



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

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*Reserved on: 1st May, 2025
Pronounced on: 31st July, 2025*

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CRL.M.C. 4373/2018 & CRL.M.A. 30916/2018

1. MR. AMARJIT SINGH DULAT

S/o Lt. Sh. Shamsher Singh Dulat
R/o: 57, Friends Colony,
New Delhi – 110065

.....Petitioner No. 1

2. MR. SANJAY MOHAN LABROO

S/o Sh. B.M. Labroo
R/o: 6, Green Avenue Lane,
Off Green Avenue
Kishangarh, New Delhi-70

.....Petitioner No. 2

3. MR. AMARENDRA PRATAP SINGH,

S/o Lt. Sh. Mahendra Pratap Singh
R/o: Flat No. B-33, IDC Apartment,
Sector 11, Opp. Sec 11 Metro Station,
Dwaraka, New Delhi – 110075

.....Petitioner No. 3

4. MR. RAJEEV RANJAN VEDERAH

S/o Lt. Sh. Jagdish Chand Vederah
R/o: 47, Paschimi Marg,
Vasant Vihar, New Delhi-110057

.....Petitioner No. 4

5. GAUTAM THAPAR

S/o Sh. Brij Mohan Thapar
E-16, Pushpanjali Farms
Bijwasan, New Delhi- 110061

.....Petitioner No. 5

6. MR. BHASKARAN NAYAR VENUGOPAL,

S/o Sh. Bhaskaran Moothahu Bhaskaran Nayar
R/o: C-2, 2nd Floor, Jeevan Jyoti,
Setalward Lane, Nepean Sea Road
Mumbai – 400036

....Petitioner No. 6



Through: Mr. Mukul Gupta, Senior Advocate
with Mr. Surender Kumar Gupta,
Mr. Sumit Mishra, Ms. Muskan Gupta
and Ms. Mokshita Sharma, Advocates

versus

1. M/S KOTAK MAHINDRA BANK LTD.

Through it's Authorized Representative
Having its registered office at 27 BKC,
C-27, G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai-400051.
Having its Branch office at 1/11
First floor, East Patel Nagar,
New Delhi-110008

.....Respondent No. 1

2. M/S BALLARPUR INDUSTRIES LIMITED

Having its registered office at PO:
Ballarpur Paper Mills, Chandrapur,
Ballarpur-442901
Also having address at:
First India Place,
Tower C, Mehrauli Gurugram Road,
Gurugram-122002

.....Proforma Respondent No. 1

3. MR. MAHAJAN RAM RANA

S/o Lt. Sh. Rohan Lai Rana
R/o: First India Place,
Tower C, Mehrauli Gurugram Road,
Gurugram-122002

.....Proforma Respondent No. 2

4. MR. NAKUL KHANNA

S/o Lt. Sh. S.D. Khanna
R/o: First India Place,
Tower C, Mehrauli Gurugram Road,
Gurugram-122002

...Proforma Respondent No. 3

5. MR. BHUTHALINGAM HARIHARAN



S/o Lt. Sh. Harisharan Bhuthalingam
R/o: Flat No. 602 B
The Mangolias, DLF Golf Links
DLF City, DLF Phase-V
Gurugram-122009

....Proforma Respondent No. 4

Through: Mr. Ravi Gupta, Senior Advocate
with Mr. Mahip Datta Parashar and
Ms. Sanya Lamba, Advocates for R-1

+ **CRL.M.C. 2693/2019, CRL.M.A. 10777/2019 & CRL.M.A. 36786/2019**

BHUTHALINGAM HARIHARAN

S/o Lt. Sh. Harisharan Bhuthalingam
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DLF City, DLF Phase-V
Gurugram-122009

.....Petitioner

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....Proforma Respondent No. 6

8. MR. AMAIJIT SINGH DULAT

R/o: 57, Friends Colony,
New Delhi – 110065

....Proforma Respondent No. 7

9. MR. AMARENDRA PRATAP SINGH,

S/o Lt. Sh. Mahendra Pratap Singh



R/o: Flat No. B-33, IDC Apartment,
Sector 11, Opp. Sec 11 Metro Station,
Dwarka, New Delhi – 110075

....Proforma Respondent No. 8

10. MR. BHASKARAN NAYAR VENUGOPAL,

S/o Sh. Bhaskaran Moothahu Bhaskaran Nayar
R/o: C-2, 2nd Floor, Jeevan Jyoti,
Setalward Lane, Nepean Sea Road
Mumbai – 400036

....Proforma Respondent No. 9

Through: Mr. Ravi Gupta, Senior Advocate
with Mr. Mahip Datta Parashar and
Ms. Sanya Lamba, Advocates for R-1

