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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 28.03.2024***+ **CRL.M.C. 5187/2022 & CRL.M.A. 20714/2022**

VARUN

..... Petitioner

Through: Mr.Naveen Kumar Jain, Adv.
with petitioner in person.

versus

TOOLIKA PANDEY

..... Respondent

Through: None

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for quashing of the complaint, being CC No.1940/2020, titled *Toolika Pandey v. Today Homes and Infrastructure Pvt. Ltd. & Ors.*, filed by the respondent herein *inter alia* against the petitioner, under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 (in short, 'NI Act').
2. At the outset, it is noticed that the respondent, in spite of service of notice, has not entered appearance. The respondent is, therefore, proceeded *ex-parte*.
3. The above complaint has been filed by the respondent alleging therein that he had booked flats in the project named 'Canary Greens'



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at Behrampur, Sector-73, District Gurugram, Haryana, a project launched by the accused no.1 company, that is, Today Homes and Infrastructure Pvt Ltd.. The respondent alleges that the accused nos.2 to 5 in the complaint case are the Directors as well as Authorized signatories and are engaged in the day-to-day routine business affairs of the accused No. 1 Company and thereby have been directly dealing with the respondent for receiving the payments in respect of booked flats and have been instrumental in allotment of flats to the respondent. The respondent alleges that the accused Nos. 2 to 5 are liable for all the acts and deeds, done for and on behalf of, the accused no.1 company, including all liabilities arising towards the respondent. The petitioner herein has been arrayed as the accused no.3 in the said complaint.

4. The complaint further alleges that, as the accused no.1 company failed to hand over the possession of the flats to the respondent in spite of timely payment by the respondent, the respondent filed a complaint, being Complaint Case No.832/2015, before the learned National Consumer Disputes Redressal Commission, New Delhi (in short, 'NCDRC') against the accused no.1 and its directors/representatives, seeking a refund of the amount paid. The petitioner was not made a party in the said proceedings.

5. By an Order dated 31.01.2017 passed in the above complaint, the learned NCDRC directed the accused to refund the amount paid by the respondent alongwith interest. The respondent thereafter filed an Execution Petition, being Execution Application No. 102/2017 before the learned NCDRC, wherein by an Order dated 26.09.2018, a



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schedule for refund was prescribed. The respondent alleges that, in order to make the payment in terms of the Order dated 26.09.2018 of the learned NCDRC, the accused nos.4 and 5 acting for and on behalf of the accused no.1 company, issued six post-dated cheques. They assured the respondent that these cheques would be duly honoured on presentation.

6. The respondent alleges that these cheques when presented, however, were returned dishonoured with the remark '*Funds Insufficient*'. The respondent thereafter issued legal notices dated 08.01.2020 and 17.01.2020 to the accused seeking payment of the said cheque amounts, however, no payment was made to the respondent by the accused.

7. On the abovementioned complaint, summons were issued to the accused, including the petitioner herein, vide order dated 18.02.2020 passed by the learned Metropolitan Magistrate-02, New Delhi District, Patiala House Courts, New Delhi. The petitioner challenges this order as well.

8. The petitioner, who appears in person, submits that the petitioner had joined the accused no.1 company only as an Additional/Non-Executive Director and in his professional capacity as a lawyer, on 25.10.2019, that is, post the handing over of the cheques in question. In this regard, he has drawn my attention to the Form No.DIR-12 filed as Annexure P-8 with the present petition, and to the Company Master Data filed as Annexure P/10 with the present petition. He further submits that by an Order dated 31.10.2019 passed in (IB)-2130(ND)2019, the learned National Company Law Tribunal,



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New Delhi Bench (in short, 'NCLT') had issued a moratorium against the accused no.1 company and had appointed Interim Resolution Professional ('IRP'). He submits that the cheques in question were presented by the respondent post the issuance of the moratorium and the appointment of the IRP by the learned NCLT. He submits that, therefore, the petitioner cannot be made liable for the non-payment of the cheques and, in any case, the petitioner is not covered under Section 142 of the NI Act and, therefore, cannot be made an accused in the complaint case.

