, are entitled to have the Complaint Case No. AC/121/2017 quashed as against them.
- H 26. Mr. Luthra referred to Section 2(47) and Section 149 of the Companies Act, 2013 dealing with independent Directors which are extracted hereinbelow for convenience:-

“*2. Definitions:* ...” A

(47) "independent director" means an independent director referred to in sub-section (5) of section 149;

149. Company to have Board of Directors: ...

(6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience; C

(b)(i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) *none of whose relatives*—

(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two

- A *immediately preceding financial years or during the current financial year;*
(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or
- B *(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);*
- C *(e) who, neither himself nor any of his relatives—*
 - D *(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed:*
 - E *Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.*
 - F *(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—*
 - G *(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or*
 - G *(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;*
 - H *(iii) holds together with his relatives two per cent or more of the total voting power of the company; or*

(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company; or

A

(f) who possesses such other qualifications as may be prescribed."

B

27. Mr. Luthra has also referred to Section 150 of the Companies Act, 2013 which is set out hereinbelow:-

150. Manner of selection of independent directors and maintenance of databank of independent directors.—(1)

C

Subject to the provisions contained in sub-section (5) of Section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors:

D

Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.

E

(2) The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of Section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.

F

(3) The data bank referred to in sub-section (1), shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.

G

(4) The Central Government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under Section 149.

H

A 28. In **K.K. Ahuja v. V.K. Vora**² this Court discussed the principles of the vicarious liability of the officers of a company in respect of dishonour of a cheque and held: -

“27. *The position under Section 141 of the Act can be summarised thus:*

- B (i) *If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix “Managing” to the word “Director” makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.*
- C (ii) *In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.*
- D (iii) *In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.*
- F
- G

H ²(2009) 10 SCC 48

(iv) *Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."* A
B

29. In *Pooja Ravinder Devidasani v. State of Maharashtra and Anr.*³ this Court held as under:-

"17. ... Non-executive Director is no doubt a custodian of the governance of the company but is not involved in the day-to-day affairs of the running of its business and only monitors the executive activity. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the company, one who actively looks after the day-to-day activities of the company and is particularly responsible for the conduct of its business. Simply because a person is a Director of a company, does not make him liable under the NI Act. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act. In *National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113]* this Court observed: (SCC p. 336, paras 13-14)

"13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the

³ (2014) 16 SCC 1

- A *company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.*
- B *14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141.”*
- ***
- C *18. In Girdhari Lal Gupta v. D.H. Mehta [Girdhari Lal Gupta v. D.H. Mehta, (1971) 3 SCC 189 : 1971 SCC (Cri) 279 : AIR 1971 SC 2162] , this Court observed that a person “in charge of a business” means that the person should be in overall control of the day-to-day business of the Company.*
- E *19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see State of Karnataka v. Pratap Chand [State of Karnataka v. Pratap Chand, (1981) 2 SCC 335 : 1981 SCC (Cri) 453]).*
- F *20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company.”*
- H *30. As held in **K.K. Ahuja v. V.K. Vora** (supra) when the accused is the Managing Director or a Joint Managing Director of a company, it*

is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company for the conduct of the business of the company. This is because the prefix “Managing” to the word “Director” makes it clear that the Director was in charge of and responsible to the company, for the conduct of the business of the company. A Director or an Officer of the company who signed the cheque renders himself liable in case of dishonour. Other officers of a company can be made liable only under sub-section (2) of Section 141 of the NI Act by averring in the complaint, their position and duties in the company, and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.

31. In course of the hearing Mr. Luthra emphasized on the proceedings initiated against the Accused Company under Section 7 of the Insolvency and Bankruptcy Code 2016, hereinafter referred to as the “IBC”.

32. By an order dated 30th March 2017, the Calcutta Bench of the National Company Law Tribunal, hereinafter referred to as the “NCLT”, admitted the application of a Financial Creditor of the Accused Company for appointment of an Interim Resolution Professional (IRP) to administer the Accused Company, as a result of which the Appellants were suspended by operation of law. When statutory notice of dishonour was sent to the Appellants, the management of the Accused Company had been taken over by the IRP.

33. It is stated that PSQ had availed the remedy under the IBC and filed its claim before the IRP, which now forms part of an Approved Resolution Plan of the Accused Company. PSQ would, therefore, be paid in terms of the Approved Resolution Plan. Mr. Luthra submitted that the Resolution Plan of the Accused Company had been upheld by the National Company Law Appellate Tribunal (NCLAT). All appeals against the Resolution Plan had been dismissed by the NCLAT.

34. Section 482 of the Cr.P.C. protects the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Cr.P.C or to prevent abuse of the process of any Court or otherwise secure the ends of justice.

35. While it is true that inherent jurisdiction under Section 482 should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specially laid down in the Section,

- A the Court is duty bound to exercise its jurisdiction under Section 482 of the Cr.P.C. when the exercise of such power is justified by the tests laid down in the said Section. Jurisdiction under Section 482 of the Cr.P.C. must be exercised if the interest of justice so requires.