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid two Petitions under Section 482 of Code of Criminal Procedure, 1973 have been filed seeking quashing of CC No. 11997/2017 and the Summoning Order dated 09.08.2017, *for the Offence under Section 138 read with 141 Negotiable Instruments Act (NI Act).*
2. ***Briefly stated***, the Complainant/Kotak Mahindra Bank Ltd. has its registered office at BKC, Bandra, Mumbai. Mr. Pranav Kumar, has been authorized, *vide* letter dated 24.08.2016, by the Board of Directors of the Bank to sign, verify and file on behalf of the Complainant.
3. According to the Complainant, Accused No. 1 *M/s Ballarpur Industries Ltd* through its Directors No. 4 to 12 and its authorised signatories Accused no. 2/Mr. Mahajan Ram Rana and Accused no. 3/Mr. Nakul Khanna, approached the Complainant requesting for funding facilities and



agreed to abide by the terms and conditions for all such facilities. After a series of discussions, the Complainant acceded to the request of the Accused and agreed to sanction Financial Facilities in the form of WCDL and other related facilities.

4. *Loan Agreement* was signed and executed by Accused No. 1 in respect of the said Facilities confirming the terms and conditions mentioned therein. All the accused persons also executed various other Loan documents. Further, it is averred that all the Members of the Board of Accused No. 1 were fully aware of and were kept abreast of all such facilities, documents, sanctions etc. Further, Accused No. 1 had from time to time, also passed several Board Resolutions thereby inter-alia authorizing Accused No. 2 to 12 to execute and deliver on behalf of Accused No. 1, all such Loan Facility documents as were necessary for the said Loan Facilities.

5. The Complainant disbursed Rs.1,57,36,00,000/- pursuant to these facilities. There was no dispute regarding the Terms and Conditions pertaining to the said financial facilities sanctioned to Accused No. 1 and all the Accused never raised any grievance about the same.

6. Thereafter, there were several irregularities in the functioning of the Loan account of the Accused No. 1. In spite of repeated requests and reminders from Complainant, all the accused failed and neglected to pay the legitimate amounts due and payable to the Complainant.

7. There were several discussions with Accused No.2 to 3 as the Authorized Signatories and Representatives and 4 to 12 as Directors of Accused No. 1. The Accused persons assured that their Account will be regularised at the earliest.



8. The Accused No. 2 & 3 towards part payment of outstanding dues, issued two impugned cheques, bearing No. 062122 dated 18.04.2017 for Rs. 10,00,00,000/- and No. 062123 dated 28.04.2017 for Rs. 9,84,73,271/-, in favour of the Complainant, with an assurance that the same would be honoured on its presentation.

9. However, on presentation, the impugned cheques were returned dishonoured *vide* Return Memo dated 30.05.2017 for the reason “*funds insufficient*”. It is submitted that all the Accused persons, at the time of issuing the impugned cheques, knew that they had no sufficient funds in their Account.

10. It is asserted that the Accused persons had fraudulently induced the Complainant to extend the said financial services on the pretext of paying it back, as per the agreed terms and conditions. This was all done by the Accused persons with intent to cheat the Complainant.

11. The Complainant served a Legal notice dated 20.06.2017, despite which the Accused have failed to make payment of the Cheques amount within the statutory period of 15 days, and thus, committed an offence under Section 138 NI Act.

12. ***Thus, the Complainant under Section 138 NI Act was filed.***

13. The ***Ld. MM summoned*** all the accused *except* Sh. Ashish Kumar Guha/Accused No.4 and Ms. Nandni Adya/Accused No.9, i.e. **Accused no.1 /M/s Ballarpur Industries Ltd, Accused no. 2/** Mr. Mahajan Ram Rana, **Accused no. 3/** Mr. Nakul Khanna, **Accused no. 5/Mr** Sanjay Mohan Labroo, **Accused no. 6/Mr.** Rajeev Ranjan Vederah, **Accused no. 7/Mr.** Gautam Thapar, **Accused no. 8/Mr.** Bhuthalingam Hariharan, **Accused no. 10/Mr.** Amarjit Singh Dulat, **Accused no. 11/Mr.** Amaarendra Pratap Singh,



and **Accused no. 12**/Mr. Bhaskaran Nayar Venugopal, *vide* Order dated 09.08.2017.

14. In **Crl. M.C. 4373/2018**, the **Petitioner no. 1**/Mr. Amarjit Singh Dulat (Accused no. 10), **Petitioner 2**/Mr. Sanjay Mohan Labroo (Accused No. 5) & **Petitioner no. 3**/Mr. Amaarendra Pratap Singh (Accused no. 11) have claimed that they *are independent Directors in the Company*.

