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

**Date of Decision: 26<sup>th</sup> February 2026**

+ CRL.M.C. 5337/2024, CRL.M.A. 20405/2024

SRK DEVBUILD PVT LTD THROUGH ITS LIQUIDATOR MR.

RAVI KAPOOR

.....Petitioner

Through: Mr. Chandra Shekhar Yadav and Mr.  
Astitva Srivastava, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ANR

.....Respondents

Through: Mr. Shaswat Awasthi, Adv.for R2.

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**J U D G M E N T**

**ANUP JAIRAM BHAMBHANI J.**

By way of the present petition filed under section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks quashing of summoning order dated 23.08.2018 passed by the learned Metropolitan Magistrate-01, Patiala House Courts, New Delhi in case bearing CC NI Act No. 12918/2018 in proceedings under section 138 of the Negotiable Instruments Act, 1881 ('NI Act'). The petitioner also challenges order dated 07.06.2023 passed in the same proceedings, whereby the learned Magistrate has dismissed an application filed by the Official Liquidator of the petitioner-company seeking stay of proceedings.



2. Notice on this petition was issued *vidé* order dated 15.07.2024 and proceedings in case bearing CC No. 12918/2018 were stayed *qua* the petitioner. Written Submissions dated 05.05.2025 and 06.05.2025 have been filed respectively on behalf of the petitioner and respondent No.2.
3. The court has heard Mr. Chandra Shekhar Yadav and Mr. Astitva Srivastava, learned counsel appearing for the petitioner; and Mr. Shashwat Awasthi, learned counsel appearing for respondent No.2, who is the contesting respondent in the matter. Considering the nature of the case, the State has no role in the matter.

**SUBMISSIONS ON BEHALF OF THE PETITIONER**

4. Mr. Chandra Shekhar Yadav has submitted, that *vidé* order dated 03.01.2020 passed by the learned National Company Law Tribunal ('NCLT'), Indore Bench at Ahmedabad, Corporate Insolvency Resolution Process ('CIRP') was initiated against the petitioner company; and thereafter *vidé* order dated 26.02.2021, liquidation of the company was ordered; and accordingly, in view of section 33(5) of the Insolvency & Bankruptcy Code, 2016 ('IBC'), the institution of any suit or other legal proceedings against the company was barred.
5. Furthermore, it has been submitted, that the cheque that is the basis of the criminal complaint under section 138 of the NI Act, *viz.*, Cheque No. 000011 dated 05.06.2018 for Rs. 2 crores, was *drawn on the personal account* of Accused No. 2 Mr. Subhash Chand Aggarwal, and not on the petitioner company's bank account; and therefore, the company could never have been arrayed as an accused in the criminal complaint.



6. Learned counsel has also argued, that the criminal complaint did not contain any specific allegation imputing any liability upon the petitioner company; nor had the complainant invoked vicarious liability on the part of accused No. 2 arising from any default on the part of the company; nor had the complainant invoked section 141 of the NI Act in the criminal complaint. In this regard, learned counsel has placed reliance on the decisions of the Supreme Court in *P.J. Agro Tech Ltd. and Others vs. Water Base Ltd.*<sup>1</sup>, *Inder Mohan Goswami & Anr. vs. State of Uttaranchal*<sup>2</sup> *Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & Ors*<sup>3</sup> to submit, that the summoning of an accused in a criminal case is a serious matter and a summoning order must reflect the Magistrate's considered satisfaction with regard to an offence being made-out. It has been argued that a summoning order under section 138 of the NI Act cannot be passed mechanically or against a non-drawer of the cheque, without evidence of any complicity in the offence.
7. In furtherance of their argument, learned counsel for the petitioner has drawn attention to the relevant extract of the impugned summoning order, which reads as under:

*“Evidence by way of affidavit tendered by AR of complaint. Original documents have been filed on record alongwith the complaint. Statement of AR of complaint recorded separately. Documents have been exhibited. Pre-summoning evidence closed on behalf of AR complainant.*

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<sup>1</sup> (2010) 12 SCC 146, paras 7 and 9

<sup>2</sup> (2007) 12 SCC 1

<sup>3</sup> (1998) 5 SCC 749



“Arguments on the point of summoning have been heard at length. Complaint and documents rendered in evidence of the complaint have been perused. All the statutory requirements for summoning of the accused for the commission of offence punishable U/s 138 NIA Act have been complied with. The present complaint case has been filed within the statutory period of limitation. After perusal of the entire record, this court is of the considered opinion that a prima facie case for the commission of offence punishable u/s 138 of NI Act is made out against the accused. I therefore, take cognizance of the offence punishable u/s 138 NI Act, 1881.”

