



2025:DHC:4647



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

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*Reserved on: 02nd May, 2025
Pronounced on: 28th May, 2025*

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CRL.M.C. 2014/2017, CRL.M.A. 8282/2017, CRL.M.A. 8283/2017

RAVINDER SINGHANIA

P-24, Green Park Extension
New Delhi-110016

.....Petitioner

Through: Mr. Pavan Narang, Sr. Advocate
along with Mr. Abhishek Kumar, Mr.
Himanshu Sethi, Ms. Twinkle Kataria
and Ms. Aishwarya Chhabra,
Advocates.

Versus

1. STATE OF DELHI

Through its Secretary (Law)
Mr. Raj Kumar Chauhan

2. TARUNBIR SINGH KAIRA

S/o Sri Santokh Singh Kalra
4X 102, AWHO, Sector CHI,
Gurjinder Vihar,
Greater NOIDA, Uttar Pradesh

.....Respondents

Through: Mr. Shoaib, Haider, Ld. APP for the
State.

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CRL.M.C. 3851/2017, CRL.M.A. 15540/2017

SANJAY BAHADUR

901/3B, Green Acres,
Lokhandwala Complex,
Andheri-West, Mumbai – 53

.....Petitioner



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Through: Mr. Pavan Narang, Sr. Advocate
along with Mr. Abhishek Kumar, Mr.
Himanshu Sethi, Ms. Twinkle Kataria
and Ms. Aishwarya Chhabra,
Advocates.

versus

1. STATE OF DELHI

Through its Secretary (Law)
Mr. Raj Kumar Chauhan

2. TARUNBIR SINGH KALRA

S/o Sri Santokh Singh Kalra
4X 102, AWHO, Sector CHI,
Gurjinder Vihar,
Greater NOIDA, Uttar Pradesh

.....Respondents

Through: Mr. Shoaib, Haider, Ld. APP for the
State.

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CRL.M.C. 3852/2017, CRL.M.A. 15545/2017

ANIL HARISH

13, CCI Chambers,
Dinshaw Wacha Road,
Churchgate, Mumbai -400020,
Maharashtra

.....Petitioner

Through: Mr. Pavan Narang, Sr. Advocate
along with Mr. Abhishek Kumar, Mr.
Himanshu Sethi, Ms. Twinkle Kataria
and Ms. Aishwarya Chhabra,
Advocates.

versus

1. STATE OF DELHI

Through its Secretary (Law)
Mr. Raj Kumar Chauhan



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2. TARUNBIR SINGH KALRA

S/o Sri Santokh Singh Kalra
4X 102, AWHO, Sector CHI,
Gurjinder Vihar,
Greater NOIDA, Uttar Pradesh

.....Respondents

Through: Mr. Shoaib, Haider, Ld. APP for the
State.

+

CRL.M.C. 4890/2017

ANIL HARISH

13, CCI Chambers,
Dinshaw Wacha Road,
Churchgate, Mumbai -400020,
Maharashtra

.....Petitioner

Through: Mr. Pavan Narang, Sr. Advocate
along with Mr. Abhishek Kumar, Mr.
Himanshu Sethi, Ms. Twinkle Kataria
and Ms. Aishwarya Chhabra,
Advocates.

versus

1. STATE OF DELHI

Through its Secretary (Law)
Mr. Raj Kumar Chauhan

2. MR. NAVIN KAUL

S/o Shri. R.J. Kaul
R/o Villa No. 6, Al-Majid-II,
Entrance 186, Road 18,506,
Janusan, Bahrain

3. MS. REKHA KAUL

W/o Shri Navin Kaul



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R/o Villa No. 6, Al-Majid-II,
Entrance 186, Road 18,506,
Janusan, Bahrain

Through

RAJESH CHUGH
Special Power of Attorney
280, Lawyers Chambers
Saket District Court, Saket
New Delhi-110017

.....Respondents

Through: My Yudhvir Singh Chauhan, Ld. APP
for the State.

+ **CRL.M.C. 1091/2018, CRL.M.A. 3922/2018, CRL.M.A. 3923/2018**

MINOTI BAHRI
Non-Executive Director,
M/s. Unitech Ltd.
R-87, Greater Kailash-I,
New Delhi-110024.

.....Petitioner

Through: Mr. Pavan Narang, Sr. Advocate
along with Mr. Abhishek Kumar, Mr.
Himanshu Sethi, Ms. Twinkle Kataria
and Ms. Aishwarya Chhabra,
Advocates.

versus

1. **MR. NAVIN KAUL**
S/o Shri. R.J. Kaul
R/o Villa No. 6, Al-Majid-II,
Entrance 186, Road 18,506,
Janusan, Bahrain
2. **MS. REKHA KAUL**
W/o Shri Navin Kaul
R/o Villa No. 6, Al-Majid-II,



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Entrance 186, Road 18,506,
Janusan, Bahrain

Through

RAJESH CHUGH

Special Power of Attorney
280, Lawyers' Chambers
Saket District Court, Saket
New Delhi-110017

.....Respondents

Through: Mr. Shoaib, Haider, Ld. APP for the
State.