15. **Petitioner No. 4**/Mr. Rajeev Ranjan Vederah (Accused no. 6) & **Petitioner no. 5**/Mr. Gautam Thapar (Accused no. 7) have asserted to be *non-Executive directors*.

16. *Further*, **Petitioner no. 6**/Mr. Bhaskaran Nayar Venugopal (Accused no. 12), was LIC's *Nominee Director* who ceased to be Director w.e.f. 03.04.2018.

17. The Petitioners, aggrieved by the filing of the Complaint and the summons issued, *have sought to challenge the summoning Order on the ground* that the Ld. MM failed to appreciate that a 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. It is submitted that they cannot be held liable under Section 141 NI Act which binds only the persons responsible for the affairs of the Company.

18. In **Crl. M.C. 2693/2019**, **Petitioner/Mr. Bhuthalingam Hariharan** (Accused no. 8) it is asserted that *he is a Director of the Accused Company*, but is not the signatory to the cheques in question. Moreover, merely because an individual is a Director of a Company, does not make him liable for offences under NI Act unless there is some material to show that *he in charge and responsible for the conduct of business of the Company*. Mere



bald assertion that the Petitioners were responsible for day to day affairs, is not enough to attract provisions of NI Act unless it is explained as to how and in what manner Petitioners are in charge of and responsible for conduct of the business of the Company.

19. Section 141 NI Act is only applicable to a person who is actively engaged with the day-to-day affairs of the Company and is responsible for the conduct of its business at the time of commission of the offence. It is in contravention of law that simply because an individual is a Director of a Company, it does not *ipso facto* mean he is liable under NI Act as not every person can be brought within the ambit of Section 141 NI Act.

20. The **learned counsel for the Petitioner/Mr. Bhuthalingam has submitted** that the summons deserves to be quashed on the ground that BILT has undergone CIRP, as National Company Law Tribunal, Mumbai vide Order dated 17.01.2020, has admitted the Application of a Financial Creditor of the Accused Company/BILT, for appointment of an Interim Resolution Professional (IRP) to administer the Accused Company.

21. Complainant/Bank had availed the remedy under the IBC and filed its *Claim before the IRP*, which now forms part of the Resolution Plan of the Accused Company, which came to be approved by NCLT on 31.03.2023. The Complainant/Bank would therefore, be paid in terms of the Approved Resolution Plan.

22. Thus, the present proceedings *qua* the Petitioner/Mr. Bhuthalingam ought to end with resolution of debts of the Company i.e., BILT. It is stated that the Petitioner has been arrayed as accused *only because he was one of the Directors of BILT* and for no other reason.



23. Further, despite the fact that all the Petitioners/Accused are residing outside the territorial jurisdiction of the Ld. MM., the Impugned Order was passed without following the procedure established under *Section 202 Cr.P.C.*

24. ***The Respondent/Kotak Mahindra Bank Limited in its Reply*** has submitted that at all relevant times from granting of financial facilities to disbursement to execution of various loan documents till the loan account of Company became irregular, it was always represented to the Bank that all the persons as mentioned herein above along with Petitioners herein, are the persons in charge of and responsible for conducting the day-to-day affairs, management, activities and functioning of the Company.

25. The Bank sanctioned Financial Facilities from time to time amounting to Rs. 157.36 Crores and the Bank also issued a Sanction Letter dated 11.02.2016 setting the terms and conditions on which the said Facilities were granted, extended and accepted by signing and acknowledging on the copy of the same. Loan Agreement was signed and executed by the Company in respect of the said facilities from the year 2006 confirming the terms and conditions mentioned therein.

26. It is further stated that all the Directors of Company i.e. Petitioner No. 1 to Petitioner No. 6 along with Mr. Ashish Kumar Guha, Ms. Nandni Adya and Mr. Bhuthalingam Hariharan also executed various other Loan documents in respect of the Financial Facilities granted in favour of the Bank, with respect to the said Facilities. Pertinently, all the Members of the Board of Company i.e. *M/s Ballaipur Industries Limited* were fully aware of and in knowledge of all such facilities, documents, sanctions etc. and therefore, Board Resolutions and such other documents were signed and



executed. *Thus, it is submitted that there is no merit in the Petitions which are liable to be dismissed.*

27. So far as the **Petitioner** in **CRL. M.C No. 2693/2019** is concerned; it is asserted that Mr. Bhuthalingam (being the Petitioner) is an independent Director. However, he is also a **Group Director, Finance** and had signed a Resolution passed in the year 2014. He was a person authorized to transact with the Bank and to sign necessary documents along with other persons of the Company. Thus, he was in active participation in the present Loan transaction.

