



\$~3

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

Date of Decision: 25th September, 2024

+ W.P.(C) 13098/2024 & CM APPL. 54737/2024, CM APPL. 54738/2024, CM APPL. 56340/2024, CM APPL. 56339/2024

RAKESH KHANNA

.....Petitioner

Through: Mr. Saurav Kr., Mr. Rajesh Kr. And
Mr. J. S. Matta, Advocates.

versus

NAVEEN KUMAR AGGARWAL & ORS.

.....Respondents

Through: None.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGMENT

SANJEEV NARULA, J. (Oral):

CM APPL. 54739/2024 (*seeking condonation of delay*)

1. For the grounds and reasons stated in the application, the same is allowed. Delay of 30 days in filing the present writ petition is condoned.
2. Disposed of.

W.P.(C) 13098/2024

3. The Petitioner has filed the instant petition assailing the order dated 9th July, 2024. Through the said order, the National Consumer Disputes Redressal Commission¹ upheld the arrest warrants issued against the

¹ ("NCDRC")



Petitioner in the capacity of Director of VXL Realtors Pvt. Ltd by the State Consumer Disputes Redressal Commission, Delhi,² on 19th March, 2024, and 16th May, 2024. These warrants were issued during proceedings to enforce the final order dated 16th March, 2021, passed against the Company.

Factual Background

4. The factual background leading to the initiation of the present proceedings is as follows:

4.1 Respondent No. 1, Mr. Naveen Kumar Aggarwal, filed a complaint under Section 17 of the Consumer Protection Act, 1986, alleging deficiency of services and unfair trade practices by VXL Realtors Pvt. Ltd., Respondent No. 4. By a judgment dated 16th March, 2024, the SCDRC granted relief to the Complainant, directing Respondent No. 4 to refund the entire amount paid by the Complainant, with interest, along with compensation and litigation costs.

4.2 Respondent No. 1 filed execution application bearing no. EA/17/2022, for the enforcement of the aforesaid order. In the execution proceedings, warrants of arrest were issued against the directors of Respondent No. 4, the Judgement Debtor *vide* order dated 19th March, 2024, whereby the Petitioner was named as one of the directors.

4.3 The Petitioner applied for recall of the order dated 19th March, 2024 (I.A. 1421/2024) to the extent that it directed issuance of warrants of arrest against him. The said application was decided through order dated 16th May, 2024 to the following effect:

“IA-1421/24 IN EA-17/22

Vide detailed order dated 19.03.2024, warrants of arrest were issued against Mr. Rakesh Khanna & Ms. Suman Kumar Nagpal, Directors of the JD.

² (“SCDRC”)



However, no report has been received.

Mr. Suraj Prakash, counsel has appeared through VC on behalf of Mr. Rakesh Khanna (Director of JD) and they have moved an application IA-1421/24 vide diary no. 6865 dated 10.05.2024 for recalling the order dated 19.03.2024 passed by this Commission to the extent it directed issuance of warrants of arrest against the applicant with supporting affidavit.

Warrants of arrest were issued against Mr. Rakesh Khanna, Director of JD on 19.03.2024, is also present on VC.

Let him appear in the Court.

Mr. Rakesh Khanna, Director of JD submits that original papers of flat may be handed over to him so that he can put up the same for sale and return the money of the DH.

Original documents of flat cannot be returned to Mr. Rakesh Khanna (Director of JD), especially when there is a decree passed against him and warrants of arrest have already been issued.

Mr. Rakesh Khanna, Director of JD is not present in Court and rather in his application he is disputing that he is not a shareholder of JD/company.

There is no merit in IA-1421/2024 and the same stands dismissed.

In compliance of order dated 19.03.2024, issue fresh warrants of arrest against the following Directors of the JD as per the details furnished by the learned counsel for the DH, executable through the concerned officials mentioned below:

<i>S.No.</i>	<i>DETAILS OF DIRECTORS</i>	<i>EXECUTABLE THROUGH</i>
<i>1.</i>	<i>Mr. Rakesh Khanna (Director of VXL Realtors) DIN No. 09008530 s/o Mr. Tilak Raj Khanna 3207, Sector-21 D, Chandigarh – 160022</i>	<i>PS Sector-19 Chandigarh</i>
<i>2.</i>	<i>Ms. Suman Kumar Nagpal (Director of VXL Realtors) DIN No. 09008130 s/o Mr. Madan Lal Nagpal Street No. 09, Gagandeep Colony, Ludhiana, Punjab – 141007</i>	<i>PS Basti Jodhewal, Ludhiana, Punjab</i>

Warrants shall be issued by concerned official within 3 days from the date of this order and the same shall be returnable before the next date of hearing along with the necessary action taken by the concerned official.

