

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

+ **CRL.M.C. 2645/2021**

Date of Decision: 27/10/2021

IN THE MATTER OF:

SCOOP BRAND HOLDINGS PVT. LTD. & ORS. Petitioners

Through: Mr. Anupam Singh, Advocate.

Versus

M/S ADGOUR DECORATOR Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

CRL.M.C. 2645/2021, CRL.M.A. 17043/2021 & CRL.M.A. /2021
(To be numbered)

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioners seeking quashing of Complaint Case No. 2129/18 filed under Sections 138/141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') titled as M/s Adgour Decorator v. Scoop Brand Holdings Pvt. & Ors. pending before the learned ACMM, Shahdara District, Karkardooma Courts, Delhi, and the proceedings arising therefrom.

2. Briefly, the facts as averred in the present petition are that petitioner No. 1 is a private limited company which is engaged in the

business of, *inter-alia*, construction, civil work, interior work, fabrication, erection, installation of furniture and fit outs and other related services, etc. Petitioner Nos. 2 to 4 are stated to be its Directors. For the sake of convenience, any reference to 'petitioner' hereinafter shall collectively refer to petitioner Nos. 1 to 4.

3. The petitioner had availed services of the respondent against a total consideration of Rs.1,98,74,358/- (Rupees One Crore Ninety-Eight Lakhs Seventy-Four Thousand Three Hundred and Fifty-Eight Only). Out of the total amount, Rs.1,31,05,000/- (Rupees One Crore Thirty-One Lakhs and Five Thousand Only) are stated to have been paid prior and thus the outstanding balance was Rs.67,69,358/- (Rupees Sixty-Seven Lakhs Sixty-Nine Thousand Three Hundred and Fifty-Eight Only). It has been averred that in order to settle the accounts, an agreement was executed between the parties on 28.09.2017, wherein the respondent had agreed to settle all outstanding payments for an amount of Rs.50,77,415/- (Rupees Fifty Lakhs Seventy-Seven Thousand Four Hundred and Fifteen Only) to be paid by the petitioner.

4. In pursuance to the aforesaid agreement, the petitioner executed three post-dated cheques with the following details :-

S.No.	Dated	Cheque No.	Amount (in INR)
1.	12.11.2017	006603	16,92,477/-
2.	27.11.2017	006608	10,00,000/-
3.	27.01.2018	006610	23,84,944/-

5. Learned counsel for the petitioner submitted that out of the aforesaid three cheques the first two cheques bearing Nos. 006603 and 006608 for Rs.16,92,477/- and Rs.10,00,000/- respectively were

honoured on presentation, however, the third cheque bearing No. 006610 amounting to Rs.23,84,944/- was stopped resulting in filing of the complaint in question. He contended that presentation of the third cheque was conditional, inasmuch as, Clause 10 of the agreement provided that prior to presentation the respondent shall clear statutory charges/taxes. Clause 10 of the aforesaid agreement reads as under :-

“10. That I agree to settle all Income tax, Vat, GST, and all applicable taxes on my own after receipt of my dues and balance payments from the company and that amounts in relation to service tax payments amounting to Rs. 23,84,944 by Chq No. 006610 of HDFC Bank Dated 27.01.2018 shall be released to me by Scoop Brand Holdings Pvt. Ltd. upon me having fulfilled service tax compliances and adducing evidences on behalf of the same to Scoop Brand Holdings Pvt. Ltd. in this regard”.

6. Learned counsel for the petitioner has further submitted that as the respondent failed to deposit the statutory dues as undertaken vide Clause 10 of the agreement, an email dated 18.01.2018 was sent to the respondent thereby requesting it to submit the challans of service tax, VAT paid to the tax authorities during the period of billing for the financial years 2016-17 and 2017-18. During the course of submissions, learned counsel submitted that an amount of Rs.8.84 lacs was deposited by the respondent towards the statutory dues, however, the entire statutory dues in terms of Clause 10 of the aforesaid agreement were not deposited. Lastly, it is contended that the summoning order dated 24.07.2018 suffers from the vice of non-application of mind as the learned ACMM wrongly noted that the petitioner had not replied to the legal notice issued by the respondent.

7. I have heard the learned counsel for the petitioner and have gone through the material placed on record.

8. At the outset, it is noted that a contention has been raised on behalf of the petitioner that the summoning order was passed without due application of mind. However, considering that the law is settled to the effect that a summoning order need not be a detailed order, the contention raised does not incline this Court to take a view in favor of the petitioner and the same is rejected.

9. A perusal of the legal notice dated 07.03.2018 would show that on presentation, the cheque in question was returned vide returning memo dated 08.02.2018 with the remarks “stop payment”. In this legal notice, issued under Section 138 of the Act, while responding to the status of payment of statutory dues, it has been specifically averred as under:-

“3. That our client tried to contact you over the phone, but you have intentionally avoided our client and mischievously and intentionally sent a letter dated 16.02.2018 to our client falsely alleging that the service tax deposit return was not submitted in terms of agreement/understanding dated NIL knowing fully well that our client had already fulfilled the service tax compliance in terms of the said agreement/understanding and the challans were duly supplied to you from time to time, and finally the service tax returns along with all the challans were supplied to your office on 06.02.2018 by our client. However, our client is once more submitting the said Service Tax Challans and Service Tax Return.”

10. Even in the complaint filed under Section 138 of the Act, the respondent has reiterated that it had fulfilled the service tax obligation in terms of the agreement and the service tax deposit challans were

also stated to have been supplied to the petitioner on more than one occasion.

11. In view of the above, it is apparent that the parties have taken conflicting stands on the issue of payment of service tax/statutory dues. The complainant has averred that the dues stand paid, whereas the petitioner has denied the payment of entire dues, despite admitting that certain dues were paid.

12. In S. Krishnamoorthy v. Chellammal reported as **(2015) 14 SCC 559**, the Supreme Court while hearing an appeal against an order passed by the High Court whereby proceedings initiated against the respondent under Section 138 NI Act were quashed, has held as follows:-

“5. The above defence of the respondent (the accused) before the High Court, in the petition filed under Section 482 of the Code, is nothing but absolutely factual in nature, which is neither admitted by the complainant, nor apparent on the face of the record. Such type of disputed factual defences could have been appreciated only by the trial court, after the parties led their evidence. In our opinion, the High Court committed grave error of law in examining the allegations and counter-allegations which are disputed and factual in nature in a proceeding under Section 482 of the Code.”

13. Further, in Rajeshbhai Muljibhai Patel and Others v. State of Gujarat and Another reported as **(2020) 3 SCC 794**, the Supreme Court has observed that when disputed questions of facts are involved, which need to be adjudicated after the parties adduce evidence, the High Court ought not to exercise its powers under Section 482 Cr.P.C. to quash the proceedings arising out of Section 138 NI Act.

14. To a similar extent are the observations of the Supreme Court in Kaptan Singh v. State of Uttar Pradesh and Others reported as **2021 CRL M.C. 2645/2021**

SCC OnLine SC 580, wherein it has been reiterated that appreciation of evidence is impermissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C.

15. Keeping in view the aforesaid facts and circumstances, the exposition of law as propounded by the Supreme Court and the disputed position of fact involved in the case, I find no ground to entertain the present petition and the same is accordingly dismissed. Miscellaneous applications are disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 27, 2021

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Click here to check corrigendum, if any