2022 INSC 970

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1586 OF 2022
(ARISING OUT OF SPECIAL LEAVE APPEAL (CRIMINAL) NO. 9811 OF 2021)

S.P. MANI AND MOHAN DAIRY ......APPELLANT(S)

VERSUS

DR. SNEHALATHA ELANGOVAN ......RESPONDENT(S)

J U D G M E N T

J.B. PARDIWALA, J.

1. Leave granted.

2. This appeal is at the instance of the original complainant of a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the NI Act") and is directed against the order passed by the High Court of Madras dated 16.02.2021 in the Criminal Original Petition No. 1063 of 2021 filed by the respondent herein (accused no.03) under Section 482 of the Code of Criminal Procedure (for short, "the Code"), whereby the High Court allowed the application and quashed the criminal proceedings initiated against the respondent herein in the court of the Judicial Magistrate Fast Track Court No.-II, Erode.

3. There are some legal issues with a never-ending debate. The debate on such legal issues goes on and on despite there being plethora of case law on the subject. The NI Act by now is almost three decades old. Section 141 of the NI Act is on the statute past more than three decades. There are various decisions of this Court and High Courts explaining the true purport of Section 141 of the NI Act. However, the debate on Section 141 of the NI Act is never ending. The present litigation is also one in which we have been called upon to look into Section 141 of the NI Act.

FACTUAL MATRIX

4. The facts of this case are plain and simple. The appellant herein (original complainant) is engaged in the business of milk and milk products. The respondent herein is one of the partners of a Partnership Firm running in the name of Sira Marketing Services. The firm used to purchase milk and milk products from the appellant/complainant on credit basis. The appellant has to recover an amount of Rs. 10,71,434.60/- (Rs. Ten Lakh Seventy One Thousand Four Hundred Thirty Four and Sixty paise) from the partnership firm. The firm issued a cheque duly signed by the original accused No. 02 (partner/authorised signatory) in favour of the appellant for the amount of Rs. 10,00,000/- (Rs. Ten Lakh only) dated 05.05.2017. The cheque came to be dishonoured as there was no sufficient balance in the account maintained by the firm. No sooner, the bank intimated the appellant herein that the cheque could not be cleared due to insufficient funds than the appellant herein issued a statutory notice dated 14-08-2017 to the firm and the two partners of the firm. Despite service of notice to the firm as well as the two partners (accused persons) the amount was not paid to the appellant and therefore, the appellant was left with no other option but to file the complaint in the Judicial Magistrate Fast Track Court No. II, Erode for the

offence punishable under Section 138 r/w 141 of the NI Act which came to registered as the STC No. 583 of 2017.

5. The respondent herein (original accused No. 03/partner) preferred an application under 482 of the Code in the High Court and prayed that the criminal proceedings instituted against her may be quashed as she has no liability under the law. The principal argument of the respondent herein before the High Court was that much before the cheque came to be issued, the firm had been dissolved. The accounts of the firm were also settled on 13-02-2017 following the dissolution. The High Court quashed the proceedings against the respondent herein mainly on the ground that there was nothing to indicate as to how and in what manner the respondent at the relevant point of time was in-charge and responsible for the conduct of the business of the firm. The High Court took the view that the complaint can be prosecuted as against the respondent herein only if the allegations made in the complaint fulfils the requirements of Section 141 of the NI Act. The High Court took the view that merely by reciting the words used under Section 141 of the NI Act in the complaint no vicarious liability can be fastened on the partner of the firm.

6. In such circumstances above, the High Court allowed the application filed by respondent herein and terminated the proceedings as far as the respondent is concerned.

7. In view of the aforesaid, the appellant (original complainant) is here before this Court with the present appeal.

Submissions on behalf of the Appellant

8. The learned counsel, Mr. E.R. Kumar appearing for the appellant vehemently submitted that the High Court committed a serious error in passing the impugned Order quashing the proceedings against the respondent herein. He would submit that the entire premise on which the High Court proceeded could be termed as erroneous in law. The learned counsel would submit that in the statutory notice issued to the respondent as well as in the body of the complaint, there are specific averments that the accused Nos. 02 and 03 respectively, being the partners of the partnership firms, are in-charge and responsible for the day-to-day affairs of the firm. He pointed out there are specific averments made in the complaint that the partners which include the respondent herein are regularly looking after and actively taking part in the day-to-day business of the firm. He further pointed out that there is a specific averment that in order to

discharge the liability, the original accused No. 02 had issued the cheque within the knowledge and consent of the respondent herein. It is argued that if the substance of the allegation made in the complaint fulfil the requirements of Section 141 of the NI Act, the complaint is to proceed and is required to be tried with. The learned counsel vociferously argued that while construing a complaint the Court should not adopt a hyper-technical approach and quash the same.

