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

% ***Reserved on: 24th July, 2025***
Pronounced on: 27th October, 2025

\+ **CRL.M.C. 1637/2017, CRL.M.A. 6647/2017, 11143/2017 and CRL.M.A. 17239/2017**

PUNITA KHATTER
D/o Maj Tulsidas Khatter
R/o 205 B, Beverley Park-I,
Gurgaon, Haryana .....Petitioner

Through: Mr. Bharat Chugh, Mr. Rajul Jain, Mr. Maanish M. Choudhary, Ms. Poorvi Rewalia, Ms. Kavya Dhankar, Mr. Abhinav Agarwal and Mr. Pushp Sharma, Advocates.

versus

EXPLORERS TRAVEL & TOUR PVT LTD
A Company registered under the Companies Act, 1956
having its registered office at
501, Rectangle 1, D-4, District Centre,
Saket, New Delhi 110017. .....Respondent

Through: Mr. Rakesh K. Khanna, Senior Advocate with Mr. Sachin Bansal and Ms. Arushi Jindal, Advocates

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 the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed on behalf of the

Petitioner, Smt. Punita Khatter for quashing of the Notice and Order dated 16.03.2017 and the proceedings pending in the Court of Ld. ACMM, New Delhi in Complaint Case No.470389/2016 titled as *Explorers Travel and Tour Private Limited vs. Punita Khatter*.

2. Respondent had filed a Complaint under Section 200 Cr.P.C. against the Petitioner, Smt. Punita Khatter for the offence under Section 452 Companies Act, 2013.

3. ***Briefly stated***, the Respondent Company was incorporated on 30.11.1989 under the name and style of Explorers Travel & Tour Pvt. Ltd. under the Companies Act, 1956. The Petitioner-Punita Khatter apart from being 35% shareholder of the Company, was appointed as Managing Director on 07.08.1995. She and one Shalini Wadhwa who was also one of the Director of the Complainant Company, were joint signatories of the Respondent Company. The Respondent alleged that the Petitioner, Smt. Punita Khatter was given following perks/ benefits in addition to her salary and commission, as part of the remuneration:

i. Car (BMW 3 series bearing registration no.HR26AV7806)

ii. Car (Mahindra XUV 500 bearing registration no. HR26CC9627)

iii. Car (Toyota Corolla bearing registration no .DL9CG3770)

iv. Car (Toyota Innova bearing registration no. DL4CAE8047)

v. Mobile Phone (I phone)

vi. credit card (no.4205806000117007 issued by ICICI bank)

vii. Visa card ending with 6377

4. It was further alleged by the Respondent in the Complaint that as Managing Director of the Company, she was in control of all financial documents, customer information, passwords of software portal of the

Company and title documents of immovable property owned by the Respondent Company. It is because of the conduct of the Petitioner, she was removed from the post of Managing Director *vide* Board Resolution dated 11.04.2016. On the same evening, the Chairperson of the Company, requested the Petitioner to hand over the certain articles *vide* email dated 11.04.2016, which were as follows:

i. Keys to chamber;

ii. keys to the office;

iii. keys to the car owned by the Company and in possession of Petitioner;

iv. All financial records, accounts, the management accounts including the data in computer along with their password; and

v. all records of the Company.

5. Petitioner refused to return the articles, despite the email dated 11.04.2016, leading to the filing of aforesaid Complaint under Section 452 Companies Act on 26.04.2016 against the Petitioner, Smt. Punita Khatter.

6. The Respondent Company examined ***CW1 Arjun Mehta*** in support of its assertions.

7. The Ld. ACMM Delhi *in the* Order of summoning dated 16.03.2017, referred to the testimony of ***CW1 Arjun Mehta*** and also to the Report of the Local Commissioner executed by the order of this Court who had recovered certain documents from the Petitioner, to conclude that *prima facie* there was adequate evidence to frame the Notice for the offense under Section 452 Companies Act, 2013. *The Notice was accordingly, framed to which the Petitioner pleaded not guilty.*

8. The Petitioner has challenged the Order of framing Notice on the ***grounds*** that on 26.04.2016, she was still holding the post of Director in the Respondent Company and thus, the question of wrongful withholding of any article, does not arise and no offence was made out under Section 452 Companies Act, 2013.