+ **CRL.M.C. 58/2018, CRL.M.A. 209/2018, CRL.M.A. 13448/2025**

MINOTI BAHRI

Non-Executive Director,
M/s. Unitech Ltd.
R-87, Greater Kailash-I,
New Delhi-110024.

.....Petitioner

Through: Mr. Pavan Narang, Sr. Advocate
along with Mr. Abhishek Kumar, Mr.
Himanshu Sethi, Ms. Twinkle Kataria
and Ms. Aishwarya Chhabra,
Advocates.

versus

TARUNBIR SINGH KALRA

S/o Sri Santokh Singh Kalra
4X 102, AWHO, Sector CHI,
Gurjinder Vihar,
Greater NOIDA, Uttar Pradesh

.....Respondents

Through: Appearance not given.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



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J U D G M E N T

CRL.M.A. 13447/2025 in CRL.M.C. 2014/2017, CRL.M.A.13449/2025 in CRL.M.C. 3851/2017, CRL.M.A. 13451/2025 in CRL.M.C. 3852/2017 & CRL.M.A. 13450/2025 in CRL.M.C. 4890/2017

1. The aforesaid six Petitions are being decided together as they arise out of similar facts and involve the same question of Law.
2. The Petitioners, namely Ravinder Singhanian, Sanjay Bahadur, Anil Harish, and Minoti Bahri, have filed the aforesaid Petitions seeking quashing of Order dated 29.04.2017 whereby the Petitioners have been summoned as accused for offences under Section 409/420/120B & 34 Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) and quashing of CC No. 2845/2017 titled "*Tarunbir Singh Kalra vs. M/s Unitech Ltd. & Ors.*".
3. The Petitioners, namely Anil Harish and Minoti Bahri, have also filed another Petition seeking quashing of Order dated 14.10.2017 in CC No. 10656/2017 titled "*Navin Kaul & Ors. vs. M/s Unitech Ltd. & Ors.*" whereby the Petitioners has been summoned as accused persons for offences under Section 409/420/120B & 34 IPC.
4. ***Briefly stated, on 17.03.2017, the Respondent No.2/Tarunbir Singh Kalra filed Criminal Complaint bearing No. 2845/2017 titled "Tarunbir Singh Kalra vs. M/s Unitech Ltd. & Ors." under Section 200 CrPC, before learned ACMM against M/s. Unitech Ltd. and its Directors including the Petitioners [Anil Harish, Accused No.5; Minoti Bahri, Accused No.6; Ravinder Singhanian, Accused No.7; Sanjay Bahadur, Accused No.8] for offences under Sections 403/406/409/415/417/420/120-B/34 IPC.***



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5. The averments made in the Complaint were that the Accused Company, *M/s Unitech Ltd.*, is incorporated under the Companies Act with its registered office in Saket, New Delhi. Accused Nos. 2 - 4 are the Managing Directors of Accused No.1; Accused Nos. 5 - 8 are the Directors and thereby, all the accused persons are supervising, managing and controlling the affairs of the Company and are responsible for the day-to-day affairs of the Accused Company.

6. The Accused Company *M/s Unitech Ltd.* launched a Group Housing Scheme called "*Unitech Cascades*" at Greater Noida. The Complainant/Tarunbir Singh Kalra while in search of a residential property, met the Accused persons and was informed that the Apartment bearing No.1803, 17th floor in Block-03 is available in Unitech Cascades Project for a total price of Rs.39,77,836/- (including basic price, PLC amount, lease rent and parking space). It was also informed that the possession of the Apartment shall be handed over to the Complainant, latest by 30.04.2008. It was further agreed that they would be liable to refund the amount paid by the Complainant with Simple Interest of 10% P.A. and a penalty @ Rs.5 per sq. ft. of super area per month, for the delay in offering the delivery of said Apartment, as per the Agreement.

7. On 13.03.2006, the Complainant paid a sum of Rs.4,00,000/- as the booking amount. An Allotment Letter/Agreement to Sell was executed, duly signed by the Authorised persons of Accused No.1 Company, which included the details of the property, area, consideration, the payment plan and other details including the date of handing over the possession of the Apartment and the provision of payment by the Accused Company in case of default.



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8. Pursuant to the Agreement to Sell, the Complainant also took a Housing Loan of Rs.35,00,000/-, from the State Bank of India (SBI) for the above-mentioned Apartment in Unitech Cascades. Accordingly, on 27.04.2006, SBI issued a Bankers Cheque for a sum of Rs.34,07,234/- in favour of the Accused No. 1 Company's Sales Account.

9. It is further submitted that there was a delay of one day in making the above-mentioned payment of Rs.34,07,234/- and the Complainant was charged Rs.1,800/- as interest. *Thus, the total amount paid by the Complainant to the Accused No. 1 Company against the Apartment is Rs.38,09,034/-.* The Accused Company had thus, received the entire amount payable till handing over of possession of the Apartment at the initial stage itself i.e. 28.04.2006.

10. The Accused Company had also promised the Complainant that possession of the Apartment shall be handed over to him latest by 31.03.2008. Also, in case of delay, the Accused No. 1 Company would offer him an alternative property or refund the amount in full simple interest @ 10% p.a.

