



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

% *Pronounced on: 20th August, 2025*

+ **CRL.M.C. 2063/2025, CRL.M.A. 9223/2025**

SH VIJAY SINGH RAO

Director, *M/s Ninaniya Estates Limited.*

Prism Tower, Tower-A, 6th Floor,

Sector-2, Gwal Pahari, Gurugram-Faridabad Road,

Gurugram, Haryana- 122003

.....Petitioner

Through: Ms. Sonal Anand, Advocate.

versus

1. STATE NCT OF DELHI

Through SHO

PS. Safdarjung Enclave

.....Respondent No. 1

2. SH. SANJAY NAGPAL

S/o Sh. Sh. Sanjay Nagpal

R/o 313, Pocket-C,

Sector-A, Vasant Kunj,

New Delhi-110070

.....Respondent No. 2

Through: Mr. Shoaib Haider, APP.

Mr. Navin Kumar, Mr. Kumar Ayush
and Mr. Ashish Shukla, Advocates for
R-2.

+ **CRL.M.C. 2064/2025, CRL.M.A. 9225/2025**

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CRL.M.C. 2065/2025, CRL.M.A. 9227/2025

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CRL.M.C. 2066/2025, CRL.M.A. 9229/2025

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CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Aforesaid Petitions have been filed under Section 528 Bhartiya Nagarik Suraksha Sanhita (BNSS) seeking quashing of Order dated 31.05.2024 *vide* which the Ld. M.M has summoned the Petitioner in C.C. No. 4668-4671/2024 for offence under S.138 Negotiable Instruments Act (NI Act).



2. **Briefly stated,** Accused No.1/M/s *Ninaniya Estates Limited* represented to the Complainant that they have absolute ownership of parcel of land bearing Killa No. 4/18/2/1, 18/2/2, 19, 21/2, 22, 26, 8/2, 48/8/3, 12, 13/1 admeasuring 20,876.97 sq. yds in Revenue estate of Gwal Pahari, Gurgaon. It was further represented to the Complainant that they have all the necessary regulatory approvals for the construction of a Five Star Hotel and that they are in the process of constructing one called “Prism Hotel & Suites”.

3. On this representation, the Complainant applied for allotment of commercial spaces in the ‘Prism Suites’ on ownership basis and was allotted Prism Suite No. PES-410 situated in Tower C of the Prism Executive Suites, after payment of the agreed consideration in terms of the Builder Buyer’s Agreement dated 23.05.2016.

4. Due to deficient services of Accused No. 1, the Complainant entered into an Agreement *via* a **consent letter** dated 30.11.2023 surrendering the PES-410 to Accused No. 1 for Rs. 64,35,000/-.Accused No.1 acknowledged, agreed and processed the request of Complainant thereby agreeing to refund a sum of Rs. 64,35,000/-.

5. Accused No. 1 signed and delivered to the Complainant six cheques in discharge of its liability towards the Complainant bearing numbers as detailed below:

Sr. No.	Cheque Date	Cheque Number	Cheque Amount
1.	30.12.2023	062373	Rs. 4,35,000/-
2.	29.01.2024	062374	Rs. 6,00,000/-



3.	22.02.2024	062375	Rs. 10,00,000/-
4.	28.03.2024	062376	Rs. 15,00,000/-
5.	29.04.2024	062377	Rs. 20,00,000/-
6.	10.05.2024	062378	Rs. 9,00,000/-

6. The Cheques at Serial No.2,3&4 were dishonoured on presentation and were returned with remarks “Account closed” *vide* Return memo dated 03.04.2024. The Complainant informed Accused No. 1 about the same but the dues remained unpaid. Consequently, demand Notice dated 19.04.2023 was served upon the Accused through Speed Post on 23.04.2023, despite which no payment was made within 15 days by the Accused.

7. Thus, the Complaint under S.138 NI Act was filed. Summons were issued against *M/s Ninaniya Estates Limited* and the Petitioner/Vijay Singh Rao *vide* Order dated 31.05.2024.