9. The learned counsel further pointed out that three individual notices were issued under Section 138 of the NI Act before the filing of the complaint. He would submit that the statutory notice was duly served upon the respondent herein. However, the respondent thought fit not to give any reply to the notice. It is argued that if the respondent had anything to say as regards her role in the firm, she could have given an appropriate reply that she is a sleeping partner and not involved into the day-to-day affairs of the firm. It is argued that respondent herein could also have clarified in her reply that the firm had already been dissolved much before the cheque was issued and in such circumstances, no liability could be fastened on her. In the absence of any reply to the statutory notice, the respondent could

not have argued before the High Court for the first time about her involvement in the affairs of the firm. The learned counsel would submit that the High Court committed a serious error in accepting such submission canvassed on behalf of the respondent at the preliminary stage.

10. The learned counsel further submitted that once the necessary averments are made in the complaint, the onus thereafter would shift on the accused to establish by producing some unimpeachable and incontrovertible evidence which may clearly indicate that the respondent herein as one of the partners of the firm, could not have been concerned with the issuance of the cheque in question.

11. In such circumstances referred above, the learned counsel appearing for the appellant prays that there being merit in his appeal, the same may be allowed and the impugned order passed by the High Court may be quashed.

<u>Submissions on behalf of the Respondent:</u>

12. Ms. Hari Priya Padmanabhan, the learned counsel appearing for the respondent (accused) on the other hand has vehemently opposed the present appeal submitting that no error, not to speak of any error of law, could be said to have been

committed by the High Court in passing the impugned order. She would submit that mere bald averments in the complaint are not sufficient to fasten the vicarious lability on the partner of the firm as envisaged under Section 141 of the NI Act. The learned counsel would submit that the case on hand is squarely covered by the decision of this Court in the case of ***SMS Pharmaceuticals Ltd. v. Neeta Bhalla***, (2005) 8 SCC 89. Relying on the said decision of this Court, the learned counsel would submit that the deeming fiction creating criminal lability and vicarious lability are a departure from the usual principles of criminal law and that a clear case should be spelt out and the accused person should be made aware of the case alleged against him or her. The learned counsel would submit that this would therefore necessarily require averments in addition to the statement that the accused is in-charge of and responsible for the affairs of the company/firm.

13. The learned counsel appearing for the respondent in support of her aforesaid submissions has placed strong reliance on the following decisions:

(i) ***Gunmala Sales Pvt. Ltd. v. Anu Mehta & Ors***, reported in (2015) 1 SCC 103;

(ii) ***National Small Industries Corporation v. Harmeet Singh Paintal & Anr.***, reported in (2010) 3 SCC 330;

(iii) ***Sunita Palita & Others v. M/s Panchami Stone Quarry***, reported in (2022) SC Online SC 945.

14. In such circumstances referred above, the learned counsel appearing for the respondent prays that there being no merit in this appeal, the same may be dismissed.

Analysis

15. Having heard the learned counsel appearing for the parties and having gone through the materials on record the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order?

16. Since the arguments of both the sides have proceeded mainly on the averments made in the complaint and to analyze the case before us in proper perspective, it is necessary to scrutinize the statutory notice as well as the complaint. The statutory notice dated 14.08.2017 reads thus:-

"To,

1. Sira Marketing Service,
Represented by it's Partner/ Authorized Signatory,
Rajesh, Old No.60, New No.30,
28th Cross St, Indhira Nagar,
Adyar, Chennai-20.

2. Rajesh,
Partner/ Authorized Signatory,
Sira Marketing Service,
Old No.60, New No. 30,
28th Cross St, Indhira Nagar,
Adyar, Chennai-20.

3. Dr. Mrs. Snehalatha Elangovan,
W/o. Elangovan,
Partner / Authorized Signatory,
Sira Marketing Service,
Old No.60, New No.30,
28th Cross St, Indhira Nagar,
Adyar, Chennai-20.

Sir,

Please take notice that we are instructed by our client S.P. Mani and Mohan Dairy, Represented by its Managing Partner: R.Mohanasundaram, No.34 & 84, Jeevanantham Street, Kollampalayam, Erode-638 002 to issue this notice to you.

You No.1 is a Partnership Firm, <u>You No.2 and 3 are Partners and incharge and responsible for the day-to-day affairs of You No. 1, you No.2 and 3 are regularly looking after and actively taking part in the day-to-day business of You No.1.</u>

Our client is doing business in Milk and Milk Products: You used to purchase Milk and Milk Products from our client on credit basis. Our client is maintaining true and correct accounts. As per accounts maintained by our client you have to pay a balance of Rs. 10,71,434.60 to

our client. In order to discharge the part of the said balance amount and liability you No.2 on behalf of you No.1 and with the knowledge and consent of you No.3 issued the following cheque which is drawn on TamilNad Mercantile Bank Ltd., Thiruvanmiyur Branch, Chennai-41.

S.No.	*Cheque Date*	*Cheque No.*	*Cheque Amount*
1.	*05.05.2017*	*411618*	*Rs. 10,00,000/-*

On your request our client presented the above said cheque for collection on 13.06.2017 through HDFC Bank Ltd., Sathy Road Branch, Erode and the same was returned as "Funds Insufficient" on 14.06.2017. Again on your request our client presented the above said cheque for collection on 20.07.2017 through HDFC Bank Ltd., Sathy Road Branch, Erode and the same was returned as "Funds Insufficient" on 21.07.2017. Without sufficient funds in your account, you have issued the above said cheque.

