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

\+ **CRL.M.C. 4464/2026, CRL.M.A. 18338/2026 & CRL.M.A. 18339/2026**

Date of Decision**: 01.07.2026**

IN THE MATTER OF:

PRAVIN KUMAR AGARWAL & ORS. .....Petitioners

Through: Ms. Akanksha Mehra, Mr. Shivam Bhimsaria, Mr. Abhiraj Choudhary and Ms. Akansha Singhania, Advs.

versus

BIHANI MANUFACTURING COMPANY PRIVATE LIMITED .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. Heard learned counsel appearing for the petitioners who contends that the petitioners, namely, Pravin Kumar Agarwal, accused no.2, Jitendra Mohan Gupta, accused no.4 and Abhishek Gupta, accused no.5 have been arrayed as accused in the complaint under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 [**NI Act**] and cognizance thereto has been taken by the competent Court on 13.03.2024 without realizing the fact that the present applicants are not responsible for day to day business and regular affairs of the accused company.

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2. Learned counsel, therefore, places reliance on a decision of the Supreme Court in the case of ***Sunita Palita and Ors. v. Panchami Stone Quarry***[1] and submits that the order of taking cognizance deserves to be set aside.

3. The Court has considered the submissions made by learned counsel appearing for the petitioners and has perused the averments made by the complainant in paragraph no.4 of the complaint. Paragraph no.4 of the complaint is extracted as under:

> *"4. The Complainant states that the Accused Nos. 2 (Pravin Kumar Aggarwal), 3 (Mahendra Kumar Gupta), 4 (Jitendra Mohan Gupta) and 5 (Abhishek Gupta) are the present Directors of the Accused Company and the Accused No. 3 is also authorized signatory of the cheques issued by the Accused Company from time to time. The Accused Nos. 2 to 5 are/were in charge of and are the persons responsible for the day to- day business and regular affairs of the Accused Company at the relevant point of time when the offence was committed and also that the Accused Nos. 2 - 5 enjoyed overall control over the management of the Accused Company during all material times and also they are the alter ego and key managerial person of the Accused Company who have jointly and severally transacted with the Complainant Company representing the management of the Accused Company during the entire material time. A list bearing the names of Accused Nos. 2 to 5 under the signatories' details of the company duly obtained from the official website of the ministry of corporate affairs is annexed hereto and marked as "***Annexure B***".*

4. If the aforesaid submissions are considered in the context of what has been held by the Supreme Court in the case of ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla***[2] as well as in the case of ***Sunita Palita and Ors.***, the Court finds that the requirement of consideration of complaint under Sections 138/141 of the NI Act is *prima facie* met.

5. In ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla***, the Supreme Court

[1](2022) 10 SCC 152
[2] (2005) 8 SCC 89

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held as under:

> *"19. In view of the above discussion, our answers to the questions posed in the reference are as under:*
> *(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.*
>
> *(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.*
>
> *(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."*

6. In ***Sunita Palita and Ors. v. Panchami Stone Quarry***, the Supreme Court further observed in paragraphs 41, 42 and 43 as under:

> *"41. A Director of a company who was not in charge or responsible for the conduct of the business of the company at the relevant time, will not be liable under those provisions. As held by this Court in, inter alia, S.M.S. Pharmaceuticals, the liability under Sections 138/141 of the NI Act arises from being in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, and not on the basis of merely holding a designation or office in a company. It would be a travesty of justice to drag Directors, who may not even be*

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connected with the issuance of a cheque or dishonour thereof, such as Director (Personnel), Director (Human Resources Development), etc. into criminal proceedings under the NI Act, only because of their designation.

42. Liability depends on the role one plays in the affairs of a company and not on designation or status alone as held by this Court in S.M.S. Pharmaceuticals. The materials on record clearly show that these appellants were independent, non-executive Directors of the company. As held by this Court in Pooja Ravinder Devidasani v. State of Maharashtra a non-executive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsible for the day-to-day running of the accused Company. Moreover, when a complaint is filed against a Director of the company, who is not the signatory of the dishonoured cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint, that such Director was in charge of and responsible for conduct of the business of the Company or the Company, unless such Director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and/or its business and affairs.
43. The High Court correctly observed that three categories of persons were covered by Section 141 of the NI Act — the company who committed the offence as alleged; everyone who was in charge of or was responsible for the business of the company and any other person who was a Director or a Manager or a Secretary or Officer of the Company with whose connivance or due to whose neglect the company had committed the offence."

7. The complainant has sufficiently and clearly stated that the present accused are responsible for the day to day business and regular affairs of the accused company at the relevant point of time when the offence was committed. The complainant has also stated that accused Nos. 2 - 5 enjoyed overall control over the management of the accused Company during all material times and also they are the alter ego and key managerial persons of the accused company who have jointly and severally transacted with the Complainant Company representing the management of the Accused Company during the entire material time.

8. It is seen that the nature of the submissions made by the present

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applicants will have to be examined during the course of the trial. The parties will have adequate opportunity to prove their case. At the stage of invoking jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, which at present is Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), the Court has to bear in mind that the plausible object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enacting the said Sections, there cannot be a roving enquiry with respect to the aforesaid aspect at this stage.

9. Bearing in mind all the aforesaid circumstances, at this stage, the Court does not find any reason to interfere with the complaint as well as the order of taking cognizance against the accused persons. The petitioners, however, shall be at liberty to raise all their grounds at an appropriate stage.

10. With these observations, petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

JULY 01, 2026/P

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