11. Despite having made all the payments, the Accused Company failed to deliver possession of the Apartment even after a lapse of almost 8 years, from the date of the agreed period. There is no response from the Accused Nos.1 - 8 till date and no relief has been granted to the Complainant.

12. It is claimed in the Complaint that *Accused Nos. 2 to 5 being whole-time Director, Managing Director and Director respectively of Accused No. 1 Company, since the beginning were fully aware that they are not going to deliver the possession on time and would misappropriate the money, but they influenced and made false promises to the Complainant to make the*



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payment. To ensure that the timely payment is paid, the Complainant also took a loan from the Bank at a higher rate of interest. But the Accused made no serious efforts for the completion of their Unitech Cascades Project.

13. Thus, it is asserted that all the accused persons in connivance and collusion with each other have committed acts of cheating, forgery, fraud and misappropriation of funds of the Complainant.

14. It is also submitted that the collusion between the NOIDA Authority and Accused No. 1 Company must be investigated, as the Project's land is Leasehold and the Company was obligated to complete it within a specified timeframe.

15. *The second Complaint bearing C.C. No. 10656/2017 was filed on similar grounds, by the Complainants - Respondents/Navin Kaul and Rekha Kaul through Rajesh Chugh, Special Power of Attorney in 2017, under Section 200 CrPC read with Section 409/415/418/420/120B IPC against the Accused Company/M/s Unitech Ltd. and its Directors including the Petitioners/Anil Harish (arrayed as Accused No.5) and Minoti Bahri (arrayed as Accused No.6).*

16. In this Complaint, the Complainants, Navin Kaul and Rekha Kaul through Rajesh Chugh (SPA), have submitted that they were looking for residential property when they came across the Accused Company and their housing Project called '*Alder Grove*', *Nirvana Country-II, Gurgaon, Haryana*, of which the Petitioners herein (*Anil Harish and Minoti Bahri, Accused Nos. 5 & 6 respectively*) are one of the Directors.

17. The Executives of the Accused Company facilitated a site visit for Complainant No. 1 and assured that all necessary permissions had been obtained from the Director, Town and Country Planning, Haryana, for the



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Housing project as on 01.10.2010. A meeting was also arranged at the Accused Company's registered office where the Managing Director and other Directors assured the Complainants of their strong reputation as Builders and timely project delivery.

18. Pursuant to their allurements, the Complainants opted for a Villa in the Alder Grove, Nirvana Country-II Project and made payments in this regard. The Complainants made a payment of Rs.22,00,000/- on 15.11.2010; further payments on 24.11.2010 of Rs.30,00,000/-, Rs.8,00,000/- and 18,45,220/-. Thus, by 24.11.2010, the Complainants made a payment of Rs.78,45,220/- as the advance booking amount for a total sale consideration of Rs. 2,41,65,00/- for the Villa.

19. On receipt of the aforesaid amount, the Accused persons issued Allotment letter dated 18.11.2010, and on 10.12.2010 executed the Buyers Agreement between the Accused persons and the Complainant for the Villa to be constructed on a plot area of 308 sq. yds. in Alder Grove.

20. On the basis of said Allotment Letter and the Agreement to Sell, the Complainants further made payments of Rs. 25,00,383/-, Rs.10,00,000/-, Rs.22,88,805/- and Rs. 45,20,000/- i.e. **a total of Rs. 1,03,09,188/- was made by 04.03.2017**. These payments were duly acknowledged in the Customer Ledger Account maintained by the Accused for the Housing Project, reflecting transactions up to 28.07.2017.

21. The Complainant executed a *Tripartite Agreement* for financing the Villa through Housing Development Finance Corporation Ltd., with Accused No. 1 issuing a *No Objection Certificate*. **A loan of Rs. 1,25,00,000/- was sanctioned**, and the Complainant has been regularly paying EMIs ever since. However, despite the promised date of possession



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as 17.11.2012 (24 months from booking on 18.11.2010), the possession has not been given, and there appears to be no likelihood of Project completion by the Accused.

22. *Accused Nos. 2 to 4 i.e. Ramesh Chandra (Chief Managing Director), Ajay Chandra (Managing Director), Sanjay Chandra (Managing Director) on behalf of Accused No. 1*, assured the Complainants that they would be entitled to all rights under the Agreement, including penalty for delay, offer of an alternative property, or refund with interest if possession was not handed over. Despite a delay of over 56 months and receipt of more than 75% of the payment, the Accused have failed to complete the Project and have misappropriated the Funds for personal use.

23. It is asserted in the Complaint that Accused Nos. 2 – 10, who are the Managing Directors and Directors of the Accused Company failed to honour the terms and conditions, which they used to induce the Complainants to make the payments under the false promise of delivering the constructed property. The Complainants were induced to pay Rs. 1,85,00,000/-, and thus, their actions amount to misrepresentation and cheating, causing wrongful loss to the Complainants and wrongful gain to themselves. The Accused continue to commit fraud through misrepresentations on their website and are still demanding further payments.

