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

\+ CRL.M.C. 6575/2022

MR KSSP SUNDARAVEL DIRECTOR OF MADURAI SUNDAR TYRES PRIVATE LIMITED & ORS. ..... Petitioners

Through: Mr. Sidharth Luthra, Sr. Adv. with Mr. Rahul Kr. Singh, Ms. Shubhangini Jain, Mr. Sheezan Hashmi, Mr. Adityaa Raju, Mr. KKS. Krishnaraj and Mr. Ajay Sharma, Advs.

versus

BRIDGESTONE INDIA PVT LTD THROUGH ITS ATTORNEY HOLDER MR SUBHASH CHHILLAR ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **07.12.2022**

CRL.M.A. 25634/2022 *(exemption from filing true and typed copies of the dim and illegible annexures)*

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

CRL.M.C. 6575/2022 & CRL.M.A. 25633/2022 *(Stay)*

3. The present petition is filed challenging the order dated 03.11.2022 passed by the learned Metropolitan Magistrate, NI Act, Rouse Avenue Courts Complex, New Delhi District, New Delhi in CC No. 9738 of 2019 tiled as ***M/s Bridgestone India Pvt. Ltd. v. Madurai Sundar Tyres Private Limited***.

4. Learned Trial Court, by impugned order, has issued

summons to petitioners in complaint filed by respondent under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881.

5. Learned senior counsel for the petitioner submits that petitioner Nos. 1 and 3 are not signatory to the impugned cheque issued by the company - Madurai Sundar Tyres Private Limited.

6. He further submits that even though the petitioner No. 2 is a signatory to the said cheque bearing No. 017384 for an amount of ₹11.57 Crores, but neither the petitioner No. 2 or any other petitioner was responsible for day-to-day functioning of business of the accused company.

7. It is pointed out from the complaint that the only role assigned to the petitioners is that they are the Directors of the accused No. 1 company and merely mentioning that they are in-charge and are responsible for managing the day-to-day affairs in conducting of business of the accused company is not sufficient. No vicarious liability can be fastened on the persons only for the reason of them being the Directors.

8. He further submits that the impugned order has also been passed in violation of the directions given by this Court in the case of ***Sudeep Jain v. M/s. ECE Industries Ltd. : 2013 SCC OnLine Del 1804***, where the directions were issued to all the learned Metropolitan Magistrates that before proceeding with the complaint under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, the learned Magistrate must seek information to the following effect:-

a. Name of the accused Company;

b. Particulars of the dishonoured cheque/cheques;

• *Person/Company in whose favour the cheque/cheques were issued*

• *Drawer of the cheque/cheques*

• *Date of issuance of cheque/cheques*

• *Name of the drawer bank, its location*

• *Name of the drawee bank, its location*

• *Cheque No./Nos.*

• *Signatory of the cheque/cheques*

c. Reasons due to which the cheque/cheques were dishonoured;

d. Name and Designation of the persons sought to be vicariously liable for the commission of the offence by the accused Company and their exact role as to how and in what manner they were responsible for the commission of the alleged offence;

e. Particulars of the legal notice and status of its service;

f. Particulars of reply to the legal notice, if any.

9. Learned senior counsel further submits that in the absence of any specific averment pointing out the manner and any specific role attributable in relation to the conduct of business of the accused company, petitioners cannot be held vicariously liable for dishonour of the cheque.

10. Issue notice, returnable on 16.02.2023.

11. Till the next date of hearing, petitioners are exempted from personal appearance before the learned Trial Court in CC No. 9738 of 2019.

AMIT MAHAJAN, J

DECEMBER 7, 2022

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