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

\+ CRL.M.C. 2956/2017, Crl MA 12280/2017 (stay)

AKKSHAY GIRJASHANKAR MEHTA & ANR ..... Petitioners

Through Mr. Jay Savla, Adv

versus

VIVEK CHOPRA ..... Respondent

Through Mr. Vaibhav Tyagi, Adv

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

<u>O R D E R</u>

% 09.04.2018

By this petition under Section 482, petitioners have prayed for quashing of complaint case bearing no.464709/2016 (Old No.1126/2015) titled 'Vivek Chopra vs. Mission Vivacare & Ors' qua them.

Respondent has filed a complaint under Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') against M/s. Mission Vivacare Ltd., wherein petitioners have been impleaded as accused nos. 2 & 3. It is alleged that petitioners were Managing Director and Director respectively of M/s. Mission Vivacare Ltd. and were responsible for the day-to-day affairs of the company, thus were liable to be prosecuted and punished for the offence committed by the company under Section 138 of the Act in view of the section 141 of the Act .

Learned counsel for the petitioners submits that cheques bearing no. 000077 and 000081, for ₹19,02,696/- and ₹4,10,103/- respectively both dated 15th January,2015, which are subject matter of the complaint were presented for enchashment on 17th March, 2015; whereas M/s. Mission Vivacare Ltd was wound up, vide order dated 1st July, 2014 passed by the Bombay High Court, that is, much prior to the date when cheques were presented, dishonoured and amount was not paid by the company even after service of notice. This fact has been admitted in the complaint itself. Accordingly, petitioner cannot be said to be responsible for the day- to- day affairs of the company as on the date when offence is alleged to had been committed by the company.

Per contra learned counsel for the respondent submits that cheques were issued in respect of the debt, which had arisen prior to winding up order, therefore, offence under section 138 read with section 141 of the Act is attracted against the petitioners. It is argued that ingredients of Section 138 of the Act are attracted once the cheque is issued for the discharge of a legally recoverable debt and is subsequently returned dishonoured on the ground of insufficiency of funds or for any other reason as stipulated in section 138 of the Act and the cheque amount is not tendered within 15 days of the service of notice under Section 138 of the Act. Cause of action will arise on the date of issue of cheque as well.

In ***M L Gupta & Anr. vs. CEAT Financial Services*** 136 (2007) DLT 308, learned single judge of this Court has held in para 21 as under:-

> "On the aforesaid averments, complaint under Section 138 of the Negotiable Instrument Act cannot be filed as on the date of presentation of the cheque the company was in liquidation and cannot be stated to have committed any offence. Even second and third accused (petitioners herein) were not the in charge of the day to day affairs and conduct of the business of the company on that date..."

In ***Vijay Steel Tubes & Fittings Pvt. Ltd. Vs. Apollo Pipes Ltd.*** 2016 (1) JCC 23, a learned Single Judge of this Court has taken similar view by following M L Gupta (supra).

It is trite law that the complaint under Section 138 of the Act cannot be filed if on the date of presentation of the cheque, the accused company was in liquidation, inasmuch as petitioners cannot be said to be in control of the day-to-day affairs of the company. Even in the present case the company was wound up much prior to the date of presentation of cheque. Arguments advanced by the learned counsel for the respondent no.2 are fallacious. The offence under Section 138 of the Act can be said to have been committed if the cheque is dishonoured for the reasons as detailed in Section 138 of the Act and the cheque amount is not tendered within 15 days of the service of notice under Section 138 of the Act.

For the foregoing reasons, complaint case bearing no.464709/2016 (Old No.1126/2015) titled as 'Vivek Chopra vs. Mission Vivacare & Ors.' is quashed qua the petitioners.

Petition is disposed of in the above terms.

Miscellaneous application is disposed of as infructuous. *Dasti*.

A.K. PATHAK, J

APRIL 09, 2018/*sm*