9. It was further asserted that the Petitioner was a lawful employee of the Respondent Company on the date of filing of Complaint and no cognizance could have been taken on the Complaint against the Petitioner. It has not been appreciated that the Complaint and alleged Letter dated 04.04.2016 as well as Letter dated 20.06.2016, are inherently vague in regard to the demand of alleged articles. It has not been considered that the Respondent Company failed to establish as to what benefits were extended to the Petitioner by virtue of being Director and Managing Director of the Respondent Company, either in its Complaint or in the pre-summoning evidence, in order to determine if there was any alleged wrongful withholding by the Petitioner.

10. Furthermore, in the absence of Board Resolution on behalf of Respondent Company asking for return of articles from Petitioner, the Letters so issued were bad in law. The Impugned Order suffers from manifest illegality and has been passed in a mechanical manner, without application of mind and is contrary to the settled principles of law.

11. Furthermore, all the articles mentioned in the email dated 18.06.2016 and 21.06.2016, have already been returned by the Petitioner on 30.06.2016 pursuant to her resignation from Directorship on 09.06.2016. It has not been considered that till 09.06.2016, there was no wrongful withholding of any article by the Petitioner, being the Director of the Company and the

subsequent letters dated 20.06.2016 for subsequent demand of balance articles, lacked material particulars and no details of the articles were mentioned therein.

12. The model of i-phone, laptop, computers, their serial numbers, IMEI number, period of book of accounts and details of vouchers, have not been mentioned in the Complaint or in the pre-summoning evidence. It has not been appreciated that there was no wilful withholding of any article by the Petitioner.

13. It has been wrongly observed by the Ld. Trial Court that proving of entrustment was not required under Section 452 Companies Act, 2013. The Petitioner in its email dated 21.06.2016, had specifically denied of being left with any articles in her possession listed in the email dated 20.06.2016.

14. Furthermore, the Ld. Trial Court has given a finding by relying upon the disputed documents. The documents relied upon by the Respondent Company are not supported with proper Affidavit under section 65B Indian Evidence Act, 1872. Therefore, *framing of Notice is bad in law.*

15. A prayer is made that the Impugned Notice framed under Section 452 Companies Act, be set aside.

16. ***A Reply has been filed on behalf of the Respondent Company*** who has taken an objection that the Petitioner has not approached the Court with *clean hands* and has deliberately and intentionally not filed all the documents which were part of the Trial Court record. The Petitioner has intentionally not placed on record the Application dated 30.07.2016 filed by the Respondent before the Trial Court seeking to place additional documents on record along with its Annexure C1 and C2. The only intention of the

Petitioner in filing the present Petition, is to stall the trial as she is fully aware that she is still holding the properties of Respondent and is misusing the same for her personal gain.

17. *On merits*, it is submitted that Section 452(1) Companies Act, 2013 requires to show that Petitioner is in possession of properties of the Respondent in the capacity of Ex-Managing Director and even after resigning from the said post since 09.06.2016 and that she is wrongfully withholding the properties despite repeated requests. Section 452 Companies Act, 2013 does not require entrustment as a necessary ingredient. The Ld. Trial Court has thus, rightly observed that section 452(1) Companies Act, 2013 does not envisage proving of entrustment of properties of the Company to its officer or employee.

18. In the case of *Charan Singh Kharbanda and Ors. v. Chandigarh Tourist Syndicate Private Limited and Ors.*, (1978) 48 Comp Cases 267 (P&H), it was held that the Managing Director of a Company in his capacity as such, would be entitled to the possession and custody of the records and property of the Company on its behalf.

19. The averments made in the Complaint and pre-summoning evidence cannot be stated to be vague or lacking material particulars especially in the light of documents and the Application filed to place additional documents on record. The summoning Order has been passed rightly, on the basis of the Complaint and the pre-summoning evidence.