You issued the above said cheque assuring payment on presentation of the same. At the time of issuing the said cheque, you represented that you are having an account in which you will have sufficient amount in your account. But you purposely allowed the same to be dishonoured with an intention to cheat and defraud our client. Therefore, you have committed an offence punishable U/S 138 of the Negotiable Instruments Act.

You are hereby called upon to pay the above said amount of Rs.10,00,000/-due under the above said cheque dated 05.05.2017 within is days from the date of receipt of this notice. Please note that on your failure to make the payment within the above-mentioned time, legal action will be taken against you under section 138 of the Negotiable Instruments Act 1881 and thereupon you will be held liable for all the costs and consequences arising thereof." [Emphasis supplied]

17. At the cost of repetition, we may state that there is no dispute that the aforesaid notice issued to the respondent was duly acknowledged by her, however, the respondent thought fit not to give any reply to the same. The acknowledgement receipt has also been placed on record. The learned counsel appearing for the respondent fairly submitted that her client was in receipt of the notice however, no reply has been given to the same.

18. The complaint filed under Section 138 of the NI Act reads thus:-

> *"The complainant is a Partnership Firm registered under the Partnership act and carrying on business in the above said address. The Partners of the said firm resolved that D. Gokulnath, S/o. M. Dhanapal the Manager of the said complainant who knows personally about each and every transaction of this case to be and he is authorized to represent the firm in this case. A copy of power of attorney is produced herewith.*
>
> *The accused No.1 is a Partnership Firm, the accused No.2 and 3 are Partners and in-charge and responsible for the day-to-day affairs of the accused No.1, the accused No.2 and 3 are regularly looking after and actively taking part in the day-to-day business of the accused No.1.*
>
> *The complainant is doing business in Milk and Milk Products. The accused used to purchase Milk and Milk Products from the complainant on credit basis. The complainant is maintaining true and correct accounts. As per accounts maintained by the complainant, the*

accused have to pay a balance of Rs.10,71,434.60 to the complainant. In order to discharge the part of the said balance amount and liability the accused No.2 on behalf of the accused No. 1 and with the knowledge and consent of the accused No.3 issued the following cheque which is drawn on TamilNad Mercantile Bank Ltd., Thiruvanmiyur Branch, Chennai-41.

S.No.	Cheque Date	Cheque No.	Cheque Amount
1.	05.05.2017	411618	Rs. 10,00,000/-

On the request of the accused the complainant presented the above said cheque for collection on 13.06.2017 through HDFC Bank Ltd., Sathy Road Branch, Erode and the same was returned as "Funds Insufficient" on 14.06.2017. Again, on the request of the accused the complainant presented the above said cheque for collection on 20.07.2017 through HDFC Bank Ltd., Sathy Road Branch, Erode and the same was returned as "Funds Insufficient" on 21.07.2017. Without sufficient funds in their account accused have issued the above said cheque.

The accused issued the above said cheque assuring payment on presentation of the same. At the time of issuing the said cheque, the accused represented that they are having an account in which they will have sufficient amount in their account. But the accused purposely allowed the same to be dishonoured with an intention to cheat and defraud the complainant. Therefore, the accused have committed an offence punishable u/s 138 of the Negotiable Instruments Act.

Thereupon the complainant issued a lawyer notice on 14.08.2017 to the accused calling upon them to pay the above said sum of Rs.10,00,000/- due under the said cheque dated 05.05.2017 within 15 days from the date of receipt of this notice. The accused received the above said notice on 16.08.2017. But they failed to pay the above said cheque amount within 15 days. Hence the

accused has committed an offence punishable u/s 138 r/w. 142 of Negotiable Instruments Act 1881 as amended by Act 55 of2002.

The complainant submits that he had produced the relevant documents relating to this offence.

He further submits that he has filed this complaint within one month from the date of expiry of 15 days grace time given in the notice for the payment of above said cheque's amount. The above said cheque was presented for collection through HDFC Bank Ltd., Sathy Road Branch, Erode which is situated in Erode Karungalpalayam Police Station limit. Hence this Hon'ble court is having jurisdiction to cognizance the offence.

A court fee of Rs.5,000/- is paid under Tamilnadu Court Fee Act.

It is therefore, prayed that this Hon'ble Court may be pleased to take this case on file, issue summon to the accused, enquire the matter, punish the accused with maximum sentence and direct the accused to pay compensation to the complainant u/s 357 CPC and render justice." [Emphasis supplied]

19. Thus, from the aforesaid the following averments in the complaint are evident:-

(a) Accused No.1 is a Partnership Firm, the accused Nos. 2 and 3 resply are the partners and in charge and responsible for the day-to-day affairs of the firm, the accused Nos. 2 and 3

are regularly looking after and actively taking part in the day-to-day business of the firm;

(b) In order to discharge the part liability, the accused No. 2 on behalf of the firm and with the consent and knowledge of the accused No. 3 issued the cheque drawn on the Tamilnad Mercantile Bank Ltd., Thiruvanmiyur Branch, Chennai-41.