“Issue summons to the accused on filing of PF/EC/AD/Speed Post returnable on 21.03.2019.

“Steps be taken within three weeks.”

(emphasis supplied)

8. Most importantly, learned counsel has submitted that *vidé* order dated 06.05.2024 passed by a Co-ordinate Bench in CRL.M.C. 3618/2024, proceedings *qua* co-accused Mrs. Gulab Chand Agarwal, who is one of the Directors of the petitioner-company, have been stayed.
9. Therefore, the petitioner has argued, that the petitioner-company could not have been summonsed under section 138 of the NI Act, since it was not the “drawer” of the cheque under section 7 of the NI Act. It has accordingly been urged, that the impugned summoning order dated 23.08.2018 is vague and has been passed mechanically, without referring to the essential statutory ingredients for making-out an offence against the petitioner company under section 138 of the NI Act.



### **SUBMISSIONS ON BEHALF OF RESPONDENT NO.2**

10. At the outset, Mr. Shashwat Awasthi, learned counsel has argued that the petitioner's challenge to the impugned summoning order suffers from gross, unexplained delay, given that the present petition came to be filed on 14.05.2024, just before the stage of framing of notice, though the petitioner-company was admitted to insolvency on 03.01.2020 and their plea for stay of the proceedings was rejected by the learned Magistrate *vidé* order dated 07.06.2023.
11. In this vein, learned counsel has drawn attention to the conduct of the accused persons, to submit, that due to continued non-appearance on behalf of the petitioner-company, the learned Magistrate was constrained to issueailable warrants against the directors of the petitioner-company on 24.03.2021; followed by non-ailable warrants on 11.04.2022; and, lastly, process was also issued under section 82 of the Cr.P.C. against accused Nos. 2 and 3, who are directors of the petitioner-company on 19.09.2022. Furthermore, learned counsel has submitted, that despite this court having clarified *vidé* order dated 15.07.2024, that the proceedings before the learned Magistrate have not been stayed *qua* Subhash Chand Agarwal, who is the signatory of the cheque, the said accused person has persistently defaulted in appearance before the learned Magistrate.
12. Mr. Awasthi has accordingly submitted, that the present petition ought to be dismissed even solely by reason of the conduct of the accused persons; and for the inordinate delay in filing the petition. In support of this submission, learned counsel has drawn attention to the



decision of a Co-ordinate Bench of this court in *Sanyam Bhushan & Anr. vs. State (NCT of Delhi) & Anr.*<sup>4</sup>

13. Insofar as the impugned summoning order is concerned, learned counsel has submitted, that the learned Magistrate has duly recorded his *prima facie* satisfaction for issuing summons after perusing the complaint, the supporting affidavit, the original cheque, and the cheque return memo. Learned counsel submits, that the subject cheque for Rs. 2 crores was issued by accused No.2 in discharge of a legally enforceable liability arising from various commercial agreements, including a Personal Guarantee Deed dated 31.03.2017 and the subject cheque reflects the composite liability of the petitioner-company.
14. It has been submitted, that the complaint was filed within the period of limitation, after the statutory notice was duly issued by the complainant and received by the accused persons. Furthermore, the complaint discloses the common and composite liability of the petitioner-company as well as of accused Nos. 2 and 3, who are the directors of the petitioner-company; and the learned Magistrate has rightly summonsed all the said persons as accused, keeping in mind the vicarious liability arising under section 141 of the NI Act.
15. Most importantly, Mr. Awasthi has submitted, that order dated 07.06.2023, whereby the learned Magistrate has rejected the petitioner's plea seeking stay of proceedings, is a speaking and