28. The present Petitions are liable to be dismissed.

Submissions heard and record perused along with written submissions.

29. The cheques in question dated 18.04.2017 bearing no. 062122 for Rs. 10,00,00,000/- & 28.04.2017 bearing no. 0621123 for Rs. 9,84,73,271/- were claimed to have been issued by the Petitioner Company, M/s Ballarpur Industries Ltd., in discharge of its debt owed to the Complainant Bank.

30. Section 141 of N.I. Act read with Explanation, makes it abundantly clear that when an offence is committed by a Company or a Firm, every member who is responsible and in charge of the affairs of the Company/Firm, is guilty of the offence committed under Section 138 of NI Act.

31. The **Petitioners No. 1 – 6 in Crl. M.C. 4373/2018** have sought discharge on the basis of their role and designation in the Company as being that of Non-Executive Directors, Independent Directors, and Nominee Directors; thus not having any role in the conduct of day-to-day affairs of the Company.



32. The Master Circular No. RBI/2012-13/43 dated 02.07.2012 issued *by Reserve Bank of India* on “Willful Defaulters” *with respect to reporting of names of Directors and the position regarding independent and nominee Directors.* and the “Listing Agreement” prescribed by *Securities and Exchange Board of India* as under:-

“A. Classification under the Companies Act Categories of Directors

The Companies Act refers to the following two specific categories of Directors:

1. Managing Directors; and
2. Whole-time Directors.

A **Managing Director** is a Director who has substantial powers of management of the affairs of the company subject to the superintendence, control and direction of the Board in question. A **Whole-time Director** includes a Director who is in the whole-time employment of the company, devotes his whole-time of working hours to the company in question and has a significant personal interest in the company as his source of income. Every public company and private company, which is a subsidiary of a public company, having a share capital of more than Five Crore rupees (Rs. 5,00,00,000/-) must have a Managing or Whole-time Director or a Manager.

Further classification of *Directors based on the circumstances* surrounding their appointment, the Companies Act recognizes the following further types of Directors:

1. **First Directors:** Subject to any regulations in the Articles of a company, the subscribers to the Memorandum of Association, or the company’s charter or constitution “Memorandum”), shall be deemed to be the Directors of the company, until such time when Directors are duly appointed in the annual general meeting (“AGM”).
2. **Casual vacancies:** Where a Director appointed at the AGM vacates office before his or her term of office expires in the normal course, the resulting vacancy may, subject to



the Articles, be filled by the Board. Such person so appointed shall hold office up to the time which the Director who vacated office would have held office if he or she had not so vacated such office.

3. **Additional Directors:** If the Articles specifically so provide or enable, the Board has the discretion, where it feels it necessary and expedient, to appoint Additional Directors who will hold office until the next AGM. However, the number of Directors and Additional Directors together shall not exceed the maximum strength fixed in the Articles for the Board.

4. **Alternate Director:** If so authorized by the Articles or by a resolution passed by the company in general meeting, the Board may appoint an Alternate Director to act for a Director ("Original Director"), who is absent for whatever reason for a minimum period of three months from the State in which the meetings of the Board are ordinarily held. Such Alternate Director will hold office until such period that the Original Director would have held his or her office. However, any provision for automatic re-appointment of retiring Directors applies to the Original Director and not to the Alternate Director.

5. **Shadow Director:** A person, who is not appointed to the Board, but on whose directions the Board is accustomed to act, is liable as a Director of the company, unless he or she is giving advice in his or her professional capacity. Thus, such a shadow; Director may be treated as an; officer in default under the Companies Act.

6. **De facto Director:** Where a person who is not actually appointed as a Director, but acts as a Director and is held out by the company as such, such person is considered as a de facto Director. Unlike a shadow Director, a de facto Director purports to act, and is seen to the outside world as acting, as a Director of the company. Such a de facto Director is liable as a Director under the Companies Act.

7. **Rotational Directors:** At least two-thirds of the Directors of a public company or of a private company subsidiary of a public company have to retire by rotation and the term



rotational Director refers to such Directors who have to retire (and may, subject to the Articles, be eligible for re-appointment) at the end of his or her tenure.