20. The aforesaid averments are not only found to be read in the complaint but in the notice too.

21. We shall now proceed to look into the impugned order passed by the High Court. The same order reads thus:-

> *"This criminal original petition has been filed to quash the proceedings in STC No. 583 of 2017, pending on the file of the Judicial Magistrate Fast Track Court No.II Erode.*
>
> *2. The respondent has filed a complaint under Section 138 of the Negotiable Instruments Act. The petitioner has been arrayed as A~ 3 in the complaint. This quash petition has been filed primarily on two grounds. The first ground is that the Partnership Firm was dissolved during February 2017 and the subject cheque is said to have been issued by A~2 on 05.05.2017, after the dissolution of the Partnership Firm. The 2nd ground that has been raised is that the allegations made in the complaint does not satisfy the requirements of Section 141 of the Negotiable Instruments Act.*
>
> *3. Heard Mr. K. Kannan, learned counsel for the petitioner and Mr. M. Guruprasad, learned counsel for the respondent.*

4. Insofar as the first issue that is raised by the petitioner, the same cannot be gone into by this Court and it is a factual issue which can be decided only in the course of trial.

5. Insofar as the second issue is concerned, it will be beneficial to extract the relevant portion from the complaint filed by the respondent hereunder:

> *"The accused No. 1 is a Partnership Firm, the accused No.2 and 3 are Partners and in-charge and responsible for the day-to-day affairs of the accused No. 1, the accused No.2 and 3 are regularly looking after and actively taking part in the day-to-day business of the accused No. 1.*
>
> *The complainant is doing business in Milk and Milk Products. The accused used to purchase Milk and Milk Products from the complainant on credit basis. The complainant is maintaining true and correct accounts. As per accounts maintained by the complainant, the accused have to pay a balance of Rs. 10,71,434. 60/- to the complainant. In order to discharge the part of the said balance amount and liability the accused No.2 on behalf of the accused No.1 and with the knowledge and consent of the accused No. 3 issued the following cheque which is drawn on Tamil Nadu Mercantile Bank Ltd., Thiruvanmiyur Branch, Chennai-41."*

S.No.	*Cheque Date*	*Cheuqe No.*	*Cheque Amount*
1.	*05.05.2017*	*411618*	*Rs. 10,00,000/-*

6. In the present case, A~ 1 is the Partnership Firm and A~2 who is the partner is the signatory of the cheque. The petitioner A~ 3 has been roped in as an accused since she is a partner of A~ 1 Firm. The complaint can be prosecuted as against the petitioner only if the allegations made in the complaint satisfies the

requirements of Section 141 of the Negotiable Instruments Act.

7. In the present case, the respondent has merely repeated the words used under Section 141 of the Negotiable Instruments Act and there is absolutely no allegation as to how and in what manner the petitioner is in-charge and responsible for the conduct of the business. In the absence of such an allegation, the complaint is not maintainable as against the petitioner. The law on this issue is well settled.

8. In the result, the proceedings in STC No. 583 of 2017, on the file of the Judicial Magistrate Fast Track Court No.II, Erode, is hereby quashed insofar as the petitioner is concerned. The Court below is directed to complete the proceedings in STC No.583 of 2017, against the other accused persons within a period of three months from the date of receipt of a copy of this order.

9. This criminal original petition is allowed with the above directions. Consequently, connected miscellaneous petitions are closed."

22. Thus, the plain reading of the impugned order passed by the High Court as aforesaid would indicate that the proceedings came to be quashed essentially on the ground that there was nothing to indicate that in what manner the respondent herein was in-charge and responsible for the day-to-day affairs of the firm so as to make her vicariously liable for the alleged offence with the aid of Section 141 of the NI Act. To put it in other words, the High Court proceeded on the footing that mere averments in

the complaint as regards the role of the respondent as a partner in the firm is not sufficient.

Analysing Section 141 of the Negotiable Instrument Act, 1881

23. The provisions of Section 138 and Section 141 resply of the NI Act read as under:-

> "***Section 138. Dishonour of cheque for insufficiency, etc. of funds in the account.***—
> *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque or with both:*
>
> *Provided that nothing contained in this Section shall apply unless—*
>
> *(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
>
> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a*

notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation: For the purposes of this Section, "debt or other liability" means a legally enforceable debt or other liability."

"***Section 141. Offences by companies.***—

(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the

part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation — For the purposes of this Section—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

24. Evidently, the gist of Section 138 is that the drawer of the cheque shall be deemed to have committed an offence when the cheque drawn by him is returned unpaid on the prescribed grounds. The conditions precedent and the conditions subsequent to constitute the offence are drawing of a cheque on the account maintained by the drawer with a banker, presentation of the cheque within the prescribed period, making of a demand by the payee by giving a notice in writing within the prescribed period and failure of the drawer to pay within the prescribed period. Upon fulfilment of these requirements, the commission of the offence which may be called the offence of 'dishonour of cheque' is complete. If the drawer is a company, the offence is primarily committed by the company. By virtue of the provisions of sub-section (1) of Section 141, the guilt for the offence and the liability to be prosecuted and punished shall be

extended to every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of its business; irrespective of whether such person is a director, manager, secretary or other officer of the company. It would be for such responsible person, in order to be exonerated in terms of the first proviso, to prove that the offence was committed without his knowledge or despite his due diligence.

