

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CRM No.M-30383 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(2) CRM No.M-30384 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(3) CRM No.M-30385 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(4) CRM No.M-30386 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(5) CRM No.M-30387 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(6) CRM No.M-30388 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(7) CRM No.M-30389 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(8) CRM No.M-30390 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(9) CRM No.M-30391 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(10) CRM No.M-30392 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(11) CRM No.M-30393 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(12) CRM No.M-30394 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(13) CRM No.M-30395 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(14) CRM No.M-30396 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(15) CRM No.M-30397 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(16) CRM No.M-30398 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(17) CRM No.M-30400 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(18) CRM No.M-30401 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(19) CRM No.M-30402 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

(20) CRM No.M-30803 of 2016 (O&M)

Jai Murty Minerals & Chemicals Pvt. Ltd. and others
...Petitioners

VERSUS

Yamuna Calcium Pvt. Ltd. through its Director
...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mukul Aggarwal, Advocate
for the petitioners.

Mr.Ravi Kamal Gupta, Advocate
for the respondent.

INDERJIT SINGH, J.

This order shall dispose of all above-mentioned connected cases being arisen from same transaction.

The above-mentioned petitions have been filed by petitioners under Section 482 Cr.P.C. for quashing of complaint dated 20.07.2015 bearing registration No.1171 of 2015 instituted on 21.07.2015, summoning orders dated 27.04.2016 and 02.07.2016 passed by learned JMIC, Yamuna Nagar at Jagadhri and all the subsequent proceedings arising therefrom.

Notice of motion was issued and learned counsel for the respondent appeared and contested all the petitions.

The facts are taken from CRM No.M-30383 of 2016.

As per complainant's version in the complaint, the accused are Directors/authorized signatories/purchase Managers of Jai Murty Minerals & Chemicals Pvt. Ltd. and are incharge and responsible persons for day-to-day conduct and affairs of the business as well as the liabilities of the company. The accused have issued impugned cheques to discharge the liability. As per the complainant's case, upto 15.06.2015, the liability upon the accused was more than ₹63 lakhs. The cheques in question were dishonoured on presentation due to 'Insufficient Funds'.

As per the case of the accused-petitioners itself, 20 (twenty)

complaints have been filed by the complainant against the petitioner under

Section 138 of the Negotiable Instruments Act regarding total amount of ₹32,31,927/-. The case of the petitioners is that to discharge their alleged liability, 22 fresh post dated cheques each amounting to ₹1.5 lakhs in lieu of 20 dishonoured cheques amounting to ₹32,31,927/- have been issued and there is actually excess payment of ₹68073/-.

Learned counsel for the petitioners states that as fresh cheques have been issued in lieu of dishonoured cheques, therefore, the whole payment is to be treated as paid and the complaints should be quashed.

On the other hand, the case of the respondent is that before filing of these complaints, out of the fresh issued cheques, only cheques amounting to ₹2 lakhs have been encashed but the total amount at that time payable by the accused is of much higher amount of more than ₹60 lakhs. Learned counsel for the respondent-complainant argued that these post date cheques have also not been honoured and these also have not been given to the respondent-complainant under any agreement. Neither the respondent-complainant ever agreed to take these post date cheques in lieu of earlier dishonoured cheques on the basis of which the complaints in question have been filed nor any such settlement took place.

I have heard learned counsel for the parties and have gone through the record.

From the arguments of learned counsel for the parties, I find that these are findings of fact which are to be given by the trial Court on the basis of the evidence i.e. whether cheques have been given in the settlement and in lieu of earlier dishonoured cheques etc. or not. Without evidence in these petitions, these disputed facts between the parties cannot be decided

record having signatures of the respondent-complainant that any written settlement has taken place between the parties qua giving fresh cheques etc.

I have gone through the record of petitions filed by the petitioners-accused. It is nowhere stated specifically that the Directors are not running day-to-day affairs. Rather simple averment in 2-3 lines is that averment given in the complaint qua liability of directors is incorrect. It is also stated that some petitioners have been intentionally roped in the present controversy as no cheque in question was ever issued on their behalf or on behalf of petitioners No.1, therefore, no liability can be fastened upon them.

The perusal of the complaint shows that there is specific averment that all the Directors are liable and they are responsible for day-to-day affairs of the company. Furthermore, at the time of arguments, learned counsel for the respondent-complainant placed on record a document which was downloaded from the website of the accused-company showing Board of Directors for Budhwani Group in which the names of Directors Mr.S.H.Budhwani, Mr.N.J.Desari, Mr.Sohil Budhwani and Mrs.Shamim Nathani, have been mentioned in detail showing the fact that they are actively involved in the day-to-day affairs of the company. So, this fact is also to be proved by the complainant before the trial Court.

As already discussed, firstly the petitioners in the petitions have nowhere stated that these Directors are not actively participating in the day-to-day affairs of the company. On the other hand, the complainant is alleging in the complaint that all these Directors are responsible for the day-to-day affairs of the company. The document which has been downloaded from the website of the accused-company prima facie shows that these

Directors are actively participating in the day-to-day affairs of the company.

Furthermore, in the petitions, it is nowhere stated that company is run by Managing Director or any other active Director etc. As already discussed, all these facts are to be proved by the parties before the Court concerned by leading evidence and the trial Court is to give the findings of fact on the basis of evidence to be produced by the parties.

At this stage, there is nothing on the record from which it can be held that filing of the complaints and the summoning order amounts to abuse of process of law or miscarriage of justice.

Therefore, finding no merit in all the petitions, the same are dismissed.

March 03, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No