Copy of order be given dasti to the DH.

List on 11.07.2024.”



4.4 The Petitioner thereafter challenged the order dated 16th May, 2024 in an appeal (Appeal Execution No. 30/2024) before the NCDRC. However, the NCDRC, through order dated 9th July, 2024, dismissed the appeal, thereby, upholding the warrants of arrest issued against the Petitioner, on account of being a director of Respondent No. 4.

Petitioner's case

5. In view of the foregoing, the Petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking quashing of the aforesaid order of the NCDRC. Mr. Saurav Kumar, counsel for the Petitioner makes the following submissions before the Court:

5.1 The complaint against Respondent No. 4 pertains to the alleged acts of deficiency of service and unfair trade practice that took place from 2010 to 2013. The complaint thereof was made to the SCDRC in 2016. However, the Petitioner was not appointed as a director of Respondent No. 4 until 2020. Therefore, the proceedings under Execution application bearing no. EA/17/2022 would not be applicable to the Petitioner since he was not a director of the Company when the alleged deficiency of service and unfair trade practice occurred.

5.2 The Petitioner was not responsible for the day to day business affairs of Respondent No. 4, and cannot be held liable to pay the amount due to the complainant merely on account of being a director of Respondent No. 4. The Supreme Court in ***Ashoke Mal Bafna vs. Upper India Steel Manufacturing and Engineering Company Limited***,³ had observed the following:

“9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what

³ (2018) 14 SCC 202.



manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action.”

In the instant case, Respondent Nos. 2 and 3, the other directors of Respondent No. 4, were in-charge of the affairs of the Company and have been correctly held responsible for the execution of the order of the SCDRC. On the other hand, the Petitioner had been suffering from Mild Micro vascular Chronic ischemic disease, Seizure Disorder, Hyponatremia, Hypomagnesemia, Cholelithiasis, Hypertension and Type II Diabetes Mellitus since 2019, and was not in a position to manage the affairs of Respondent No. 4. Neither was he in-charge of the everyday affairs of the Company, nor he was responsible for the conduct of the business of the Company at the time of commission of the offence. Accordingly, the proceedings in the present case cannot be executed against him solely on the basis of his position as a director of the Company.

5.3 The warrants of arrest issued by the State Commissioner under Order XXI Rule 41(3) of the Code of Civil Procedure, 1908⁴ are bad in law as they have been passed in violation of Order XXI Rule 41(2) of the CPC. The relevant provision of Order XXI Rule 41 of the CPC reads as under:

“41. Examination of judgment-debtor as to his property.—

(1) Where a decree is for the payment of money the decree-holder may apply to the Court for an order that—

(a) the judgment-debtor, or

(b) where the judgment-debtor is a corporation, any officer thereof, or

(c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what

⁴ (“CPC”)



other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

(3) In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.”

A plain reading of Order XII Rule 41(3) makes it clear that the provision can only be invoked in cases where the Judgement Debtor has disobeyed any order made under sub-rule (2) of Order XII Rule 41. In the instant execution proceedings, the State Commissioner did not pass any prior order under Order XII Rule 41(2) of the CPC, directing the Petitioner to file an affidavit stating the particulars of the assets of Respondent No. 4. The Petitioner was not issued any notice, nor was he arrayed as a party in the execution proceedings. The State Commissioner arbitrarily and without following due process of law, issued warrants of arrest under Order XXI Rule 41(3) of the CPC, and the same are liable to be set aside.

5.4 The Petitioner resigned from the position of director of Respondent No. 4 on 25th July, 2024. However, despite this fact, the State Commissioner again issued warrants of arrest dated 31st July, 2024 to enforce compliance of order dated 16th May, 2024. These warrants were issued without considering the Petitioner’s resignation and his cessation from acting as a director of the Company. Therefore, the issuance of the arrest warrants post-resignation demonstrates a disregard of the changed circumstances.



Analysis and findings

6. The Court has considered the submissions advanced by the Petitioner and carefully reviewed the relevant orders of both the SCDRC and the NCDRC. It is pertinent to note that the impugned orders pertain to the execution of the final order dated 16th March, 2021, passed against the Judgment Debtor Company, *i.e.*, Respondent No. 4. These proceedings do not seek to determine the personal liability of the directors, but instead hold them accountable for non-compliance with the said order. In this regard, Section 72 of the Consumer Protection Act, 2019⁵ provides for penalty for non-compliance of an order in the following terms:

“72. Penalty for non-compliance of order.—

(1) Whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Commission, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of first class for the purposes of the Code of Criminal Procedure, 1973.