8. Aggrieved by the same, *the present Petition is preferred seeking quashing of the Summoning Order on the ground* that the impugned Order is passed in a totally mechanical manner and the same is against the well-settled principles of law i.e. while taking cognizance/summoning the Ld. MM has to examine carefully whether the ingredients of an offence have been made out or not against ‘each’ proposed Accused.

9. It is submitted that the Petitioner has not signed any document or cheque regarding the transactions with the Complainant/Respondent no. 2. The Ld. MM has summoned the Petitioner merely because he is one of the Directors in the AccusedNo.1/Company. As is the settled law, vicarious liability under S.141NI Act has to be specifically made out in the Complaint.



10. The Ld. MM has failed to examine the facts properly and wrongly summoned the petitioner merely on bald averments. It is submitted that the offence of Section 138 of N.I. Act is said to occur when the cheque is returned unpaid for various reasons and legal notices sent to the accused person who are involved in it. Perusal of Paragraph no. 7, 8, 9 of the Complaint reveals that there is not even a bald allegation that the present Petitioner was involved in the affair of the Company in any manner whatsoever. The only place where certain allegations have been levelled against the Petitioner are in Paragraph no. 3, which itself talks about when the transaction was entered into. Even if assuming without admitting, there was to be some veracity in the allegations, even that shall not bring the present Petitioner within the four corners of vicarious liability.

11. It is submitted that the Petitioner was arraigned and accused by the Respondent No.2 only to exert pressure as the Petitioner is a senior citizen aged around 73 years. The Complainant has not set out a case that it was the Petitioner who induced him to get into the Agreement or the present Petitioner handed over the cheques or was the one who signed the cheques or was the one looking after the banking or the finance of the Accused no. 1/M/s Ninaniya Estate Pvt. Ltd.

12. It is submitted that the Ld. MM erred in summoning the Petitioner without even examining the Complaint and the documents attached therewith.

13. The Ld. M.M failed to appreciate that there is no role ascribed to the Petitioner and no averment is brought forth to make him liable vicariously, and in this regard, reference is made to NSIC Ltd. vs. Harmeet Singh Paintal



& Ors. (2010) 3 SCC 330 wherein it is observed that that vicarious liability on the part of a person must be pleaded and proved and not inferred.

14. Further reliance is placed on Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & Ors., (1998) 5 SCC 749, Hitesh Verma vs. M/s Health Care at Home India Pvt. Ltd. & Ors. SLP CrI. No. 8368/2019, and Sunil Bharti Mittal vs. CBI, AIR 2015 SC 923.

15. Thus, it is prayed that the Summoning Order dated 31.05.2024 be quashed.

16. The **Learned Counsel for the Respondent No.2** has vehemently opposed the Petition on the ground the Petitioner has control over the day-to-day affairs of the Company and had knowledge of the transactions.

Submissions Heard and Record Perused.

17. The Petitioner has challenged the summoning Order dated 31.05.2024 on the ground that there is no averment in the Complaint making him vicariously liable for the acts of the accused Company. Complainant entered into a Builder Buyer's Agreement dated 03.08.2016 to buy Prism Suite Unit No. 604 admeasuring 770 sq. ft. At the cost of Rs.4,950/- per sq. ft. for a consideration of Rs.38,11,500/-.

18. Subsequently, a letter Offering Possession of Suite No. 401 was offered to the Complainant *vide* letter dated 24.04.2017. However, the Complainant wrote a letter Consent Letter dated 30.11.2023 *vide* which he gave his consent in regards to suite No. 401 and asked for refund of Rs.64,35,000/-, which was inclusive of lease rent, IFMS, and security deposit amounts. It is this backdrop that the impugned Cheque came to be issued as detailed in the letter dated 30.11.2023. The cheque on presentation



got dishonoured and thus, the Complaint came to be filed and Petitioner Summoned, for being a Director in the Accused No. 1 Company.