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<sup>4</sup> 2024 SCC OnLine Del 4545, paras 45 and 46



reasoned order in-line with the judgment of the Supreme Court in *P. Mohanraj vs. Shah Brothers Ispat (P) Ltd.*<sup>5</sup>

16. Reference has also been made by learned counsel for the respondent to *Sudeep Jain vs. M/s. ECE Industries Ltd.*<sup>6</sup>, to submit that though the court has advocated greater scrutiny by Magistrates at the pre-summoning stage, to ensure *prima-facie* satisfaction under section 141 NI Act without mechanically arraying parties in criminal complaint, in the present case the learned Magistrate has exercised requisite attention and consideration before issuing summons to the accused persons.

#### LEGAL LANDSCAPE

17. Examining the relevant legal landscape, in *Sunil Todi vs. State of Gujarat*,<sup>7</sup> the Supreme Court has *inter-alia* observed as follows:

“41. In *Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.* [*Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.*, (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828], the earlier decisions which have been referred to above were cited in the course of the judgment. The Court noted : (SCC p. 628, para 26)

“26. The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 CrPC or whether the complaint should be dismissed by resorting to Section 203 CrPC on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202 CrPC, the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the

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<sup>5</sup> (2021) 6 SCC 258

<sup>6</sup> 2013 SCC OnLine Del 1804

<sup>7</sup> (2022) 16 SCC 762



averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused.”

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“46. In the present case, the Magistrate has adverted to:

- (i) The complaint;
- (ii) The affidavit filed by the complainant;
- (iii) The evidence as per evidence list and; and
- (iv) The submissions of the complainant.

“47. The order passed by the Magistrate cannot be held to be invalid as betraying a non-application of mind. In *Chief Controller of Imports & Exports v. Roshanlal Agarwal* [*Chief Controller of Imports & Exports v. Roshanlal Agarwal*, (2003) 4 SCC 139 : 2003 SCC (Cri) 788], this Court has held that in determining the question as to whether process is to be issued, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can only be determined at the trial. [See also in this context the decision in *Bhushan Kumar v. State (NCT of Delhi)* [*Bhushan Kumar v. State (NCT of Delhi)*, (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872].”

(emphasis supplied)

18. In its judgment in *Mehmood Ul Rehman vs. Khazir Mohammad Tunda & Ors.*,<sup>8</sup> while relying on the celebrated judgment of the Supreme Court in *Pepsi Foods Ltd.*, and emphasizing the seriousness of setting in motion the process of criminal law against a person, the Supreme Court has reiterated the following:

“20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in

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<sup>8</sup> (2015) 12 SCC 420



the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.

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“22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of



**the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.**

“23. Having gone through the order passed by the Magistrate, we are satisfied that there is no indication on the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. **The contention that the application of mind has to be inferred cannot be appreciated.** The further contention that without application of mind, the process will not be issued cannot also be appreciated. **Though no formal or speaking or reasoned orders are required at the stage of Sections 190/204 CrPC, there must be sufficient indication on the application of mind by the Magistrate to the facts constituting commission of an offence** and the statements recorded under Section 200 CrPC so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. **The question is not about veracity of the allegations, but whether the respondents are answerable at all before the criminal court.** There is no indication in that regard in the order passed by the learned Magistrate.”

(emphasis supplied)

19. Furthermore, in its recent judgment in ***JM Laboratories & Ors/ vs. State of A.P. & Anr.***,<sup>9</sup> the Supreme Court has re-enunciated that a summoning order passed by a Magistrate should *reflect* his application of mind in the following words:

“8. In the judgment and order of even date in criminal appeal arising out of SLP (Crl.) No. 2345 of 2024 titled “INOX Air Products Limited Now Known as INOX Air Products Private Limited v. The State of Andhra Pradesh”, we have observed thus:

“33. It could be seen from the aforesaid order that except recording the submissions of the complainant, no reasons are

<sup>9</sup> 2025 SCC OnLine SC 208



recorded for issuing the process against the accused persons.