8. Nominee Directors: They can be appointed by certain shareholders, third parties through contracts, lending public financial institutions or banks, or by the Central Government in case of oppression or mismanagement. The extent of a nominee Directors rights and the scope of supervision by the shareholders, is contained in the contract that enables such appointments, or (as appropriate) the relevant statutes applicable to such public financial institution or bank. However, nominee Directors must be particularly careful not to act only in the interests of their nominators but must act in the best interests of the company and its shareholders as a whole. The fixing of liabilities on nominee Directors in India does not turn on the circumstances of their appointment or, indeed, who nominated them as Directors. Chapter 4 and Chapter 5 that follow set out certain duties and liabilities that apply to, or can be affixed on, Directors in general. Whether nominee Directors are required by law to discharge such duties or bear such liabilities will depend on the application of the legal provisions in question, the fiduciary duties involved and whether such nominee Director is to be regarded as being in control or in charge of the company and its activities. This determination ultimately turns on the specific facts and circumstances involved in each case.

B. Classification under the Listing Agreement

The Securities Contracts (Regulation) Act, 1956, read with the rules and regulations made thereunder, requires every Company desirous of listing its shares on a recognized Indian stock exchange, to execute a listing Agreement (Agreement) with such Indian stock exchange. This Agreement is in a standard format (prescribed by the Securities Exchange Board of India (“SEBI”)), as amended by SEBI from time to time. The Agreement provides for the following further categories of Directors:



Categories under the Listing Agreement:

1. Executive Director;
2. Non-executive Director; and
3. Independent Director.

Executive and non-executive Directors

An *Executive Director* can be either a Whole-time Director of the company (i.e. one who devotes his whole time of working hours to the company and has a significant personal interest in the company as his source of income), or a Managing Director (i.e. one who is employed by the company as such and has substantial powers of management over the affairs of the company subject to the superintendence, direction and control of the Board).

In contrast, a *non-executive Director* is a Director who is neither a Whole-time Director nor a Managing Director. Clause 49 of the Agreement prescribes that the Board shall have an optimum combination of executive and non-executive Directors, with not less than fifty percent (50%) of the Board comprising non-executive Directors. Where the Chairman of the Board is a non-executive Director, at least one-third of the Board should comprise independent Directors and in case he is an executive Director, at least half of the Board should comprise independent Directors. Where the non-executive Chairman is a promoter of the company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the company shall consist of independent Directors.

Independent Directors

The Agreement defines an “Independent Director” as a non-executive Director of the company who”

- a. apart from receiving Directors remuneration, **does not have material pecuniary relationships or transactions with the company**, its promoters, its Directors, its senior management, or its holding company, its subsidiaries, and associates which may affect independence of the Director;



b. is not related to promoters or persons occupying management positions at the board level or at one level below the board;

c. has not been an executive of the company in the immediately preceding three (3) financial years;

d. is not a partner or an executive or was not a partner or an executive during the preceding three (3) years, of any of the following:

i. the statutory audit firm or the internal audit firm that is associated with the company, and

ii. the legal firms and consulting firms that have a material association with the company;

e. is not a material supplier, service provider or customer or a lessor or lessee of the company, which may affect the independence of the Director; or

f. he is not a substantial shareholder of the company, i.e., owning two percent (2%) or more of the block of voting shares; and

g. he is not less than twenty-one (21) years of age.

Nominee directors appointed by an institution that has invested in, or lent money to, the company are also treated as independent Directors.”

33. The Division Bench of the Gujarat High Court in the case of Ionic Metalliks v. Union of India 2014 SCC OnLine Guj 10066 upheld the Circular Of RBI. The Coordinate Bench of this Court in Rahul Vijayvargia vs The State Of Delhi And Ors., in CRL.M.C. 2654/2023 decided on 19.09.2024 and Sai Girdhar Raj Kumar v. Arun Kapoor & Ors., in CRL.M.C. 3864/2018 decided on 04.05.2020 had also taken note of this Circular of the RBI and placed reliance on the same for determination of culpability in Offences under Section 138 NI Act.

34. This Circular of RBI explains that the Companies Act recognizes different kind of Directors/Authorised Persons who may be associated in the affairs and Management of the Company. It provided for two specific



categories of Directors: *first, Managing Director* and *second, Whole-time Directors*.

35. Classification into further sub-classes is also provided and has recognized the following types of Directors: (i) ***First Directors***, (ii) ***Casual vacancies***, (iii) ***Additional Directors***, (iv) ***Alternate Director***, (v) ***‘Shadow’ Director***, (vi) ***De facto Director***, (vii) ***Rotational Directors***, and (viii) ***Nominee Directors***.

36. Further, clarity is provided in ***“Listing Agreement”*** prescribed by Securities and Exchange Board of India, where Directors have been categorised in Categories under the Listing Agreement: (i) ***Executive Director***; (ii) ***Non-executive Director***; and (iii) ***Independent Director***.

