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

+ CRL.M.C. 374/2019 and Crl. M.A. no. 1608/2019

SH. SANJAY JAIN & ORS.

..... Petitioners

Through Mr. Randhir Jain and Ms. Anita
Ahluwalia, Advs.

versus

M/S. HCL INFO SYSTEMS LTD.

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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24.01.2019

Respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, against M/s. P.G. Micro System Pvt. Ltd., wherein petitioner no. 1 has been impleaded as accused no. 3, being the Director of accused no. 1, that is, M/s. P.G. Micro System Pvt. Ltd. Complainant has alleged in the complaint that goods were supplied by it to the accused from time to time, pursuant to the purchase orders placed by the accused on the complainant. Total value of the goods supplied was ₹58,59,426/-. Details of invoices have been given in para 4 of the complaint. It is specifically alleged that cheque no. 001001 dated 30th June, 2015 for ₹58,59,426/- drawn on HDFC Bank, Nehru Place, New Delhi was issued by the accused persons

in favour of respondent (complainant) in discharge of their liability. On presentation of the cheque, same was returned dishonoured by the bank vide a bank return memo dated 4th July, 2015 with the remarks “Payment Stopped by drawer”. It is further stated in para 17 of the complaint that legal notice dated 24th November, 2015 was sent on 26th November, 2015 by the complainant to accused demanding the payment of amount of the dishonoured cheque within 15 days but the same was not paid, hence, the complaint.

After recording pre-summoning evidence, petitioners were summoned.

Petitioners challenged the maintainability of the petition. Trial court has held vide order dated 23rd August, 2018 that complaint is maintainable.

That is how petitioner is before this court by way of present petition under Section 482 Cr.P.C.

Grievance of the petitioners is that legal notice was not served on the petitioners. It is further the case of petitioners that an out of court settlement was arrived at between the parties, thus, complaint was not maintainable.

It is a trite law that at this stage, the averments made in the complaint have to be taken on its face value. The disputed question of fact can be

resolved only after the trial. A specific averment has been made in the complaint that legal notice under Section 138 of the Act was served, inasmuch as, a copy of the notice has been annexed. If the receipt thereof is being the disputed the same can be decided only after trial. Prima facie, all the ingredients of offence have been disclosed in the complaint. Whether any settlement was arrived or not is also subject matter of trial.

Petition is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

JANUARY 24, 2019
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