“34. In this respect, it will be relevant to refer to the following observations of this Court in the case of *Pepsi Foods Ltd. v. Special Judicial Magistrate* (1998) 5 SCC 749 (*supra*):

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.”

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“37. Recently, a Bench of this Court to which one of us (Gavai, J.) was a Member, in the case of *Lalankumar Singh v. State of Maharashtra* 2022 SCC OnLine SC 1383 (*supra*), has observed thus:

“38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of *Sunil Bharti Mittal v. Central Bureau of Investigation*, which reads thus:

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“53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case



*against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”*

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*“9. In the present case also, no reasons even for the namesake have been assigned by the learned Magistrate. The summoning order is totally a non-speaking one. We therefore find that in light of the view taken by us in criminal appeal arising out of SLP (Crl.) No. 2345 of 2024 titled “INOX Air Products Limited Now Known as INOX Air Products Private Limited v. The State of Andhra Pradesh”, and the legal position as has been laid down by this Court in a catena of judgments including in the cases of Pepsi Foods Ltd. v. Special Judicial Magistrate, Sunil Bharti Mittal v. Central Bureau of Investigation, Mehmood Ul Rehman v. Khazir Mohammad Tunda and Krishna Lal Chawla v. State of Uttar Pradesh, the present appeal deserves to be allowed.”*

(emphasis supplied)

### **DISCUSSION AND CONCLUSIONS**

20. Though much has been argued on behalf of the petitioner-company in challenge to summoning order dated 23.08.2018, the material considerations that emerge for purposes of the present decision are the following:
- 20.1. The subject cheque, though admittedly drawn on the personal account of one of the directors-Mr. Subhash Chand Aggarwal, was drawn *inter alia* in accordance with the Deed of Personal Guarantee dated 31.03.2017, whereby the said director had stood guarantee for performance by the petitioner-company of certain obligations. Therefore, it is not possible to infer, least of all at this stage, that the subject cheque was *not* issued in discharge of a debt or liability owed by the petitioner-company.



- 20.2. The subject cheque was dated 05.06.2018 and was dishonoured by way of Return Memo dated 08.06.2018.
- 20.3. The record shows that the petitioner-company went under moratorium in CIRP proceedings on 03.01.2020; and thereafter, went into liquidation on 26.02.2021. Therefore, the CIRP proceedings and the liquidation proceedings happened after more than about 02 years of the issuance and dishonour of the subject cheque.
- 20.4. The liability of the petitioner-company under section 138 of the NI Act, as *may* come to be determined in the course of the trial, arose well *before* the CIRP or liquidation proceedings, and therefore, whether or not that liability would be effaced by subsequent events, would have to be seen in the course of the trial, subject to the provisions of the IBC *inter-alia* sections 33(5) and 35(1)(k) of that statute.
- 20.5. The stay of proceedings against another director of the petitioner-company, Mrs. Gulab Chand Aggarwal (accused No.3), *vidé* order dated 06.05.2024 passed in CRL.M.C. No. 3618/2024 would also have no bearing on the present matter.
- 20.6. Furthermore, testing the summoning order on the anvil of the settled law as per the judicial precedents discussed above, would show that that though the Magistrate is required to consider the averments in the complaint and the material and evidence that comes on record, the Magistrate is not required to give detailed reasons at the stage of issuing summons in proceedings under section 138 of the NI Act.



21. In the present case, though the Magistrate has omitted to *narrate* in the impugned summoning order as to how a *prima-facie* case is made-out against the petitioner-company, considering that the summoning order is dated 23.08.2018, and since this court has perused the complaint, the requisite documents, including the subject cheque, the cheque dishonour memo, and the statutory notice issued under section 138 of the NI Act, that have been placed before it, this court would refrain from interfering with the impugned summoning order, though the ingredients of the offence do not find any mention in it.
22. As a sequitur of the above, the petition is dismissed.
23. The stay of proceedings before the learned Magistrate *qua* the petitioner-company, as directed *vidé* order dated 15.07.2024, stands vacated.
24. Pending applications, if any, also stand disposed-of.

**ANUP JAIRAM BHAMBHANI, J**

**FEBRUARY 26, 2026**

**HMJ**