24. The Accused Persons are Whole-Time Directors, Managing Directors and Directors respectively of the Accused No. 1 Company. Since the beginning, they were fully aware that they would neither be able to complete the Project nor be able to hand over the possession on time.



25. *Learned ACMM summoned all the accused persons including the Petitioners under Sections 409/420/120B/34 IPC, vide Order dated 29.04.2017 and 14.10.2017, in the two Complaints.*

26. *Aggrieved by the summoning Orders in both the Complaints, the present Petitions have been filed by the Directors.*

27. *The Petitioners have sought quashing of the summoning Orders and the Complaints on the common ground* that they have not been named individually nor is there any averment specifying their role in conducting business or in the day-to-day affairs and management of the Accused Company. *No vicarious liability can be fastened upon the Petitioners for the offences committed by the Accused Company.*

28. The Complaints fail to disclose that the Petitioners consistently served as Independent Directors of the Accused Company, and this omission by the Complainants appears deliberate, especially since this information was available in the public domain.

29. The impugned Summoning Order dated 29.04.2017 and 14.10.2017 passed by the learned ACMM against all the Petitioners, is a cryptic determination consisting only of conclusions and not any reasoned findings. The learned ACMM has to ascertain whether all the Directors who have been arrayed as accused by the two Complainants, are particularly liable for alleged offences committed by the accused Company.

30. It is submitted that as per *Section 149(12) of Companies Act, 2013* only such person can be appointed as an Independent Director who has or had no pecuniary relationship 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.



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Furthermore, an Independent Director shall be held liable only in respect of such acts of omission or commission by a Company which had occurred with his knowledge, attributable through Board processes and with his consent or connivance or where he had not acted diligently.

31. In this regard, reliance has been placed on the case of State of Haryana vs. Brij Lai Mittal & Ors., (1998) 5 SCC 343, whereby the Apex Court held that vicarious liability of a person on being prosecuted for an offence committed under the Act by a Company arises if at the material time, he was in-charge of and was also responsible to the Company for the conduct of its business. Simply because a person is Director of the Company, it does not necessarily mean that he fulfils both the above requirements so as to make him liable.

32. Reliance has also been placed on the case of Sunil Bharti Mittal vs. CBI, (2015) 4 SCC 609 whereby the Apex Court has held that a Corporate entity is an artificial person which acts through its Officers, Directors, Managing Directors, Chairman, etc. and if such Company commits an offence involving *mens rea*, it normally would be the intent and action of that individual who would act on behalf of the Company. It is the cardinal principle of criminal jurisprudence that there can be no vicarious liability unless the statute specifically provides so. Furthermore, an individual who has allegedly perpetrated the commission of an offence on behalf of a Company, can be made accused along with the Company if there is sufficient evidence of his active role coupled with criminal intent.

33. The Apex Court has consistently held in various judgements that where a jurisdiction is exercised on a Complaint filed in terms of Section 156(3) or Section 200 CrPC, the Penal Code does not contain any provision



for attaching vicarious liability on the part of the Managing Director or Directors of the Company when the accused is the Company.

34. In *Maksud Saiyed vs. State of Gujarat*, (2008) 5 SCC 668, the Apex Court observed that where a jurisdiction is exercised on a Complaint, the Magistrate is required to apply his judicial mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director/Director of the Company, when the accused is the Company itself. The learned Magistrate has to pose onto himself the correct question i.e. *whether the Complaint Petition, even if given face value and taken to be correct in its entirety would lead to the conclusion that the Respondents were personally liable for any offence.*

35. It is further submitted by the Petitioners that in the Complaint there is not even a whisper that the Petitioners induced the Complainant. There is no specific averment that the Complainant was 'deceived' or 'induced' by anyone. The allegations made in the Complaints are generic in nature and are not aimed at the Petitioners in any manner.

36. Reliance has been placed on *Ram Jas vs. State of U.P.*, AIR 1974 SC 1811 wherein it was observed that the basic ingredient necessary to constitute offence of cheating, there must be some inducement of a person to constitute the offence of cheating.

37. Furthermore, the Respondents have tried to give a criminal colour to a civil dispute, which is not tenable in law. The Apex Court has consistently observed that the tendency of the parties to convert their civil disputes into criminal cases needs to be curbed and condemned. It has been held in the case of *G. Sagar Suri vs. State of U.P.*, (2000) 2 SCC 636 that it has to be



seen if in matter which is essentially Civil in nature has been given a cloak of criminal offence.

38. It is also asserted that learned ACMM did not consider that Delhi Courts did not have jurisdiction as no cause of action arose in Delhi. Since the property/Unitech Cascades is situated in Uttar Pradesh, the Agreements were executed in Uttar Pradesh and the parties had also agreed to submit to the jurisdiction of Courts at Gautam Budh Nagar. Merely because the Company had its offices in New Delhi, cannot be sufficient to confer jurisdiction on Courts in Delhi. Hence, the Complaints could not have been filed in Delhi.

39. Respondent No.2 is merely indulging into *forum shopping* which is evident from the fact that had even filed a Consumer Complaint before the learned National Consumer Disputes Redressal Commission, which was disposed of on the technical ground of not being maintainable.