37. ***It is in this backdrop that the contentions*** raised by the Petitioners need to be appreciated.

38. The averments made in the Complaint regarding the ***role of the Petitioners*** need to be considered, which is as under:

“....

3. That it is hereby stated that at all relevant times Accused No. 1 has represented that Accused No.2 and 3 are the authorized signatories and accused No. 4 to 12 are directors and also the Authorized Signatories of M/s Ballarpur Industries Ltd., i.e. Accused No. 1. ***It is further stated that Accused No.2 & 3 are the Signatories of the At-par Cheques.***

4. That the Accused Nos.2 to 3 are the Authorized Signatories and Representatives and 4 to 12 are Directors & Authorized Signatories and Representatives were at all the relevant times, and presently are the persons in charge of and responsible for conducting the day-to-day affairs, management, activities functioning of Accused No. 1. That all the accused are jointly and / or severally responsible for the acts of omission and commission committed by Accused



No. 1, as Directors and Authorized Signatories were actively involved in the entire transaction right from the inception i.e. from time of approaching complainant for sanctioning and availing various facilities and as also during the time that accused's loan account was irregular when several discussions and meetings were held between complainant and all the accused.

....

13.At all relevant times all the accused had repeatedly assured and confirmed the complainant that their Accounts would be regularized at the earliest.

...

28.The cheques in question were issued by the Accused No. 2 & 3, on behalf of Accused No. 1 and 4 to 12 and in their personal capacity, to Complainant out of an account with its Bank.”

Independent Directors:

39. The ***Petitioner no. 1***/Mr. Amarjit Singh Dulat (Accused no. 10), ***Petitioner 2***/Mr. Sanjay Mohan Labroo (Accused No. 5) & ***Petitioner no. 3***/Mr. Amaarendra Pratap Singh (Accused no. 11) have sought to argue that they are ***Independent Directors***, and consequently had no control over the day-to-day affairs of the Company. The same is proved by way of FORM DIR-12 by all three wherein they are categorised as “Independent Director” within the class of “Non-executive Directors”.

40. 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?

41. 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.



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

“(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.”

43. 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.**



44. 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.

45. *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.*

46. Neither the Petitioner no. 1/Mr. Amarjit Singh Dulat (Accused no. 10), Petitioner 2/Mr. Sanjay Mohan Labroo (Accused No. 5) & Petitioner no. 3/Mr. Amaarendra Pratap Singh (Accused no. 11), though being Directors, had any role in the management or control of the affairs of the Company. It has to be specifically averred in the Complaint as to how the Petitioners, being an independent Directors, were in charge of day to day affairs of the Company as well as the conduct of its business, but nothing of this nature can be made out from the Complaint.

47. In view of Section 141 NI Act and Section 149 of Companies Act, 2013, Petitioners could have been held vicariously liable only if it was shown that they were in charge of and were responsible for the conduct of the business of the Company at the time of commission of Offence, and not otherwise.

48. ***They are therefore, entitled to be discharged.***

Non-Executive Directors:



49. **Petitioner No. 4**/Mr. Rajeev Ranjan Vederah (Accused no. 6) & **Petitioner no. 5**/Mr. Gautam Thapar (Accused no. 7) have asserted that they are *Non-Executive Directors*. Petitioner No. 4 has proved his designation by way of FORM DIR-12 wherein he is categorised as a “Professional Director” within the class of “Non-executive Directors”. Petitioner no. 5/Mr. Gautam Thapar has proved his designation by way of FORM DIR-32 wherein he is categorised as a “*Promoter Director*” within the class of “*Non-executive Directors*” and “Chairman”.

50. In the judgment of Apex Court in Pooja Ravinder Devidasani vs. State of Maharashtra, (2014) 16 SCC 1 it was observed that “*while taking into consideration that a **non-executive director** plays a governance role and are not involved in the daily operations or financial management of the Company, held that to attract liability under section 141 of the NI Act, the accused must have been actively in-charge of the company’s business at the relevant time. Mere directorship does not create automatic liability under the Act. The law has consistently held that only those who are responsible for the day-to-day conduct of business can be held accountable.*”

51. The Apex Court in the case of Chitalapati Srinivasa Raju vs. Securities and Exchange Board of India, AIR 2018 SC 2411, held that “***non-executive directors** are, therefore, persons who are not involved in the day-to-day affairs of the running of the company and are not in charge and are not responsible for the conduct of the business of the company.*”

52. These observations made in the case of Pooja Ravinder Devidasani (supra) have been endorsed by the Apex Court in the recent case of Kamal Kishor Shrigopal Taparia vs India Ener Gen Private Limited 2025 INSC 22.