(3) Save as otherwise provided, the offences under sub-section (1) shall be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.”

7. Section 72 of the CP Act makes it abundantly clear that the objective of the provision is to enforce the orders of Consumer Commissions, by holding a company and its officers accountable for defying the directions of the Commissions. These Commissions are empowered with judicial



authority akin to that of a Judicial Magistrate of the first class for the purpose of executing their directions. Hence, the issuance of arrest warrants against the directors of the Judgment Debtor Company for compelling compliance, is well within the ambit of the statutory framework of the CP Act. The Petitioner's argument that he should not be held liable because he was not a director at the time the original cause of action arose as alleged in the Complaint, is both legally flawed and untenable. The issue at hand is not the assessment of personal liability for the initial acts of deficiency in service, but the responsibility for ensuring compliance with the SCDRC's final order. As a director of the Company at the time of the enforcement proceedings, the Petitioner had a legal obligation to ensure that the Company complies with the SCDRC's directives. Therefore, the issuance of arrest warrants in this context is not an indictment of the Petitioner's personal liability, but rather a procedural mechanism to ensure that the Petitioner, as a director of the Judgment Debtor Company, meets with his obligations.

8. In light of the foregoing, the Petitioner's attempt to evade the consequences of the Judgment Debtor's non-compliance, on the basis of the contention that he was not a director when the initial cause of action arose, is legally unsustainable. His responsibility arises from his role as the director at the time the order was to be enforced. In this regard, reliance is placed on the decision of *Ravi Kant v. National Consumer Disputes Redressal Commission*,⁶ wherein this Court observed that if a company fails or neglects to comply with an order passed by a Consumer Forum, liability extends not only to the company itself, but also to those individuals who are responsible for its operations and fail to take necessary steps to ensure

⁵ ("CP Act")



compliance. This principle is premised on Section 27 of the Consumer Protection Act, 1986, which has now been encapsulated within Section 72 of the Consumer Protection Act, 2019. Therefore, in light of the above statutory framework, it becomes abundantly clear that the Petitioner's role as a director, places upon him an obligation to ensure that the Company complies with the order of the SCDRC, failing which he becomes liable under the provisions of the CP Act.

9. Furthermore, the Petitioner's reliance on the Supreme Court judgment in *Ashoke Mal Bafna* to argue that since he was not a director of the Company at the time the alleged offences were committed, he cannot be held liable, is misplaced. It is crucial to note that *Ashoke Mal Bafna* pertains specifically to Section 141 of the Negotiable Instruments Act, 1881,⁷ which reads as under:

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

⁶ MANU/DE/0629/1997.

⁷ ("NI Act")



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”

A plain reading of Section 141 of the NI Act reveals that it explicitly limits liability to those responsible for the conduct of the company “*at the time the offence was committed.*” Thus, individuals not in charge of the company at the relevant time are not liable under this section. However, the enforcement provisions of the CP Act, which provide for penalties, do not contain a similar stipulation that exempts individuals not in charge at the time of the offence or when the cause of action arose. This key difference between the two statutes underscores that the Petitioner’s reliance on Section 141 of the NI Act is entirely misplaced. Furthermore, while Section 141 of the NI Act pertains to the commission of an offence, the CP Act is primarily focused on ensuring compliance with its orders to protect consumers’ rights, irrespective of the timing of a director’s appointment. When a director assumes office, they inherit the company’s obligations, including compliance with existing legal orders. Therefore, the Petitioner’s argument—that he cannot be held liable merely because he was not a director when the acts of deficiency occurred—fails to acknowledge his obligation, as a director, to ensure that the Company complies with the SCDRC’s orders.