40. *It is submitted by the Petitioner/Ravinder Singhania* that the transactions took place in the month of March-April 2006, however he became only an Independent Director of the Accused Company w.e.f. 24.08.2006 i.e. much later than the date when the alleged offence took place or committed by the Company.

41. The *other Petitioners* have also submitted that on date of filing of the Complaint under challenge, the Petitioners/Ravinder Singhania and Sanjay Bahadur were not Directors in the Company as they had already resigned on 23.05.2016 and 23.02.2016, respectively. Furthermore, the Petitioner/Anil Harish had also resigned on 23.05.2015. The Petitioner/Minoti Bahri also resigned on 11.12.2017.



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42. The ***Respondent No.2/Tarunbir Singh Karla*** has submitted his short ***Reply*** to the Petitions.

43. It is submitted that the Petitioners have attempted to portray that they were implicated solely due to their position as Directors and that the summons were issued based on vicarious liability. In fact, the Petitioners, while serving as Directors, held Key Managerial Positions and actively participated in all decisions made during Board of Directors meetings, including those concerning finances, Project approvals, fund collection, and the diversion of funds.

44. It is also submitted that the Petitioners have tried to mislead the Court by claiming they were not Directors as of 13.03.2006, while concealing that during their tenure i.e. from 24.08.2006 to 23.05.2015, they attended multiple Board meetings where key financial decisions, including fund collection and diversion, were made and misappropriation occurred with the involvement of all Directors.

45. It is also submitted that the offence of criminal conspiracy, cheating, misappropriation and other offences for which the accused persons including the Petitioner has been summoned, is not confined to any particular date. On the contrary, the offence was a continuing one.

46. The Petitioner has concealed the fact that all the transactions had taken place in the Registered Office of the accused Company situated at 6 Community Centre, Saket, New Delhi- 110017 and even the payments had been made at the Registered Office of the Company. Thus, the Courts in Delhi have the jurisdiction to deal with the present Complaint.

47. The ***Petitioners in their Written Submissions*** have reiterated the grounds taken in the Petition and have relied on cases where similar



observations have been made, Sunita Palita vs. Panchami Stone Quarry, 2022 SCC OnLine SC 945; Pooja Ravinder Devidasani vs. State of Maharashtra & Anr., (2014) 16 SCC 1; Ravindranath Bajpe vs. Mangalore SEZ Ltd. & Ors., (2021) SCC OnLine SC 806; Kanarath Payattiyath Balrajh vs Raja Arora, (2017) 2 DLT (Cri) 695; Shiv Kumar Jatia vs. State of NCT of Delhi, (2019) 17 SCC 193; Jayaprakash vs. State [MANU/TN/2062/2014].

48. **Submissions heard and record perused.**

49. The *brief background* of both the Complaints essentially arise from the same issue that that despite payment of the sale consideration, the possession of residential units (Apartment/Villa) have not been handed over by Accused No.1 Company/M/s Unitech Ltd. Allegations have been made against Directors, including the Petitioners herein, stating they were aware of the delay in possession and refused to compensate the Complainants.

50. The Petitioners have asserted that they served as Non-Executive and Independent Directors, with no executive authority or involvement in the day-to-day affairs of the Company.

51. ***Thus, first and foremost what needs to be ascertained is who is an Independent Director and under what circumstances can a Director be liable for the acts of an Accused Company?***

52. Here, reference can be made to **Section 2(47) Companies Act, 2013** which states that an “*independent Director*” means an independent Director referred to in sub-section (6) of Section 149.

53. **Section 149(6) Companies Act, 2013** is reproduced as under for reference:-



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“(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;

(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 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

(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);]

(e) who, neither himself nor any of his relatives—

(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:

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.

(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—

...

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

54. Section 149(6) Companies Act, 2013 thus, defines that an independent Director is a director who is **not** a *Managing Director, Whole-Time Director, or Nominee Director*, and who meets specific criteria related to integrity, expertise, who has / *had no pecuniary relationship, other than remuneration as such Director, and independence from the Company’s promoters and Management. An independent director does not hold any security or interest in the Company or its subsidiary or associate company.*

55. Furthermore, **Section 149(12) of the Companies Act, 2013** provides a protective framework for Independent Directors and Non-Executive Directors (not being promoter or key managerial personnel), by *limiting their liability*. It holds them accountable only for acts of omission or commission by the Company that occurred with their knowledge, gained through Board processes, and with their consent, connivance, or due to their failure to act diligently.



56. *Thus, it is clear that Non-Executive Directors, including Independent Directors, are typically not involved in the day-to-day operations of the Company, which further limits the scope of their potential liability.*

57. ***The next aspect for consideration is that under what circumstances can a Non-Executive and Independent Director of a Company be liable for the acts of said Company?***

58. The fundamental principle under criminal jurisprudence is that where the accusations are against a Company of having committed a criminal offence, its Directors do not *ipso facto* become the accused persons. The Company, being a juristic entity, necessarily acts through its Directors, Managers, Employees and to infer any criminal liability, it has to be *prima facie* shown that they were involved in the activities of the Company and were responsible for the acts taken on behalf of the Company.

