

TWIN CONDITIONS FOR HOLDING A DIRECTOR LIABLE IN A CHEQUE BOUNCE CASE

Supreme Court in a recent noteworthy judgement of **Hitesh Verma versus M/s Health Care at Home India Pvt. Ltd. and Ors.**¹, reiterated the twin conditions applicable under Section 141 of the Negotiable Instruments Act, 1881 (“**NI Act**”) for holding directors liable in cases of dishonor of cheques. The Apex Court categorically held that a Director who is “in charge” of a company and a Director who is “responsible to the company” for the conduct of the business, are two distinct aspects and both are required to be spelled out in the complaint for establishing liability.

Brief Background

In a case of dishonor of cheques filed against a company and its directors, including the Appellant in the present case, the Division Bench of Justice Abhay S. Oka and Justice Ujjal Bhuyan observed that since the Appellant is not a signatory of the cheque, there is no liability against him under Section 138 of the NI Act unless the complaint culls out a case sufficiently establishing the ingredients of Section 141 of the Act.

“There are twin requirements under sub-Section (1) of Section 141 of the 1881 Act. In the complaint, it must be alleged that the person, who is sought to be held liable by virtue of vicarious liability, at the time when the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company. A Director who is in charge of the company and a Director who was responsible to the company for the conduct of the business, are two different aspects. The requirement of law is that both the ingredients of sub-Section (1) of Section 141 of the 1881 Act must be incorporated in the complaint,” the Court said.

Significance of the Ruling

The aforesaid dual criteria are mandatorily required to be established in order to hold directors vicariously liable for an offence under Section 138 read with Section 141 of the NI Act. Section 141 is an exception to the normal rule that there can be no vicarious liability under penal provisions. Thus, to attract such vicarious liability, ingredients of Section 141 (1) of the NI Act need to be satisfied.

This judgement sheds light on the statutory language used in Section 141 of NI Act to hold that it is necessary to specifically state in a complaint that at the time the offence was committed, the person accused was in charge of and responsible for the conduct of business of the company. Without a specific and categorical averment to this effect, the rigors of Section 141 cannot be invoked against an accused person. This requirement cannot be done away

¹ Hitesh Verma versus M/s Health Care at Home India Pvt. Ltd. and ors., Criminal Appeal No(S). 462 of 2025.

since there is no deemed liability of a Director in such cases, where merely being a Director will not fix the liability in absence of express averments in the complaint itself.

CONCLUSION

Blanket application of the vicarious liability invoked under Section 141 of NI Act is not in the interest of justice as this approach would result in unnecessary prosecution of all Directors and would be against the very scheme of the statute. This judgement comes as a relief to directors who are not in charge of the conduct of the business, such as nominee, independent, or other similar directors, who are arraigned as accused of offenses under Section 138 of the NI Act merely because of their designation.

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