20. It is further asserted that Petitioner has deliberately not filed the Order dated 08.04.2016 of Company Law Board (now National Company Law Tribunal), Ex. CW1/12, which clearly records that Petitioner was called upon to deliver various documents, papers, records, information and such

other things to ensure that the accounts of the Company are fully audited and also requested to render full accounts on daily basis to an appointed representative by the Board of Directors.

21. It was further recorded that Directors of the Company had called upon the Petitioner in her capacity as Managing Director of the Company, to provide them various information regarding the affairs of the Company, usage of Corporate Credit Cards, Debtor and Creditors on 29.12.2015. Again, this information was sought with regard to complimentary benefits received from the Company, the vehicles owned by the Company and contract entered into by the Managing Director on behalf of the Company. It was further stated in this Order that "*even then the Petitioner had failed to supply information concerning financial affairs of the Company from time to time and some of the instances are as follows...*"

22. Furthermore, the Petitioner after being removed from the post of Managing Director, was called upon on 11.04.2016 to hand over the keys of the Chamber, Office, Cars and Financial Records, Accounts, Management Accounts, etc. to Arjun Mehta, Director of the Company. Further *vide* Letter dated in 15.04.2016, she was asked to *cease and desist* from holding out herself as Managing Director. She intentionally and deliberately has not filed the termination letter dated 15.04.2016 on record, which reminded her to return the records, assets and documents.

23. All these facts and documents were duly proved during the pre-summoning evidence. Furthermore, a Local Commissioner had been appointed by this Court, who gave a Report that documents of the Complainant were recovered from her possession, which falsifies her defence that she was not wrongfully retaining any property of the

Complainant and had returned all the properties in her possession. In fact, she being the sole signatory of the Complainant Company, was having possession of numerous properties of the Company about which the Company has gradually discovered that they have not been returned by the Petitioner.

24. It is thus, submitted that these Complaint or the Letters were not vague or devoid of material particulars, as has been asserted by the Petitioner. She having ceased to be in the employment of the Respondent Company, cannot withhold the properties.

25. Furthermore, Section 452 (which was similar to Section 630 Companies Act, 1956) covers not only the present but also the past employees as been held in a case of *Baldev Krishna Sahi vs. Shipping Corporation of India Limited & Anr*. [(1987) 4 SCC 361], *Abhilash Vinodkumar Jain Vs. Cox & Kings (India) Ltd.* [(1995 3 SCC 732], *Lalita Jalan Vs. Bombay Gas Co. Ltd.* [(2003) 6 SCC 107] and *Gopika Chandrabhushan Saran Vs. XLO India Limited and Anr.* [(2009) 3 SCC 342

26. It is further submitted that the Certificate under Section 65B Evidence Act has duly been filed by the Respondent. The grounds raised by the Petitioner involved disputed questions of fact which are matter of trial, and cannot be determined by this Court in exercise of inherent jurisdiction under Section 482 Cr.P.C. It is therefore, submitted that the present Petition is liable to be dismissed.

Submissions heard and record perused along with the written submissions filed by both the parties.

27. At the outset, it may be noted that the Petitioner was summoned on 30.07.2016, but the said Order of summoning, was not challenged.

Essentially, the Petitioner should have challenged the Summoning Order, but she chose to wait till 16.03.2017, to challenge the Order on Notice, which is not amenable to revisional jurisdiction. It is the Summoning Order, which could have been questioned by the Petitioner on the ground of being unsustainable. Be as it may, since the matter is pending since 2016, it may be considered on merits.

28. As per the case of the Respondent Company, Petitioner Punita Khatter was the Managing Director of Respondent Company and she was removed from the said Post because of irregularities noticed in discharge of her duties. An Extra Ordinary General Meeting was convened on 11.04.2016, wherein the Board Resolution was passed for removal of the Petitioner from the post of Managing Director. On the same day, the information through e-mail was conveyed to the Petitioner and she was asked to handover the articles of the Company *forthwith*, which are as under:

> "*i. Keys to chamber;*
> *ii. Keys to the office;*
> *iii. Keys to the car owned by the Company and in possession of Petitioner;*
> *iv. All financial records, accounts, the management accounts including the data in computer along with their password; and*
> *v. All records of the Company.*

29. All the executive powers vested with the Petitioner were withdrawn by Board of Directors on 13.04.2016. On 15.04.2016, *Cease-and-Desist* Notice was issued to her from representing herself as Managing Director of the Company.