59. In the case of *State of Haryana vs. Brij Lai Mittal & Ors.*, (1998) 5 SCC 343, the Apex Court held that vicarious liability of a person on being prosecuted for an offence committed under the Act by a Company arises *if at the material time, he was in-charge of and was also responsible to the Company for the conduct of its business.*

60. Similarly, in the case of *Sunil Bharti Mittal vs. CBI*, (2015) 4 SCC 609 the Apex Court held that a Corporate entity is an artificial person which acts through its Officers, Directors, Managing Directors, Chairman, etc. and if such Company commits an offence involving *mens rea*, it normally would be the intent and action of that individual who would act on behalf of the Company. *It is the cardinal principle of criminal jurisprudence that there can be no vicarious liability unless the statute specifically provides so. Furthermore, an individual who has allegedly perpetrated the*



commission of an offence on behalf of a Company, can be made accused along with the Company if there is sufficient evidence of his active role coupled with criminal intent.

61. Therefore, simply because a person is a Director of the Company, it does not necessarily mean that he fulfils both the above requirements so as to make him liable, in the absence of any specific allegations.

62. ***The third issue for consideration is: whether the two Complaints contain specific averments to import liability on the Accused Directors that they were involved in the day-to-day affairs of the Accused Company?***

63. The Petitioners have asserted that they were the Non-Executive and Independent Directors in the Accused Company, who had also submitted their resignations. Thus, they were not responsible for the acts of the Company.

64. The Petitioners have substantiated their claim that they served as Non-Executive and Independent Directors of M/s Unitech Ltd. through official Company records and public disclosures.

65. Petitioner ***Ravinder Singhania*** was appointed as a Director on 24.08.2006, as substantiated through Form-32 and has resigned on 23.05.2015, substantiated through Form DIR-12, a resignation letter, and Form MGT-7. Similarly, Petitioners ***Sanjay Bahadur*** and ***Anil Harish*** resigned on 23.02.2016 and 23.05.2015 respectively, with their resignation documented through Forms DIR-12 and Form MGT-7.

66. Furthermore, the designation of all the Petitioners/Ravinder Singhania, Sanjay Bahadur, Anil Harish and Minoti Bahri *as Non-Executive and Independent Directors*, is clearly reflected in the Company's Corporate Governance Report and Annual Report for the year 2015.



67. Additionally, the Petitioner/Minoti Bahri's designation as a Non-Executive Director is also reflected through information available on the National Stock Exchange (NSE) and Bombay Stock Exchange (BSE).

68. Thus, having established that the Petitioners were the Non-Executive and Independent Directors, *it is imperative to consider if the two Complaints contain any specific allegation against the Petitions, so as to impose liability on them on behalf of the accused Company.*

69. This aspect was considered in the case of Shiv Kumar Jatia vs. State of NCT of Delhi, (2019) 17 SCC 193 wherein the Apex Court reaffirmed its views in the case of Sunil Bharti Mittal (supra), where it was *inter-alia* held that Individual Directors can be made accused **only** if there is sufficient material to prove their active role coupled with criminal intent. The criminal proceedings were quashed against the accused, who was a *Managing/Non-Independent Executive Director*.

70. Such direct involvement of the Directors was considered in the case of S.K. Alagh vs. State of U.P. & Ors., AIR 2008 SC 1731 by the Apex Court wherein it went to the extent of even exonerating the Managing Director, where the averments were that that the Bank Drafts in said case were drawn in the name of the Company. *It was observed that in the absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any Offence committed by the Company itself.*

71. Similarly, in the case of Ravindranath Bajpe, (supra), the accused persons were the Chairman, Managing Director, Deputy General Manager (Civil & Env.), Planner & Executor, Chairman and Executive Director but in *absence of any specific allegations and the specific role attributed to them,*



the Supreme Court upheld the Order of High Court *quashing the summoning Order against the accused persons for offences under Sections 427, 447, 506 and 120B IPC read with Section 34 IPC.*

72. Similar observations have been made by the Apex Court in the case of *K.S. Mehta vs. M/s Morgan Securities and Credits Pvt. Ltd.*, 2025 INSC 315 wherein the Complaint lacked specific averments that would have established a direct nexus between the Appellants and the financial transactions in question or demonstrate their involvement in the company's financial affairs and the documents on record confirmed the non-executive status of the Appellants/Directors, underscoring their limited role in governance without any Executive decision-making authority. ***It was held that merely because the Appellants/Directors attended Board Meetings does not automatically translate into control over financial operations.*** Hence, unless direct involvement of the Directors is established, they cannot be held vicariously liable under the Act, 1881.

73. ***Thus, it is a settled principle that a Director of a Company cannot be arrayed as an accused without a specific assertion in the Complaint that the said accused as Director was involved in the day-to-day functioning and affairs of the Company. Liability depends on the role one plays in the affairs of a Company and not on designation or status alone.***

74. It is pertinent to observe that mere statement in the Complaints, that they were responsible for Company affairs being the Director, is insufficient for prosecution. The Complaint must specifically delineate as to how the Director controlled or managed the Company operations to establish his liability.