25. Under the separate provision of sub-section (2), if it is proved that the offence was committed with the consent or connivance of or was attributable to the neglect on the part of any director, manager, secretary or other officer of the company, such person would also be deemed to be guilty for that offence. Obviously, the burden of alleging and proving consent, connivance or neglect on the part of any director, etc. would rest upon the complainant. The *non obstante* clause with which the sub-section (2) opens indicate that the deeming provision is distinct and different from the deeming provision in sub-section (1) in which the office or designation of the person in charge of and responsible to the company for the conduct of its business is immaterial.

26. While the essential element for implicating a person under sub-section (1) is his or her being in charge of and responsible to the company in the conduct of its business at the time of commission of the offence, the emphasis in sub-section (2) is upon the holding of an office and consent, connivance or negligence of such officer irrespective of his or her being or not being actually in charge of and responsible to the company in the conduct of its business. Thus, the important and distinguishing feature in sub-section (1) is the control of a responsible person over the affairs of the company rather than his holding of an office or his designation, while the liability under sub-section (2) arises out of holding an office and consent, connivance or neglect. While all the persons covered by sub-section (1) and sub-section (2) are liable to be proceeded against and also punished upon the proof of their being either in charge of and responsible to the company in the conduct of its business or of their holding of the office and having been guilty of consent, connivance or neglect in the matter of commission of the offence by the company, the person covered by sub-section (1) may, by virtue of the first proviso, escape only punishment if he proves that the

offence was committed without his knowledge or despite his due diligence.

27. As for the requisite evidence, the burden upon the prosecution would be discharged under sub-section (1) when a person is proved to be in charge of and responsible to the company in the conduct of its business and would shift upon the accused to prove that he was ignorant or diligent, if that be his defence; whereas under sub-section (2) the prosecution would be required to allege and prove the consent, connivance or neglect and holding of the office by the accused. There is nothing to suggest that the same person cannot be made to face the prosecution either under sub-section (1) or sub-section (2) or both. A director or manager can be arraigned and proved to be guilty as the person in charge of and responsible to the company as well as the director of the company who, as such, might have consented to, connived at or been negligent in respect of the offence of dishonour of cheque, be logically deduced that a person can be arraigned in a complaint as the accused along with the company if it *prima facie* appears that he was in charge of and responsible to the company for the conduct of its business, although he may or may not be or may not have continued to be

a director or other officer of the company, as mentioned in sub-section (2). It would be sufficient if the complaint indicates that such person has been arraigned on the basis of averments which disclose him or her to be the person in charge of and responsible to the company in the conduct of its business at the time the offence was committed. Evidently, a person who signs the cheque or who has the authority to sign the cheque for and on behalf of the company, regardless of his office or capacity, can, *prima facie*, be assumed to be in charge of and responsible to the company in the conduct of its business. And, where such person is prosecuted, then, if it be his defence that the offence was committed without his or her knowledge or that he or she has exercised all due diligence to prevent the commission of such offence, the burden to prove that would be on him or her and can only be discharged at the stage of evidence.

28. While dealing with a reference to resolve the apparent conflict between the judgments of this Court in the ***Municipal Corporation of Delhi v. Ram Kishan Rohtagi***, (1983) 1 SCC 1, and the ***U.P. Pollution Control Board v. Modi Distillery***, (1987) 3 SCC 684, in the context of vicarious liability under the

provisions of Section 141 of the NI Act, this Court in ***P. Rajarathinam v. State of Maharashtra***, (2000) 10 SCC 529, pertinently observed as under:

> *"4. A bare reading of the provision mandates that some facts must come on the record in order to figure as to who should answer the charge ultimately. Necessarily, pre-charge evidence assumes importance. The complainant will have to put his side of the case as given out in the complaint and the persons summoned would have to put on the record all what is material to extricate themselves out. In any case, the crucial time would be when framing charge whereat a decision in that respect would be required to be made by the court. Presently, it appears to us premature to be resolving the conflict and the ratio deduced thereby, may turn out to be obiter. Therefore, we think that we need not resolve such conflict at present and leave it to the court concerned to pass appropriate orders at the time of framing of charge. In this manner, we dispose of these appeals."*
>
> [Emphasis supplied]

