



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

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*Reserved on: 15th July, 2025
Pronounced on: 11th August, 2025*

+ **CRL.M.C. 92/2018, CRL.M.A. 399/2018, 31868/2019 & 31869/2019**

KUSUM GARG

W/o Sh.Surender Kumar Garg,
R/o 85, Second floor,
Vasundhra Apartment,
Plot no.44, Near Japanese Park, Sector-09
Rohini, Delhi

.....Petitioner

Through: Dr. Nityanand Singh, Advocate.

versus

1. SHRI DUNI CHAND GARG (Since Deceased)

Through L.R.
Shri Naresh Garg
Prop. Of M/s Sarthak India ,
R/o B-3/96, Paschim Vihar,
New Delhi-110063

.....Respondent No. 1

2. M/S LUMAX AUTOMOTIVE SYSTEMS PVT. LTD.

At: Plot No. 46, Sector-03, IMT, Manesar,
Gurgaon, Haryana.

Through Official Liquidator,
8th floor ,Lok Nayak Bhawan
Khan Market, New Delhi

.....Respondent No. 2

3. UMESH KUMAR JAIN

S/o Sh. S.C. Jain

.....Respondent No. 3

4. SH. NITIN JAIN

S/o Sh. Umesh Kumar Jain

.....Respondent No. 4

**5. SH. MILAN JAIN**

S/o Sh. Umesh Kumar Jain

.....Respondent No. 5

All R/o: 173A, Western Avenue
Sainik Farm, New Delhi-110062

6. VINAY MANSUKH LAI PANCHMIYA

R/o: Bhaichand Bunglow Road No. 2
Contractors Area Bistupur
Jamshedpur-831001, Jharkhand

.....Respondent No. 6

7. RAJENDRA PRASAD AGGARWAL

R/o: 56, Mandakini, First Floor
NRI Ccomplex, G.K.-IV
New Delhi-110019

.....Respondent No. 7

Through: None.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T****NEENA BANSAL KRISHNA, J.**

1. Petition under Section 482 of Criminal Procedure Code, 1973 (Cr.P.C) has been filed for quashing of the Summoning Order dated 09.07.2015 and proceedings emanating from CC No. 212/01/2015 for Offences under *Section 138/141 of Negotiable Instruments Act, 1881 (N.I. Act)*.

2. *Briefly stated*, Complainant/Respondent No. 1/Shri Duni Chand Garg, proprietor of *M/s Sarthak India* was engaged in the business of trading *Plastic Danna and plastic granules*. Office bearers of Respondent No. 2/ *M/s Lumax Automotive Systems Pvt. Ltd.* placed 3 Purchase Orders No. P02



AO No.-0018 dated 16.07.2014, PO-0196 dated 19.09.2014 and P0196 AO No- AO-0048 dated 02.01.2015 to the Respondent No. 1/Shri Duni Chand Garg.

3. The Complainant supplied material to the accused persons through various Bills issued between 12.09.2014 – 03.04.2015, and the Respondent No. 2 / *M/s Lumax* which owed Rs.2,01,16,368/- to the Complainant as on 07.04.2015, issued three Cheques bearing No. 379121, dated 30.01.2015 for Rs.25,00,000/-, No. 533250, dated 27.02.2015 for Rs.25,65,951/- and No. 533361, dated 28.04.2015 for Rs.25,00,000/-. Cheque No. 379121 was presented and the same got dishonoured on account of “*payment stopped by drawer*” and was returned with Return Memo dated 28.04.2015.

4. The Complainant informed the accused persons about the dishonour of the Cheque and requested to clear the outstanding amount, but the same was refused. The Complainant sent Legal Notice dated 22.05.2015 which was duly served on all the accused persons.

5. Thereafter, the Complaint was filed by the Complainant under S.138 NI Act and the Petitioner was summoned along with other accused persons, *vide* Order dated 09.07.2015.

6. The Petitioner has ***sought quashing of the summoning Order*** on the ***ground*** that the Ld. M.M has taken Cognizance mechanically and summoned the Petitioner without ascertaining her role in the commission of the Offence under Section 138/142 N.I. Act.

7. The Ld. M.M has failed to take note of ***Form DIR-12*** filed by the Complainant in which she has been mentioned as an ***Independent Director*** appointed on 13.02.2015, and that the Cheque was issued for Orders placed



between 16.07.2014 – 02.01.2015, i.e. prior to her appointment as ***Independent Director***.

8. It is submitted that the Ld. M.M has erred in summoning the Petitioner/Accused especially when no document has been produced by the Complainant to show that the Petitioner was responsible for day-to-day affairs of the Company; merely bald averments to this effect are not tenable.

9. Reliance has been placed on Central Bank of India vs. Asian Global Ltd., (2010) 11 SCC 203, Small Industries Corporation Limited vs. Harmeet Singh Paintal, 2010 3 SCC 330, and Punjab National Bank vs. Surendra Prasad Sinha, 1993 Supp. (1) SCC 499.

10. Thus, it is prayed that the Summoning Order passed *qua* the Petitioner be set aside.

11. All the ***Respondents*** were duly served as recorded in Order dated 08.04.2021. Respondent No. 1 has chosen to not file any Reply as recorded in Order dated 09.01.2023. Opportunity was granted to the Respondents; however, no arguments were advanced on their behalf.

Submissions Heard and Record Perused.

12. The impugned Cheque bearing No. 379121 dated 30.01.2015 for Rs.25,00,000/- is claimed to have been issued by the Respondent No. 2/M/s *Lumax* in discharge of its legal liability. The impugned Cheque has been signed by Respondent No. 5/Milan Jain, on behalf of Respondent No. 2.

13. The Petitioner has sought to discharge on the ground that she is an independent woman Director in the Accused Company, and consequently, had no control over the day-to-day affairs of the Company.



14. 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.

15. FORM DIR-12 placed on record reflects that petitioner has been categorised as an “*Additional Independent Director*” with the Class of “*Non-Executive Directors*” with her date of Appointment being 13.02.2015. The impugned Cheque was issued on 30.01.2015 for the Orders placed between 16.07.2014 and 02.01.2015.

16. Here, reference may 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.

17. **Section 149(6) Companies Act, 2013** defines Independent Director, as under: -

“(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.”

18. 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.*

19. 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.

20. *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.*



21. In view of Section 141 NI Act and Section 149 of Companies Act, 2013, Petitioner could have been held vicariously liable only if it was shown that *she was in charge of and was responsible for the conduct of the business of the Company* at the time of commission of Offence. However, nowhere in the Complaint is there even a single word to explain her day to day involvement which assumes significance as she is an Independent Director, who by definition *not hold any security or interest in the Company*.

22. *Petitioner Kusum Garg is therefore, entitled to be discharged.*

Relief:

23. The Petition **CRL.M.C. 92/2018** is allowed and the Summoning Order dated 09.07.2015 in respect of Kusum Garg, is hereby set aside.

24. The Petition is accordingly disposed of, along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 11, 2025

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