75. *Furthermore, it is also essential to examine whether the offence of cheating, criminal breach of trust or misappropriation of property is made out from the contents of the two Complaints.*

76. *The following are the averments made in the Complaint by the Complainant/Tarunbir Singh Kalra:-*

“... That the accused persons are the whole time Directors, Managing Directors and Directors respectively of the company, since the very beginning knowing well that they will neither complete the project nor hand over the possession at all, were fully aware that the company is not going to deliver apartment to the complainant and is going to misappropriate his money and instead of utilizing the money paid by the complainant and similar other persons for development of their apartments have diverted the same for their personal use or used other than for which it was given. Under influence of such deceptively false promise and assurances and under belief, hope and expectation that he will get his apartment within stipulated period and will have a proper residence for him to live. The complainant to ensure timely payment to the accused took loan from the State Bank of India at a higher rate of interest and made payment to accused. But the said promises and assurances made by the accused to complainant appears to be nothing but fudge which is clear from the fact that till date accused has made no serious and effective efforts to complete the project Unitech Cascades and deliver possession of the apartment to the complainant despite a period of more than 8 years being over since due date of delivery of the apartment as it was predetermined by the accused persons to cheat the innocent buyers including complainant.”

77. The Complainant/Tarunbir Singh Kalra has made serious allegations against the accused persons, who served as whole-time Directors, Managing



Directors, and Directors of the company. According to the Complaint, these individuals knew from the very beginning that they would neither complete the project nor hand over possession to buyers. The Complainant alleges that the accused were fully aware that the Company would not deliver apartments to purchasers and would instead misappropriate their money.

78. The ***second Complaint, filed by the Complainants/Navin Kaul and Rekha Kaul, contains the following averments:-***

“ ... That it is pertinent to mention that the Accused Persons despite knowing well that they are not even owner of the piece of the land on the date the Agreement to Sell was executed and further the said piece, of land is already hypothecated by the Accused to the banker for which a loan has been obtained as loan for construction of the said project. It is pertinent to mention that the Complainant entrusted the said money to the Accused No. 1 to 10 against the consideration amount for purchasing the property in question and same has been entrusted to the accused person as a merchant who have committed a criminal breach of trust as an agent of the complainants which is punishable U/s 409 of IPC.

That it is pertinent to mention that at the time of booking of the Villa the Complainant was promised that in case the Accused persons do not deliver the possession of the property within 24 months from the signing of the agreement, they shall be liable as per the agreement and the said agreement was executed by the accused persons with the complainant knowing well that the funds of the accused No. 1 is diverted to other business purposes of the accused persons having full knowledge that the accused persons are likely to caused wrongful loss to the person whose interest in the transaction to which the cheating relate, was bound to either by law or by law or by the legal contract to protect and have committed an offence of cheating with knowledge that wrongful loss may ensure to a person



whose interest offender is bound to protect. As such the accused persons have committed and offence U/s 418 of IPC.”

79. Furthermore, the Complainants/Navin Kaul and Rekha Kaul, asserted that during their meetings with the ‘Accused No.1 Company’, the ‘Managing Director’ and ‘other Directors’ were present and they also represented and assured the Complainants of their reputation as a high end Builders who deliver the Projects on time.

80. **The Petitioners have been** summoned as accused persons for offences under Section 409/420/120B & 34 IPC. **Upon a bare perusal of the two Complaints under Sections 403/406/409/415/417/420/120-B/34 IPC**, it is evident that the allegations are broadly framed, lacking specificity regarding the direct involvement of the individual Petitioners in the alleged acts under Sections 409 (*Criminal breach of trust by public, servant. or by banker, merchant or agent*)/ 420 (*Cheating and dishonestly inducing delivery of property*)/ 120B (Punishment of criminal conspiracy) & 34 (*Acts done by several persons in furtherance of common intention*) IPC.

81. The Complaints primarily emphasize the positions held by the Petitioners in the accused company but fail to delineate their respective roles in the day-to-day functioning or decision-making processes. The statements made by the Complainants, asserting that the Petitioners, as Directors and Managing Directors, made false assurances and were aware of their incapacity to deliver the project, *are general and unsubstantiated by concrete factual specifics*. The use of omnibus statements without attributing specific actions or fraudulent conduct to each Petitioner individually undermines the threshold required to establish *prima facie* offences for breach of trust and cheating.



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82. In the recent case of HDFC Bank Ltd. vs. State of Maharashtra and Anr., 2025 INSC 759, the Supreme Court has held that criminal proceedings under Section 138 N.I. Act against a Company Director cannot be dismissed solely because the Complaint does not precisely replicate the wording of Section 141. The Court underscored that the essence of the allegations is more important than their form. If the Complaint sufficiently indicates that the Director was actively involved in the Company's day-to-day operations and played a role in the transactions in question, this is enough to meet the threshold for vicarious liability under Section 141(1) NI Act, even if the statutory expression "*in charge of and responsible for the conduct of the business*" is not quoted verbatim.