9. He places reliance on the judgment dated 21.09.2023 passed by a Co-ordinate Bench of this Court in a bunch of petitions filed by the petitioner herein, including Crl.M.C. 3602/2022, titled **Varun v. Amit Khanna** Neutral Citation no.2023:DHC:6872, wherein considering the petitioner's position as a Non-Executive Director, the Complaint Cases against the petitioner had been quashed.

10. He also places reliance on the judgment of this Court in **Govind Prasad Todi & Anr. v. Govt. of NCT of Delhi & Anr.** Neutral Citation no.2023:DHC:4149, in support of the submission that if the cheque is presented for payment after the Corporate Insolvency Resolution Process ('CIRP') has been initiated against the main accused, that is, the company, and the moratorium has been issued, the complaint against the directors would not be maintainable.

11. I have perused the contents of the complaint and considered the submissions made by the petitioner, who appears in person.

12. As is noted hereinabove, Form No.DIR-12, which the petitioner has annexed with the present petition, shows that the petitioner was



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appointed only as an Additional/Non-Executive Director of the accused no. 1 Company and that too, only on 25.10.2019, that is, post the issuance of the cheques in question by the accused no.1 company.

13. In **Amit Khanna** (Supra), this Court in the bunch of petitions filed by the petitioner herein, has dismissed similar complaints under Section 138 of the NI Act filed against the petitioner, by observing as under:

“23. It is pertinent to mention that the Courts are bound to follow the directions in letter and spirit. A perusal of the FORM 32/ Form No. DIR -12 makes it manifestly evident that the petitioner was only appointed in the capacity of an Additional Director-Non Executive w.e.f. 25.10.2019 in the accused company. A perusal of the complaint reveals that the subject cheques which came to be disowned were in fact issued on 24.07.2019, which is prior to the date of appointment of the petitioner as an Additional/Non-Executive Director in the accused company.

24. In view of the above it can be easily inferred that the petitioner could not possibly have been responsible for or in charge of the day to day affairs of the company or its conduct of business at the relevant time when the cheques were issued. Moreover, neither was he a signatory to the cheques in question. It would thus be travesty of justice and abuse of the process of the courts if the complaints were kept pending qua the petitioner especially in absence of any cogent material against him for committing the said offence. Ld. MM while issuing summons took cognizance of the offence under section 138 NIA and mechanically summoned the petitioner in the capacity of a Director of the accused company without applying his judicial mind.

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26. In the present case, the Ld.MM committed an error by summoning the petitioner, who was not even an Additional Director- Non Executive in the accused company at the time when the cheques were issued and thus was not handling the affairs or the conduct of business of the accused company at the relevant time. These facts were also mentioned in the reply on behalf of the petitioner to the legal notices of the complainants. However, Ld. MM ignoring such vital aspects, mechanically proceeded to issue summons to the present petitioner.”

14. A perusal of the contents of the complaint also shows that the cheques in question were presented for encashment by the respondent post the Order dated 31.10.2019 passed by the learned NCLT, issuing a moratorium against the accused no.1 company.

15. In ***Govind Prasad Todi*** (Supra), under similar circumstances, another Coordinate Bench of this Court has observed that post the issuance of the moratorium, it is the Insolvency Resolution Professional who has the authority to operate the bank accounts of the company, and on the dishonour of the cheques issued in the name of the company under CIRP, the accused persons/directors therein cannot be said to be in control and management of the affairs of the company, and, therefore, cannot be prosecuted.

16. Keeping in view the above principles, in my view, the petitioner has been able to make out ground for quashing of the Impugned Complaint *qua* the petitioner.

17. Accordingly, the petition is allowed. Consequently, the complaint case, being CC No.1940/2020, titled ***Toolika Pandey v. Today Homes and Infrastructure Pvt. Ltd. and Ors.*** is hereby



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quashed as against the petitioner herein. The pending application is also disposed of as being rendered infructuous.

18. There shall be no order as to costs.

NAVIN CHAWLA, J

MARCH 28, 2024/Arya/AS

Click here to check corrigendum, if any