29. The seminal issue raised and requires to be settled in the present case is one relating to a person liable to be proceeded against under the provisions of sub-section (1) of Section 141 for being in-charge of and responsible to the company "*at the time the offence was committed.*" It would, therefore, be important to find out the "time" when the offence under Section 138 can be said to have been committed by the company. It is common place that an offence means an aggregate of facts or omissions which are punishable by law and, therefore, can consist of several

parts, each part being committed at different time and place involving different persons. The provisions of Section 138 would require a series of acts of commission and omission to happen before the offence of, what may be loosely called "dishonour of cheque" can be constituted for the purpose of prosecution and punishment. It is held by the Supreme Court in ***K. Bhaskaran v. Sankaran Vaidhyan Balan***, (1999) 7 SCC 510, that:-

> *"14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice."*

30. Different persons can be in-charge of the company when each of the series of acts of commission and omission essential to complete the commission of offence by the company were being committed. To take an example, in the case of a company, "A" might be in charge of the company at the time of drawing the cheque, "B" might be in charge of the company at the time of dishonour of cheque and "C" might be in charge of the company

at the time of failure to pay within 15 days of the receipt of the demand notice. In such a case, the permissibility of prosecution of A, B and C resply or any of them would advance the purpose of the provision and, if none can be prosecuted or punished, it would frustrate the purpose of the provisions of Section 138 as well as Section 141. The key to this interpretation lies in the use of the phrase: "*every person shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly*" as it occurs in sub-section (1) of Section 141 and the use of the phrase "*provided that nothing contained in this sub-section shall render any person liable to punishment if he proves...*" that occurs in the first proviso. Every person who was in charge of and was responsible to the company for the conduct of its business at the time any of the components necessary for the commission of the offence occurred may be "proceeded against", but may not be "punished" if he succeeds in proving that the offence was committed without his knowledge and despite his due diligence; the burden of proving that remaining on him. Therefore, it also has to be held that the time of commission of the offence of dishonour of cheque cannot be on the stroke of a clock or during 15 days after the demand notice

has to be construed as the time when each of the acts of commission and omission essential to constitute the offence was committed. The word “every” points to the possibility of plurality of responsible persons at the same point of time as also to the possibility of a series of persons being in charge when the sequence of events culminating into the commission of offence by the company were taking place. As to what this ‘relevant time’ is, was a question that this Court was called to answer, *inter alia*, in ***N Rangachari v. Bharati Sanchar Nigam Limited***, AIR (2007) SC 1682. In this case, Data Access, a company had issued two cheques to the BSNL, which were duly presented, but were dishonoured for insufficiency of funds. A complaint under Section 138 of the NI Act was filed. While the BSNL held the directors liable, the appellant, a chairman in the company contended that he being a nominated chairman and holding an Honorary post in the Company, was never assigned with any of the company’s financial or other business activities. He was the Chairman for name sake and was never entrusted with any job or business or constituted a signing authority. Resolving the issue of when the liability could be fastened, this Court said:-

> "*In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the two dishonoured cheques were issued by the company, the appellant and another were the Directors of the company and were in charge of the affairs of the company. It is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons in-charge of the affairs of the company. Obviously, the complaint refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour.*"
>
> [Emphasis supplied]

31. As held by this Court in ***Anil Hada v. Indian Acrylic Ltd.***, (2000) 1 SCC 1, the phrase "as well as" used in sub-section (1) of Section 141 of the NI Act would embroil the persons mentioned therein within the tentacles of the offence on par with the offending company. Therefore, when the company or firm is the drawee of the cheque, such company or firm is the principal offender and the fiction created by the legislature. When the offence is attributed to a juristic person or a body made up of several individuals and the liability to be prosecuted and punished is extended to embroil by legal fiction certain human beings, that legal fiction has to be so interpreted and applied that the individuals intended to be embroiled may not escape the

liability by mere fact of having not been in charge at the time when one of the other of the events essential to complete the offence by the company happened. Borrowing again from ***K. Bhaskaran*** (supra), the court should not adopt an interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure.

32. In the aforesaid context, we may straight away proceed to look into the following observations made by this Court in the case of ***Monaben Ketanbhai Shah v. State of Gujarat*** in Criminal Appeal No. 850 of 2004 decided on 10.08.2004 reported in (2004) 7 SCC 15:-

> *"Section 138 of the Act makes dishonour of the cheque an offence punishable with imprisonment or fine or both. Section 141 relates to offences by the company. It provides that if the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Thus, vicarious liability has been fastened on those who are in-charge of and responsible to the company for the conduct of its business. For the purpose of Section 141, a firm comes within the ambit of a company. It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole. If the substance of the allegations made in the complaint fulfill the requirements of Section 141, the*

complaint has to proceed and is required to be tried with. It is also true that in construing a complaint a hyper-technical approach should not be adopted so as to quash the same. The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of Sections 138 and 141 has to be borne in mind. These provisions create a statutory presumption of dishonesty exposing a person to criminal liability if payment is not made within statutory period even after issue of notice. It is also true that the power of quashing is required to be exercised very sparingly and where, read as a whole, factual foundation for the offence has been laid in the complaint, it should not be quashed. All the same, it is also to be remembered that it is the duty of the Court to discharge the accused if taking everything stated in the complaint as correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking."