30. As per the Petitioner herself, she wrote an e-mail on 18.06.2016 wishing to handover certain articles. Respondent Company accepted the

same on 20.06.2016 and stated that there were certain other articles in her possession, which are as under:

> *"i. Laptop, computer;*
> *ii. I-phones;*
> *iii. Supporting Vouchers of Accounting entries made in the accounts maintained by the Company;*
> *iv. Statutory Books of the Company including what are not limited to the minute books, statutory registers as applicable under the companies act;*
> *v. Original agreement to sell/builder buyer agreement in respect of the property located at Ludhiana;*
> *vi. Credit Card (No. 4205806000117007 issued by ICICI bank);*
> *vii. Credit Card Visa ending with 6377;*
> *viii. Secretarial records of the Company; and*
> *ix. Financial Records of the Company."*

31. Eventually, articles mentioned in the e-mail dated 18.06.2016 and 21.06.2016 were returned by the Petitioner, which were dully accepted by the Company.

32. The ***first aspect***, which needs mention, is that the Notice dated 11.04.2016 required the Petitioner to handover the articles forthwith, of which she was in possession being the Managing Director of the Company forthwith, but she failed to do so and therefore, present Complaint got filed on 26.04.2016. To say that it was premature, was not correct, as despite being told to handover the articles *forthwith*, she failed to do so, till the time present Complaint was filed on 26.04.2016.

33. The ***second aspect*** raised by the Petitioner is that even though she was removed from the post of Managing Director on 11.04.2016, but she continued to be a Director in the Company, from which she resigned on 09.06.2016.

34. It is pertinent to observe that assets and documents that were sought to be returned by the Petitioner had been in her possession by virtue of she holding a post of *Managing Director*. Therefore, as soon as she seized to be the Managing Director, it was imperative for her to comply with the e-mail Notice dated 11.04.2016 and handover all the articles. Even if she continued as a Director till 09.06.2016, it did not give her any right to retain the articles/documents of which she was in possession, being a Managing Director. These were the articles in her possession, as a Managing Director and therefore, her defence that since she continued to be a Director till 09.06.2016, she was not required to handover the documents/assets, is *prima facie* incorrect.

35. Section 452 of Companies Act, 2013 provides that if an officer or employee of a Company having in his possession property including cash wrongfully withholds the same, is liable for punishment.

36. In the present case, one the Petitioner seized to be the Managing Director of the Company on 26.04.2016; she, in terms of Section 452 of Companies Act, 2013, was required to handover the assets and documents of the Company forthwith, as mentioned in the Letters dated 11.04.2016 & 15.04.2016 of the Company.

37. It has been rightly observed by Ld. ACMM that Section 452 of Companies Act, 2013 does not talk of entrustment. It is in a sense, a strict liability provision which mandates the return of the property of the Company as soon as the possession of such articles with the employee, becomes unlawful.

38. Much has been contended by the Petitioner that e-mail Notice dated 11.04.2016 was vague insomuch as it did not give the particulars precisely,

but this contention has also been rightly rejected by learned ACMM. It clearly stated that all Financial Records, Accounts, the Management Accounts including the Data In Computer along with their password and all records of the Company, be returned.

39. Hence, as per the submission of the Petitioner, the records were voluminous. Thus, seeking all the records of the Company in itself was sufficient Notice to the Petitioner to return the same. Ld. ACMM has rightly observed that *prima facie* Notice under Section 452 of Companies Act, 2013 is made out and the Notice has been accordingly framed.

40. Needless to say, that the observations made herein does not tantamount to expression on the merits of the case.

41. There is no merit in the present Petition, which is hereby dismissed along with pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 27, 2025
N/R