83. Furthermore, it was observed that a harmonious reading of the judgments in K.K. Ahuja vs. V.K. Vora and Another, (2009) 10 SCC 48, National Small Industries Corporation Limited vs. Harmeet Singh Paintal and Another, (2010) 3 SCC 330 and S.P. Mani and Mohan Dairy vs. Dr. Snehalatha Elangovan, (2023) 10 SCC 685 brings out the position that there is no obligation on the Complainant to plead in the Complaint as to matters within the special knowledge of the Company or the Directors or Firm about the specific role attributed to them in the Company/Firm.

84. ***In the present case***, the Complaints themselves admit that payments were made to the Accused No.1 Company, and not to any of the individual Petitioners. The allegations regarding misappropriation or diversion of funds remain unsupported by any material particulars, indicating misappropriation by the individual Directors.

85. The mere fact that individuals held official designations within the Company is insufficient, by itself, to impute criminal liability for cheating or



criminal breach of trust. The law requires more than positional authority; it demands evidence of specific individual involvement in or knowledge of the alleged criminal conduct.

86. Thus, in the absence of any specific allegations detailing the individual conduct of the Petitioners, the requisite *mens rea* necessary to constitute the offences of *cheating* or *criminal breach of trust* cannot be imputed solely on the basis of their official designations within the Company.

87. ***The fourth point of consideration is: whether the Summoning Orders are speaking orders reflecting the individual roles of the Accused persons?***

88. It is pertinent to observe that the grounds for proceeding against the accused must be stated in the Order itself. *If no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused, the Order is liable to be set aside, as has been stated in the case of Lalankumar Singh vs. State of Maharashtra, 2022 SCC OnLine SC 1383.*

89. Furthermore, while issuing summons, the Magistrate is required to assess the nature of the allegations in the Complaint along with the oral and documentary evidence presented, to determine whether there is sufficient ground for the Complainant to establish the offence against the accused, as has been observed by the Apex Court in the case of Pepsi Foods Ltd. vs. Special Judicial Magistrate, (1998) 5 SCC 749.

90. Now, it is, apposite to refer to the two summoning Orders in the Complaints, which are reproduced as under:-

91. The summoning Order dated 29.04.2017 in CC No.2845/2017, relevant part, reads as under:-



“ Arguments on summoning heard.

It is the case of the Complainant ... Despite having received the entire cost of the flat, the accused company has failed to hand over possession of the flat to him till date. Accused no. 2 to 8 are Directors of accused no. 1. He has been cheated by the accused persons who had siphoned off and misappropriated the money paid by him to accused no. 1.

From the perusal of the pre-summoning evidence adduced by the complainant, a prima facie case for commission of offences punishable U/s 420/409/120-B/34 IPC is made out against all the eight accused persons and there are sufficient grounds for proceeding against them.

Accordingly, all the eight accused persons be summoned on filing of PF and list of prosecution witnesses.

... ”

92. The relevant paragraph of the summoning Order dated 14.10.2017 in CC No.10656/2017 is reproduced as under:

“ Arguments on summoning heard.

...

Till date, the complainants have made payment of Rs. 1.85 crore to the accused persons, but the said amount has been misappropriated and siphoned off for their personal use by the accused persons. Even the land in question has been mortgaged with some financial institutions and money received against the same has also been siphoned off. The accused persons were having dishonest intention from the very beginning. There was no sanction from the Department of Town and Country Planning, Chandigarh to raise construction. ...

From the perusal of the aforementioned pre-summoning



evidence adduced by the complainants, a prima facie case for commission of offences U/s 409/420/120-B/34 IPC is made out and there are sufficient grounds for proceedings against accused no. 1 to 10. Complainant is directed to file list of prosecution witnesses and PR Upon filing of the same, all the 10 accused persons be summoned.

... ”

93. The aforesaid Summoning Orders reflect that the Petitioners have been summoned with a cryptic Order on the two Complaints against the Directors without any findings about the role of the Petitioners in regard to the affairs of the Company. Ambiguous reasoning has been given to summon the Accused persons with regard to offences under Section 409/420/120-B/34 IPC. The Orders do not contain sufficient rationale to establish the ingredients for commission of the offences by the Petitioners.

Conclusion:

94. No averments whatsoever have been made in the two Complaints nor do the Summoning Orders reflect any mention of the involvement of the Petitioners in the affairs of the Company. There is a complete absence of any specific averment that on the date of execution of Agreements or date of receiving of payments, the Petitioners were responsible for the acts of the Accused Company. The documents of the Company also unambiguously establish the Petitioners' role as that of Non-Executive and Independent Directors. In the absence of any averments, no vicarious liability of the Directors of a Company unless the Statute specifically provides for making them vicariously liable.

95. In light to the observations made herein, the summoning Orders dated 29.04.2017 and 14.10.2017; and the proceedings emanating against the



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Petitioners/Ravinder Singhanian, Sanjay Bahadur, Anil Harish, Minoti Bahri in *CC No.2845/2017* and *CC No.10656/2017*, are hereby, quashed.

96. The Petitions are allowed and thereby disposed of, along with pending Application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 28, 2025/RS