36. The High Court rightly held that when a complaint was filed B 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 C 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.

37. The High Court also rightly held that the Managing Director or Joint Managing Director would admittedly be in charge of the company D and responsible to the company for the conduct of its business by virtue of the office they hold as Managing Director or Joint Manging Director. These persons are in charge of and responsible for the conduct of the business of the company and they get covered under Section 141 of the NI Act. A signatory of a cheque is clearly liable under Section 138/141 E of the NI Act.

38. The High Court, however, failed to appreciate that none of these Appellants were Managing Director or Joint Managing Director of the Accused Company. Nor were they signatories of the cheque which was dishonoured.

- F 39. The High Court proceeded to hold that, in construing a complaint, a hyper technical approach should not be adopted, to quash the same. The High Court observed rightly that the laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions, resulting in enactment of Sections 138 and 141 G of the NI Act has to be borne in mind. A complaint should also not be read with a pedantically hyper technical approach to deny relief under Section 482 of the Cr.P.C. to those impleaded as accused, who do not have any criminal liability in respect of the offence alleged in the complaint. As observed by the High Court, the provisions of Section 138/141 of the NI Act create a statutory presumption of dishonesty, against those H covered by Section 138/141 of the NI Act and expose them to criminal

liability, if payment is not made within the statutory period, even after issue of notice. A

40. The High Court further held that the power of quashing is required to be exercised sparingly. The High Court, in effect, found that even though, on perusal of the complaint, it appeared that the exact words used in Section 141 of the NI Act had not been used in the complaint, the essential pleadings were there in the complaint. B

41. There can be no doubt that in deciding a Criminal Revisional Application under Section 482 of the Cr.P.C. for quashing a proceeding under Section 138/141 of the NI Act, the laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of the said Sections has to be borne in mind. The provisions of Section 138/141 of the NI Act create a statutory presumption of dishonesty on the part of the signatory of the cheque, and when the cheque is issued on behalf of a company, also those persons in charge of or responsible for the company or the business of the company. Every person connected with the company does not fall within the ambit of Section 141 of the NI Act. C

42. A Director of a company who was not in charge or responsible for the conduct of the business of the company at the relevant time, will not be liable under those provisions. As held by this Court in, *inter alia*, **S.M.S. Pharmaceuticals Ltd.** (*supra*), the liability under Section 138/141 of the NI Act arises from being in charge of and responsible for the conduct of the 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. It would be a travesty of justice to drag Directors, who may not even be connected with the issuance of a cheque or dishonour thereof, such as Director (Personnel), Director (Human Resources Development) etc. into criminal proceedings under the NI Act, only because of their designation. D

43. 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 Ltd.** (*supra*). 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 and Anr.** (*supra*) 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 E

F

G

H

- A 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.

44. 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

- C 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.

- D hyper technical approach in construing pleadings, to quash criminal proceedings, the High Court adopted a hyper technical approach in rejecting the application under Section 482 of the Cr.P.C., on a cursory reading of the formalistic pleadings in the complaint, endorsing the contents of Section 141 of the NI Act, without any particulars. What the High

- E Court overlooked was, the contention of these Appellants that they were non-Executive Independent Directors of the Accused Company, based on unimpeachable materials on record. The High Court observed that in the petition it had specifically been averred that all the accused persons were responsible and liable for the whole business management of the Accused Company, and took the view that the averments in the complaint F were sufficient to meet the requirements of Section 141 of the NI Act.

46. As held by this Court in *National Small Industries Corporation Ltd. v. Harmeet Singh Paintal*⁴ quoted with approval in the subsequent decision of this Court in *Pooja Ravinder Devidasani v. State of Maharashtra and Anr.* (supra) the impleadment of all Directors

- G of an Accused Company on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company, without anything more, does not fulfil the requirements of Section 141 of the NI Act.

H ⁴(2010) 3 SCC 330

47. In any event there could be no justification for not dispensing with the personal appearance of the Appellants, when the Company had entered appearance through an authorized officer. As held by this Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate and Ors.*⁵ summoning an accused person cannot be resorted to as a matter of course and the order must show application of mind.

A

48. In our considered view, the High Court erred in law in not exercising its jurisdiction under Section 482 of the Cr.P.C in the facts and circumstances of this case to grant relief to the Appellants.

B

49. For the reasons discussed above, the appeal is allowed. The judgment and order of the High Court is set aside. Criminal Case No. AC/121/2017 pending under Section 138/141 of the NI Act in the Court of Judicial Magistrate, 2nd Court, Suri, Birbhum is quashed in so far as these Appellants are concerned. It is made clear that the proceedings may continue against the other accused in the criminal case, including in particular the Accused Company, its Managing

C

Director/Additional Managing Director and/or the signatory of the cheque in question.

D

Devika Gujral
(Assisted by : Shubhanshu Das, LCRA)

Appeal allowed.

⁵ (1998) 5 SCC 749