53. Both the *Petitioner No. 4 & 5* are *Non-Executive Directors* and no specific role has been imputed to them in the Complaint except the general averments that they are Authorized Signatories of *M/s Ballarpur Industries Ltd.* and were involved in the discussions during the Loan Facilities.

54. *Therefore, it cannot be said that they were in-charge or responsible for the day today working of the Accused Company and are entitled to be discharged.*

Nominee Director:

55. Similarly, ***Petitioner No.6***/Sh. Mr. Bhaskaran Nayar Venugopal is merely a *nominee Director* and no specific role has been ascribed to him or can be ascertained from the relevant paras of the Complaint. The same is proved by way of FORM DIR-12, wherein he is categorised as “*Professional Nominee Director*” within the class of “*Non-executive Directors*”.

56. The RBI Circular has provided a description of “*Nominee Directors*” in the Classification provided under the Companies Act, which is as under:

“The Nominee Directors can be appointed by certain shareholders, third parties through contracts, lending public financial institutions or banks, or by the Central Government in case of oppression or mismanagement. The extent of a nominee Director's rights and the scope of supervision by the shareholders, is contained in the contract that enables such appointments, or (as appropriate) the relevant statutes applicable to such public financial institution or bank. However, nominee Directors must be particularly careful not to act only in the interests of their nominators but must act in the best interests of the company and its shareholders as a whole. The fixing of liabilities on nominee Directors in India does not turn on the circumstances of their appointment or, indeed, who



nominated them as Directors. Chapter 4 and Chapter 5 that follow set out certain duties and liabilities that apply to, or can be affixed on, Directors in general.

Whether nominee Directors are required by law to discharge such duties or bear such liabilities will depend on the application of the legal provisions in question, the fiduciary duties involved and whether such nominee Director is to be regarded as being in control or in charge of the company and its activities.

This determination ultimately turns on the specific facts and circumstances involved in each case.”

57. From the above description, it becomes clear that the role of the Nominee Director has to be determined from the specific facts and circumstances.

58. Further support in this regard is offered by the Classification prescribed in the Listing Agreement prescribed by the SEBI which provides that the Nominee Directors ***“are also treated as independent Directors.”***

59. Thus, the Petitioner No. 6, being a nominee of LIC, cannot be summoned as he had no role in the day-to-day affairs of the Company, and is entitled to be discharged.

CRL. M.C. 2693/2019:

60. **Petitioner/Accused no. 8/Mr. Bhuthalingam Hariharan** has sought to argue that there is no specific role ascribed to him in the Complaint, and neither was he a signatory of the impugned Cheques. There is nothing to prove his class and category as a Director in the Company.

61. The Supreme Court in Aneeta Hada vs. M/s Godfather Travels & Tours Pvt. Ltd., AIR 2012 SC 2795, after referring to judgments in Iridium India Telecom Ltd. vs. Motorola Inc and Ors., 2004 (1) BOM CR 479 and Standard Chartered Bank and others vs. Directorate of Enforcement and



others, AIR 2006 SC 1301, has observed that “*the Company can have criminal liability and further, if a group of persons that guide the business of the companies have the criminal intent, that would be imputed to the body corporate. In this backdrop, Section 141 of the Act has to be understood. The said provision clearly stipulates that when a person which is a Company commits an offence, then certain categories of persons in charge as well as the Company would be deemed to be liable for the offences under Section 138. Thus, the statutory intendment is absolutely plain.*”

62. The same was reiterated by the Apex Court in Anil Gupta vs Star India Pvt. Ltd., 2014 (10) SCC 373, Himanshu vs B. Shivamurthy & Anr., (2019) 3 SCC 797, and recently in Bijoy Kumar Moni vs Paresh Manna & Anr., 2024 INSC 1024.

63. Law in regards to the liability of Directors stands settled in S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla (2005) 8 SCC 89 wherein the requirements of Section 141 were defined. Apex Court had reiterated and clarified that essentially in a case under Section 141, there ought to be a specific averment in the pleadings of the Complainant that at the time the Offence was committed, the person accused was *in charge of and responsible for the conduct of the business* of the Company. It was held that a Director would not be liable simply because they are holding that position. It needs to be shown that the Director being made liable should be *in charge of and responsible for the conduct of the business of the Company* at the time of committing the offence. Further, that the persons holding the office of “*Managing Director*” or “*Joint Managing Director*”, by virtue of the very nature of their role, renders them in charge of and responsible for the conduct of the business of the Company, and liable under Section 141.



