$~34, 36 & 37

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

% ***Date of Decision: 12th August, 2024***

\+ **CRL.M.C. 3362/2024 & CRL.M.A. 12953/2024**

MR. SANDIP VINODKUMAR PATEL
& ORS. ..... Petitioners
Through: Mr. Trideep Pais, Adv. (through VC)
Ms. Devika Mohan, Adv.

versus

STCI FINANCE LTD., & ANR. ..... Respondents
Through: Ms. Vinita Sasidharan, Adv.

\+ **CRL.M.C. 4859/2024 & CRL.M.A. 18458/2024**

MR. SANDIP VINODKUMAR PATEL
& ORS. ..... Petitioners
Through: Mr. Trideep Pais, Adv. (through VC)
Ms. Devika Mohan, Adv.

versus

STCI FINANCE LTD & ANR. ..... Respondents
Through: Ms. Vinita Sasidharan, Adv.

\+ **CRL.M.C. 4862/2024 & CRL.M.A. 18470/2024**

MR. SANDIP VINODKUMAR PATEL
& ORS. ..... Petitioners
Through: Mr. Trideep Pais, Adv. (through VC)
Ms. Devika Mohan, Adv.

versus

STCI FINANCE LTD & ANR. ..... Respondents
Through: Ms. Vinita Sasidharan, Adv.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J.

1. The present petitions are filed seeking quashing of the summoning orders dated 18.01.2024 in CC No. 163318/2023, 07.02.2024 in CC No. 7054/2023 and 07.02.2024 in CC No. 10565/2023. The petitioners are also seeking the consequential relief of quashing of the aforesaid complaint cases filed under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') read with Sections 141/142 of the NI Act.

2. The complaints were filed alleging that the management of Sadbhav, along with the petitioners herein, approached the respondent company/STCI for availing corporate loan to the tune of ₹50 crores. It is alleged that on 30.03.2021, the loan facility agreements were executed and the amount of ₹50 crores was disbursed to Sadbhav on 31.03.2021. Post-dated cheques were thereafter handed to the complainant towards payment of interest and re-payment of the principal loan amount.

3. It is alleged that on presentation for clearance, all the cheques were returned with the remark – "Funds insufficient". Separate complaints were filed by the complainant for dishonour of cheques under the respective Loan Agreements.

4. It is not disputed that the petitioners were the independent Directors in the accused company and therefore, cannot be held to be vicariously liable under Section 141 of the NI Act. The petitioners have placed impeachable material on record, in the

form of Form 32 of the accused company, filed with the Registrar of Companies, that clearly shows that the petitioners were appointed in the capacity of an Independent Additional Directors and that they were non-executive Directors.

5. The petitioners are sought to be implicated in the present case under Section 141 of the NI Act. Section 141 of the NI Act reads as under:

> *"**141. Offences by companies.***
> *(1) If the person committing an offence under section 138 is a company, every person 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 and shall be liable to be proceeded against and punished accordingly:*
> *Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:*
> *Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.*
> *(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*
> *Explanation.-- For the purposes of this section, --*

> *(a) "company" means any body corporate and includes a firm or other association of individuals; and*
> *(b) "director", in relation to a firm, means a partner in the firm."*

6. In terms of Section 141 of the NI Act, a person can be vicariously held responsible for the offence committed by a company if he is responsible for the conduct of the company's business at the relevant time.

7. The respondent has not disputed that the petitioners are independent directors.

8. The Hon'ble Apex Court in the case of ***Sunita Palita v. Panchami Stone Quarry*** **: (2022) 10 SCC 152**, relying on a catena of judgments, quashed the proceedings under Sections 138/141 of the NI Act against the appellants therein who were independent, non-executive directors of the accused company. The relevant portion of the aforesaid judgment is reproduced hereunder:

> *"**41.** 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….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.*
> ***42….**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 [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378] 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 would obviously be responsible for the company and/or its business and affairs.***

44…*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 were sufficient to meet the requirements of Section 141 of the NI Act.*

45. *As held by this Court in National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] quoted with approval in the subsequent decision of this Court in Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378] the impleadment of all Directors 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.*

46. *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 authorised officer. As held by this Court in Pepsi Foods Ltd. v. Special Judicial Magistrate [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] summoning an accused person cannot be resorted to as*

a matter of course and the order must show application of mind."

(emphasis supplied)

9. From the precedents mentioned above, it is clear that a person cannot be made vicariously liable under the provisions of Section 141 of NI Act, merely by stating that he was in-charge and responsible for the day-to-day-conduct of the accused company at the relevant time when the offence was committed.

10. In view of the uncontroverted fact that the petitioners were independent, non-executive Director and that the complaints lack the necessary averments to endorse as to what was the active role of the petitioners and as to how the petitioners were guilty or responsible for the offence, this Court is of the opinion that continuance of the proceedings would amount to abuse of the process of the Court. The present case is a fit case to exercise discretionary jurisdiction under Section 482 of the CrPC.

11. The present petitions, to that extent, are allowed and the Complaint Nos. 16318/2023, 7054/2023 and 10565/2023, under Section 138 of the NI Act, and all consequential proceedings arising therefrom are quashed *qua* the petitioners.

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

13. A copy of this order be placed in all the matters.

AMIT MAHAJAN, J

AUGUST 12, 2024/*'KDK'*