19. The principles for making the person vicariously liable for the affairs of the Company were stated by the Supreme Court in Aneeta Hada vs. M/s Godfather Travels & Tours Pvt. Ltd., AIR 2012 SC 2795. After referring to judgments in Iridium India Telecom Ltd. vs. Motorola Inc and Ors., 2004 (1) BOM CR 479 and Standard Chartered Bank and others vs. Directorate of Enforcement and others, AIR 2006 SC 1301, it had observed that “*the Company can have criminal liability and further, if a group of persons that guide the business of the companies have the criminal intent, that would be imputed to the body corporate. In this backdrop, Section 141 of the Act has to be understood. The said provision clearly stipulates that when a person which is a Company commits an offence, **then certain categories of persons in charge as well as the Company** would be deemed to be liable for the offences under Section 138. Thus, the statutory intendment is absolutely plain.*”

20. The same was reiterated by the Apex Court in Anil Gupta vs Star India Pvt. Ltd., 2014 (10) SCC 373, Himanshu vs B. Shivamurthy&Anr., (2019) 3 SCC 797, and recently in Bijoy Kumar Moni vs Paresh Manna &Anr., 2024 INSC 1024.

21. Law in regard to the liability of Directors stands settled in S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla (2005) 8 SCC 89 wherein Apex Court had reiterated and clarified that essentially in a case under Section 141, there ought to be a specific averment in the pleadings of the Complainant that at the time the Offence was committed, *the person*



accused was in charge of and responsible for the conduct of the business of the Company. To hold a Director liable, it needs to be shown that the Director being made liable, should be in charge of and responsible for the conduct of the business of the Company at the time of committing the offence. Further, that the persons holding the office of “Managing Director” or “Joint Managing Director”, by virtue of the very nature of their role, renders them in charge of and responsible for the conduct of the business of the Company and liable under Section 141. Similar observations were made by the Apex Court in Sunita Palita vs. M/s Panchami Stone Quarry, in SLP (Crl.) No. 10396 of 2019 decided on 01.08.2022.

22. In the Complaint, it has been specifically averred that the Petitioner/Accused No. 2 along with the other co-accused/Prateik Rao are the Directors, who are in-charge and responsible for the conduct of the day-to-day affairs. The Complainant had annexed along with the Complaint, the details of the Directors from the MCA Website wherein there are six Directors indicated out of which, Prateik Rao is the Managing Director while the Petitioner *herein* is shown as the Director. Though, there are names of other four Directors as well but it has been specifically mentioned in the Complaint that only the Petitioner and the co-accused/Prateik Rao, the Managing Director were in-charge and responsible for the day-to-day affairs of the Company. Pertinently, the Legal Notice dated 12.04.2024 was also addressed only to these two Directors aside from the Accused Company. According to the Complainant, the Notice was duly delivered at the address as mentioned in the MCA Website despite which, the cheque amount has not been paid. *Prima facie*, there are enough averments in the Complaint to



show that the Petitioner and his son, Prateik Rao/Managing Director are the two Directors responsible and in-charge for the day-to-day affairs of the Company.

23. In this regard, a reference has been made to the latest judgment of the Apex Court in HDFC Bank Ltd. vs. State of Maharashtra and Anr., 2025 INSC 759, wherein the Court has held that criminal proceedings under Section 138 N.I Act against a **Company Director** cannot be dismissed solely because the Complaint does not precisely replicate the wording of Section 141. The Court underscored that the essence of the allegations is more important than their form. If the Complaint sufficiently indicates that the Director was actively involved in the Company's day-to-day operations and played a role in the transactions in question, this is enough to meet the threshold for vicarious liability under Section 141(1) NI Act, even if the statutory expression "*in charge of and responsible for the conduct of the business*" is not quoted verbatim.

24. As has been stated above, though there are six other Directors but the others have not been made the party to the present Complaint, which *prima facie* reflects that it is only the Petitioner and his son, Prateik Rao/Managing Director, who are responsible for the day-to-day affairs of the Company. At this stage, there is nothing on record to show that the Petitioner is not involved in the activities of the Company. It is his defence that he has not been involved for which can be adjudicated only after the trial.

Relief:

25. In view of the aforesaid discussion, the Summoning Order is not liable to be quashed. ***Thus, the Petitions are dismissed.***

2025:DHC:7099



26. The Petitions are accordingly disposed of, along with pending Application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

AUGUST 20, 2025/N