64. Further, the Apex Court in Sunita Palita vs. M/s Panchami Stone Quarry, in SLP (Crl.) No. 10396 of 2019 decided on 01.08.2022, has reiterated the importance of specific averments with regard to the Directors' role in the pleadings, and has held that no such specific averment with regard to the role is needed when the person has the term "*Managing*" affixed to their position as Director, as it would be clear that they are in charge of and responsible for the Company.

65. The role of **Accused no. 8**/Mr. Bhuthalingam Hariharan, the Petitioner herein, as a Director of the Company thus, needs to be seen in the context that there are no other eligible Persons who had control over the affairs of the Company.

66. The Petitioner has sought to seek quashing of the Summoning Order on the basis of no specific averments being made in the Complaint *qua* his role.

67. In the recent case of HDFC Bank Ltd. vs. State of Maharashtra and Anr., 2025 INSC 759, the Apex 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.



68. 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.

69. The Petitioner/Mr. Bhuthalingam Hariharan, **Accused no. 8** being the Director of the Company, is therefore, **not entitled to be discharged**.

Insolvency proceedings against the Accused Company:

70. ***The next aspect, which has been argued, is that the Complaint does not survive in view the Insolvency proceedings being admitted by the NCLT.***

71. To appreciate this contention reference has to be made to the case of P. Mohanraj & Ors. vs. Shah Brothers Ispat Pvt. Ltd., (2021) 6 SCC 258 wherein while considering the impact of proceedings under IBC on a Corporate Debtor (Company and its Directors), the Apex Court observed that in view of the legal impediment contained under Section 14 IBC, it would be impossible to continue the proceedings under Section 138 of N.I. Act or be instituted against the Corporate Debtor. However, it was further noted that such statutory bar would apply only to the Corporate Debtor while the natural persons mentioned in Section 141 NI Act, continue to be statutorily liable under Section 138 N.I. Act.



72. Two aspects emerged from this judgment of P. Mohanraj & Ors. (supra); *firstly*, that once the proceedings have been commenced under IBC, no proceedings under Section 138 of N.I. Act, can be commenced or continued against the Corporate debtor/Company. The *second aspect* is that the proceedings under Section 138 N.I. Act may be continued against the natural persons mentioned in Section 141 N.I. Act.

73. In the present case, BILT has undergone CIRP, as National Company Law Tribunal, Mumbai *vide* Order dated 17.01.2020, has admitted the Application of a Financial Creditor of the Accused Company/BILT for appointment of an Interim Resolution Professional (IRP) to administer the Accused Company. Complainant/Bank had availed the remedy under the IBC and filed its claim before the IRP, which now forms part of the Resolution Plan of the Accused Company, which came to be approved by NCLT on 31.03.2023. The Complainant/Bank would, therefore, be paid in terms of the Approved Resolution Plan.

74. However, the Cheques and Complaint pertain to year 2017, i.e. prior to the commencement of CIRP proceedings. Thus, in view of P. Mohanraj & Ors. (supra) the Complaint under Section 138 N.I. Act is maintainable and the Petitioner/Director, in any case, is a natural person in control of the Company at the time the offence was committed, and thus cannot be discharged.

Conclusion:

75. In view of the aforesaid discussion, the Summoning Order dated 09.08.2017 is set aside qua **Petitioner no. 1**/Mr. Amarjit Singh Dulat (Accused no. 10), **Petitioner no. 2**/Mr. Sanjay Mohan Labroo (Accused No. 5) & **Petitioner no. 3**/Mr. Amaarendra Pratap Singh (Accused no. 11) who



are independent Directors, in the Company. Also, the Summoning Order dated 09.08.2017 is set aside against **Petitioner No. 4**/Mr. Rajeev Ranjan Vederah (Accused no. 6) & **Petitioner no. 5**/Mr. Gautam Thapar (Accused no. 7) who are the *non-executive Directors*, and **Petitioner no. 6**/Mr. Bhaskaran Nayar Venugopal (Accused no. 12), the LIC's nominee director.

76. In view of the above discussion, the Summoning Order dated 09.08.2017 for Petitioner/Accused No. 8 is not liable to be quashed.

Relief:

77. The Petition ***CRL.M.C.4373/2018*** is *allowed* and the Summoning Order dated 09.08.2017 stands quashed *qua* the Petitioners No. 1 - 6.

78. The Petition ***CRL.M.C. 2693/2019*** of Petitioner/Accused no. 8/Mr. Bhuthalingam Hariharan, is *dismissed*.

79. The Petitions are disposed off accordingly, along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 31, 2025

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