[Emphasis supplied]

33. Thus, the legal principles discernible from the aforesaid decision of this Court may be summarised as under:-

(a) Vicarious liability can be fastened on those who are in-charge of and responsible to the company or firm for the conduct of its business. For the purpose of Section 141, the firm comes within the ambit of a company;

(b) It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole;

(c) If the substance of the allegations made in the complaint fulfil the requirements of Section 141, the complaint has to proceed in regards the law.

(d) In construing a complaint a hyper-technical approach should not be adopted so as to quash the same.

(e) The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in the enactment of Sections 138 and 141 respectively should be kept in mind by the Court concerned.

(f) These provisions create a statutory presumption of dishonesty exposing a person to criminal liability if payment is not made within the statutory period even after the issue of notice.

(g) The power of quashing should be exercised very sparingly and where, read as a whole, the factual foundation for the offence has been laid in the complaint, it should not be quashed.

(h) The Court concerned would owe a duty to discharge the accused if taking everything stated in the complaint is correct and construing the allegations made therein liberally

in favour of the complainant, the ingredients of the offence are altogether lacking.

34. The inter-relationship between the Sections 138 and 141 respectively of the NI Act has been succinctly explained by this Court in ***SMS Pharmaceuticals v. Neeta Bhalla***, AIR (2005) 3512, in the following words:-

> *"It will be seen from the above provisions that Section 138 casts criminal liability punishable with imprisonment or fine or with both on a person who issues a cheque towards discharge of a debt or liability as a whole or in part and the cheque is dishonoured by the Bank on presentation. Section 141 extends such criminal liability in case of a Company to every person who at the time of the offence, was in-charge of and was responsible for the conduct of the business of the Company. By a deeming provision contained in Section 141 of the Act, such a person is vicariously liable to be held guilty for the offence under Section 138 and punished accordingly."*

Who is liable? Vicarious liability:

35. This Court in ***Assistant Commissioner, Assessment-II, Bangalore and Ors. v. Velliappa Textiles Ltd. and Ors.*** AIR (2004) SC 86, introduced the concept of ego and alter ego in relation to the employee and the employer corporation. The Court elucidated this principle in the following words:-

> *"In order to trigger corporate criminal liability for the actions of the employee (who must generally be liable*

himself), the actor-employee who physically committed the offence must be the ego, the centre of the corporate personality, the vital organ of the body corporate, the alter ego of the employer corporation or its directing mind. Since the company/corporation has no mind of its own, its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. To this extent there are no difficulties in our law to fix criminal liability on a company. The common law tradition oj alter ego or identification approach is applicable under our existing laws."

36. Now, the logical question that would follow is who would be liable through the company for this offence? Can the company itself be prosecuted for this offence? Answering this question, the Section 141 says, <u>'every person who was in charge of'</u> and <u>'was responsible to the company for the conduct of the business'</u> shall be deemed to be guilty of the offence. This concept of vicarious liability has been explained by this Court in ***Sabhitha Ramamurthy v. RBS Channabasavaradhya***, AIR (2006) SC 3086, as:-

"Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. <u>Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition,</u>

<u>are made so as to make the accused therein vicariously liable for the offence committed by the company</u>. Before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted."

[Emphasis supplied]

37. At this stage, we should look into the decision of this Court in the case of ***K.K. Ahuja v. V.K. Vora***, (2009) 10 SCC 48, in ***K.K. Ahuja*** (supra), wherein this Court discussed the principles of vicarious liability of the officers of a company in respect of dishonour of a cheque and held-

> *"27. The position under section 141 of the Act can be summarized thus:*
>
> *(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in-charge of and are responsible to the company, for the conduct of the business of the company.*
>
> *(ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed*

by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, Secretary or Manager (as defined in Section 2(24) of the Companies Act) or a person referred to in clauses (e) and (f) of section 5 of Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

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

[Emphasis supplied]

38. In a very recent pronouncement in the case of ***Sunita Palita v. M/s Panchami Stone Quarry*** (2022) SC Online SC 945, this Court, after referring to ***K.K. Ahuja*** (supra) referred to above, observed as under:

"When the accused is the Managing Director or a Joint Managing Director of a company, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company for the conduct of the business of

the company. This is because the prefix "Managing" to the word "Director" makes it clear that the Director was in charge of and responsible to the company, for the conduct of the business of the company. A Director or an Officer of the company who signed the cheque renders himself liable in case of dishonour. Other officers of a company can be made liable only under sub-section (2) of Section 141 of the NI Act by averring in the complaint, their position and duties, in the company, and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

39. In yet one another recent pronouncement in the case of ***Ashutosh Ashok Parasrampuria v. Gharrkul Industries Pvt. Ltd.*** reported in (2021) SCC Online SC 915, this Court after due consideration of the decisions in the case of ***SMS Pharmaceuticals*** (supra); ***S.K. Alagh v. State of Uttar Pradesh*** (2008) 5 SCC 662; ***Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.***, (2010) 10 SCC 479, and ***GHCL Employees Stock Option Trust v. India Infoline Limited***, (2013) 4 SCC 505, observed as under:-

"In the light of the ratio in SMS Pharmaceuticals Ltd. (supra) and later judgments of which a reference has been made what is to be looked into is whether in the complaint, in addition to asserting that the appellants are the Directors of the Company and they are in-charge of and responsible to the Company for the conduct of the business of the Company and if statutory compliance of Section 141 of the NI Act has been made, it may not open for the High Court to interfere under Section 482 CrPC unless it comes across

some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abused of process of Court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the particular Director for which there could be various reasons."