10. The Petitioner further contends that he was not in charge of the day-to-day affairs of Respondent No. 4 at the relevant time, citing medical



reports to argue that his health prevented him from managing the Company. However, the central issue here is not whether the Petitioner was actively managing the Company during a specific period, but rather the non-compliance with the SCDRC's order. In the said context, a three-member bench of the NCDRC in the case of ***Rajnish Kumar Rohatgi & Anr. Vs. M/s Unitech Limited & Anr.***,⁸ had observed the following:

“The next question which arises for consideration is as to who can be said to be the persons in charge of and responsible to the company for conduct of its affairs and that would be liable to penalty in the event of the order passed by a Consumer Forum against a company, not being complied. In our opinion, the question as to who can be said to be persons in charge of and responsible to the company for the conduct of its business is a question of fact to be decided, in the facts and circumstances of each case. However, only those persons would be liable to penalty under Section 27 of the Consumer Protection Act, who were in charge of and responsible to the company for conducts of its business at the time the offence under Section 27 of the Act is committed. The said offence, in our view, is committed on the date the order is passed by the Consumer Forum and the said offence continues till the aforesaid order is complied in all respects. Therefore, the persons who were in charge and responsible to the company for conduct of its business on and after the date the order came to be passed by the Consumer Forum, till the said order is complied, shall be liable to be punished under Section 27 of the CP Act.”

Applying the aforesaid reasoning, which this Court finds to be sound, to the present case, the offence of non-compliance commenced on 16th March, 2021, when the SCDRC order was issued, and continued through the execution proceedings that began on 22nd February, 2022, ultimately leading to the issuance of arrest warrants against the Petitioner on 19th March, 2024. Thus, by virtue of his position as a director during this period, the Petitioner bears the responsibility for compliance. His medical condition does not exempt him from the legal obligation to ensure the execution of the order.

⁸ EA/80/2016 in CC/14/2015 decided on 08.01.2019.



Therefore, he remains accountable for the Judgment Debtor's failure to comply, as the offence of non-compliance persisted while he held the directorship.

11. The Petitioner has also challenged the execution proceedings on the ground that the arrest warrants were issued under an incorrect provision of the CPC. However, this contention is fundamentally flawed. It is imperative to clarify that the State Commission's power to direct enforcement of their orders stems from two provisions, *i.e.*, Sections 71 and 72 of the CP Act. Section 71 of the CP Act stipulates as under:

71. Enforcement of orders of District Commission, State Commission and National Commission.— Every order made by a District Commission, State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under this Act.

Section 71 of the CP Act provides for the enforcement of an order by a Consumer Commission in the same manner as a decree passed by a civil court, incorporating the provisions of Order XXI of the CPC. In the present case, the issuance of arrest warrants is not rooted in the enforcement mechanism outlined in Section 71 of the Act, but rather in the powers conferred by Section 72, which explicitly empowers the Consumer Commissions to act as a Judicial Magistrate of the first class for the purpose of trying an offence under Section 72(1) of the CP Act. Section 72(2), envisaging a non-obstante clause, grants the State Commission the jurisdiction to penalize non-compliance of its directions, which includes the power to issue arrest warrants for enforcing compliance. This reinforces that the SCDRC is vested with both the jurisdiction and authority to enforce its



orders, including issuing arrest warrants, if necessary. The Petitioner's reliance on specific provisions of the CPC, to suggest that the warrants were issued under an incorrect provision, is therefore misplaced. Consequently, the objection raised by the Petitioner regarding the misuse of CPC provisions is without merit and cannot be sustained.

Conclusion

12. To conclude, in the Court's view, the Petitioner has missed the point. The impugned proceedings are not about pinning personal liability on him for the alleged failings of the Company. Instead, they centre on enforcing the SCDRC order—an order that carries the weight of law and requires compliance. As a director of Respondent No. 4, the Petitioner shoulders the duty to ensure that compliance, whether he likes it or not. The Petitioner argues that he wasn't involved with the Company during the period of alleged misconduct, suggesting that the impugned proceedings unfairly target him. However, this contention holds no water. The question here is not about past wrongs; it is about the present failure to comply with a legally binding order. The CP Act is explicit on this point: those in charge of a company at the time of non-compliance are accountable. By holding a directorial position during this period, the Petitioner is naturally included in this responsibility. Additionally, the Petitioner's reliance on procedural aspects of CPC is equally misplaced. The CP Act grants the SCDRC the power to act with the authority of a Judicial Magistrate for trial of offences under Section 72(1) of the Act, which includes the power to issue warrants of arrest. The arrest warrants, therefore, are issued under the CP Act's specific provisions, and not the CPC. In this context, the issuance of these warrants is both appropriate and within the Commission's jurisdiction. In



conclusion, the Court finds no flaw in the actions taken by the SCDRC or the NCDRC. The Petitioner's arguments are unconvincing, and the law clearly assigns him the duty to comply with the SCDRC's orders.

13. Accordingly, the Petition is dismissed, along with the pending application.

SANJEEV NARULA, J

SEPTEMBER 25, 2024

d.negi