

# Dispute Resolution Hotline

May 05, 2009

## A DIRECTOR'S LIABILITY FOR A DISHONORED CHEQUE

The Hon'ble Supreme Court of India ("Court") has, by its order dated April 15, 2009<sup>1</sup>, reiterated that when the person committing an offence of dishonour of cheque under Section 138<sup>2</sup> of the Negotiable Instruments Act, 1881 ("the Act") is a company, merely being a director of the accused company is not sufficient to make a person liable for the said offence under Section 141 of the Act. To prosecute a director or an officer of the accused company under Section 141<sup>3</sup> of the Act, it is necessary for the complainant to make specific averments against the said director or officer, as the case may be, and show the court as to how such person was involved in the transaction and responsible for the conduct of the business of the accused company.

### BRIEF FACTS OF THE CASE:

The Appellant was the General Manager ("Appellant") of J.K.Utility Division of J. K. Synthetics Ltd ("Company"). The Respondent No. 2, who was the original complainant ("Complainant"), was in the transportation business and had transported coal under an order for which, transportation charges of Rs. 9,45,000/- were paid by four cheques that were given to the Appellant by the finance manager of the Company.

The Complainant filed a complaint under the provisions of the Act. In the complaint, the Complainant stated that the order for transportation was placed by the Appellant, the material was received by the Appellant and the cheques were given to him by the Appellant and the absconding co-accused.

The Appellant contended that he was not in charge and responsible for the conduct of the business of the Company and therefore, ought not to have been held guilty by the lower courts. Moreover, the cheques were not signed by him. He did not even receive the requisite notice provided for under Section 138 (b)<sup>2</sup> of the Act. It was contended that there was no evidence to show that the Appellant was in charge and responsible for the conduct of the business of the Company and no specific role was attributed to him in the complaint.

### JUDGMENT:

The Court, relying upon its earlier decisions<sup>4</sup>, noted that only such person would be held liable, if at the time when such offence was committed, he was in charge and was responsible to the Company for the conduct of the business of the Company. Merely being a director would not be sufficient and to launch a prosecution against an alleged director/officer, there needed to a specific allegation in the complaint as to the part played by such director/officer in the transaction and how the said director/officer were in charge and responsible for the conduct of the business of the Company.

The Court noted that the liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with the principal accused being the company, which is a departure in from the rule of vicarious liability in criminal law. The Court upheld that a clear case should be spelt out in the complaint against the person sought to be made liable vicariously. There should be clear and unambiguous allegation as to the role of the directors in the offence and their responsibility and charge in the conduct of the business of the principal accused company. This would enable a person to know the alleged case against him and would enable him to meet the case at trial.

The Court held that merely being a director of a company is not sufficient to make such a director liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. Interestingly, the Court held that the Managing Director or the Joint Managing Director would get covered under the provisions of Section 141 of the Act by virtue of the office they held and a signatory of the dishonoured cheque would be clearly responsible for the incriminating act and be covered under the provisions of Section 141(2) of the Act.

- Sahil Kanuga & Shafaq Uraizee-Sapre

1. Passed in Criminal Appeal No. 1103 of 2003.

2. 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 extend to 2[two year], or with fine which may extend to twice the amount of

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the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

1. 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;
2. 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 3[thirty] days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
3. 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.

3. 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:

2“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,—

1. “company” means any body corporate and includes a firm or other association of individuals; and
2. “director”, in relation to a firm, means a partner in the firm.

4. *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr (2007) 4 SCC 70, N.K. Wahi v. Shekhar Singh and Ors. (2007) 9 SCC 481, Sabitha Ramamurthy and Anr v. R.B.S. Channabasavaradhya and Anr.2006 (9) SCALE 212 and Saroj Kumar Poddar v. State (NCT of Delhi) and Anr. (JT 2007 (2) SC 233).*

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