[Emphasis supplied]

40. The principles discernible from the aforesaid decision of this Court in the case of ***Ashutosh Ashok Parasrampuriya*** (supra) is that the High Court should not interfere under Section 482 of the Code at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the Director/partner of a firm could not have been concerned with the issuance of cheques. This Court clarified that in a given case despite the presence of basic averments, the High Court may conclude that no case is made out against the particular Director/ partner provided the Director/partner is able to adduce some unimpeachable and incontrovertible evidence beyond suspicion and doubt.

Specific Averments in the complaint:

41. In ***Gunmala Sales Private Limited*** (supra), this Court after an exhaustive review of its earlier decisions on Section 141 of the NI Act, summarized its conclusion as under:-

> *"a) Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;*
>
> *b) If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director;*
>
> *c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally*

acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

d) No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director."

42. The principles of law and the dictum as laid in ***Gunmala Sales Private Limited*** (supra), in our opinion, still holds the field and reflects the correct position of law.

43. In the case on hand, we find clear and specific averments not only in the complaint but also in the statutory notice issued to the respondent. There are specific averments that the cheque was issued with the consent of the respondent herein and within her knowledge. In our view, this was sufficient to put the respondent herein to trial for the alleged offence. We are saying so because the case of the respondent that at the time of

issuance of the cheque or at the time of the commission of the offence, she was in no manner concerned with the firm or she was not in-charge or responsible for day-to-day affairs of the firm cannot be on the basis of mere bald assertion in this regard. The same is not sufficient. To make good her case, the respondent herein is expected to lead unimpeachable and incontrovertible evidence. Nothing of the sort was adduced by the respondent before the High Court to get the proceedings quashed. The High Court had practically no legal basis to say that the averments made in the complaint are not sufficient to fasten the vicarious liability upon the respondent by virtue of Section 141 of the NI Act.

44. We may also examine this appeal from a different angle. It is not in dispute, as noted above, that no reply was given by the respondent to the statutory notice served upon her by the appellant. In the proceedings of the present type, it is essential for the person to whom statutory notice is issued under Section 138 of the NI Act to give an appropriate reply. The person concerned is expected to clarify his or her stance. If the person concerned has some unimpeachable and incontrovertible material to establish that he or she has no role to play in the

affairs of the company/firm, then such material should be highlighted in the reply to the notice as a foundation. If any such foundation is laid, the picture would be more clear before the eyes of the complainant. The complainant would come to know as to why the person to whom he has issued notice says that he is not responsible for the dishonour of the cheque. Had the respondent herein given appropriate reply highlighting whatever she has sought to highlight before us then probably the complainant would have undertaken further enquiry and would have tried to find out what was the legal status of the firm on the date of the commission of the offence and what was the status of the respondent in the firm. The object of notice before the filing of the complaint is not just to give a chance to the drawer of the cheque to rectify his omission to make his stance clear so far as his liability under Section 138 of the NI Act is concerned.

45. Once the necessary averments are made in the statutory notice issued by the complainant in regard to the vicarious liability of the partners and upon receipt of such notice, if the partner keeps quiet and does not say anything in reply to the same, then the complainant has all the reasons to believe that what he has stated in the notice has been accepted by the

noticee. In such circumstances what more is expected of the complainant to say in the complaint.

46. When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But, if any Director or Partner wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or Partner.

47. Our final conclusions may be summarised as under:-

a.) The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

b.) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special

knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant

time they were not in charge of the affairs of the company or the firm.

c.) Needless to say, the final judgement and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners *'qua'* the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

d.) If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in

order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.

48. We reiterate the observations made by this Court almost a decade back in the case of ***Rallis India Ltd v. Poduru Vidya Bhusan & Ors.***, (2011) 13 SCC 88, as to how the High Court should exercise its power to quash the criminal proceeding when such proceeding is related to offences committed by the companies. *"The world of commercial transactions contains numerous unique intricacies, many of which are yet to be statutorily regulated. More particularly, the principle laid down in Section 141 of the NI Act (which is pari materia with identical sections in other Acts like the Food Safety and Standards Act, 2006; the erstwhile Prevention of Food Adulteration Act, 1954; etc.) is susceptible to abuse by unscrupulous companies to the detriment of unsuspecting third parties."*

49. In the result, this appeal succeeds and is hereby allowed with no order as to costs. The impugned order passed by the High Court is hereby set aside.

50. Pending application, if any, also stands disposed of.

……………………………….J.
(SURYA KANT)

………………………………J.
(J.B. PARDIWALA)

New Delhi;
September 16, 2022