

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

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CRM-M-50373-2022

Date of Decision: 12.12.2022

Ayush Pande and others

.... Petitioners

Versus

M/s Delhi Steel and Cement

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Tejinder Pal Singh, Advocate for the petitioners.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of compliant bearing No.NACT/50278/2019 titled as 'M/s Delhi Steel and Cement Vs. M/s Nice Projects Limited and others' filed under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') as well as summoning order dated 18.01.2020.

Brief facts of the case are that the respondent/complainant has filed the above-said complaint against 13 persons including the petitioners alleging that the respondent/complainant is engaged in the business of cement, steel, sariya etc. The accused persons approached the respondent/complainant for doing business with them. On 12.09.2018 a mutual settlement between respondent/complainant and the accused was executed and according to the settlement the accused issued a cheque dated 03.09.2019 amounting to Rs.15,60,251/- in favour of the respondent/complainant for their legal liability. On presentation of the

said cheque, the same was dishonoured by the bank with remarks 'Funds Insufficient'. The respondent/complainant had got served a legal notice dated 16.09.2019 upon the accused for paying the amount of Rs.15,60,251/- within 15 days from the receipt of the said notice. However, the accused had not paid the money to the respondent/complainant.

Learned counsel for the petitioners submits that the petitioners have been falsely implicated in the present case. The petitioners have not signed any mutual settlement or any other agreement with the respondent. The petitioner No.2 and 3 got to know about the present complaint from petitioner No.1 and petitioner No.1 got to know about the present complaint from other Directors. The trial Court wrongly passed summoning order dated 18.01.2020 without application of mind. No specific role has been mentioned against the petitioners. There is only vague and general allegations against the petitioners. It is necessary for the respondents to aver in the impugned complaint that at the time of commission of alleged offence, the petitioners were in-charge of and responsible for the conduct of business of the company. Without this averment being made in the complaint, the requirements of Section 141 cannot be said to be satisfied. In support of his arguments, learned counsel for the petitioners has placed reliance upon the judgments of Hon'ble Supreme Court passed in ***CRA No.529 of 2017 arising out of SLP (Crl.) No.10899 of 2015 tilted as 'Ashoke Mal Bafna Vs. M/s Upper India Steel Mfg and Engg. Co. Ltd.'*** decided on 06.03.2017 and ***CRA Nos.1130-31 of 2003 titled as 'K.K. Ahuja Vs. V.K. Vora and***

another' decided on 06.07.2009.

I have heard learned counsel for the petitioner and gone thorough the paper-book.

A perusal of the complaint, as well as the impugned order dated 18.01.2020, shows that prima-facie all ingredients of offence under Section 138 of the N.I. Act are made out, inasmuch as the cheque which was issued by the petitioners was dishonoured on presentation due to insufficiency of funds. Statutory notice in this regard was issued to the petitioners and after expiry of the stipulated period under the Act and upon failure of the petitioners to make the payment of the cheque amount, the complaint has been filed.

In so far as the contentions of learned counsel are concerned, they would at the best raise disputed questions of fact which would be gone into by the trial Court after recording evidence in that regard. Moreover, the summoning order was passed on 18.01.2020 and the petitioners have filed the present petition on 21.10.2022 after a delay of 02 years and 10 months.

In view of above, the present petition stands dismissed.

12.12.2022

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No