

## **High Court of M.P. Bench at Indore**

**MCRC No.22567/2017**

**Indore: Dated:-29.09.2018**

Shri Sunil Verma, learned counsel for the petitioner.

Shri N. Vishard, learned counsel for the respondent.

Heard with the consent of both the parties.

Disgruntled with the order of registration of complaint against them, the petitioners Rahul Roy, Rohit Roy and Smt. Teepima @ Tatiana Zueva have come before this Court on the sole ground that no specific allegation has been made against them in the complaint, therefore, in view of the judgements passed by Hon'ble the Supreme Court in the case of Anita Malhotra vs. Apparel Export Promotion Council and Another (2012) 1 SCC 520, K.K. Ahuja vs. V.K. Vora and Another (2009) 10 SCC 48, DCM Financial Services Ltd. vs. J.N. Sareen (2008) 8 SCC 1, N.K. Wahi v. Shekhar Singh and Others (2007) 9 SCC 481, State of Karnataka vs. L. Muniswamy and Others CR.LR. (SC) 1977 and Manohar T. Soni, Vs. Kamlabai Soni, 1991 CR.L.J. 788 (MP), the complaint filed by the respondent is not maintainable and is not to be proceeded further.

2. Learned counsel for the respondent drew my attention towards para no.1 of the complaint itself, copy of which is filed by the petitioner, para no.5 of reply of notice given by the petitioners (Annexure R/1), proposal of settlement of the dues given by the petitioners after registration of complaint (Annexure R/3) and submitted that as the specific allegations have been made against the petitioners and admittedly they are Directors of the Company and the company as well have admitted liability towards the respondent, therefore, the complaint can not be dismissed on the ground raised by the petitioners.

3. In reply, learned counsel for the petitioner has submitted that it was denied by the petitioners that the reply of demand

notice was given on behalf of the petitioners, but infact, it was a mistake of the advocate. Petitioners have never instructed him to reply on their behalf and that reply can not be taken into consideration.

4. Contention of the learned counsel for the respondent is that as to whether the counsel of the petitioner has mistakenly given reply to the demand notice issued by the respondent is a matter of fact which needs appreciation and that can not be done while deciding the present petition.

5. Para no.1 of the complaint filed by the respondent reads thus:-

“ 1. यह कि परिवादी करबा नलखेड़ा में कृषि उपज क्रय विक्रय करने का व्यवसाय करता है तथा मुलजिम क्रमांक 1 राय ब्रदर्स आर्गेनिक एग्रो प्राईवेट लिमिटेड भी सोयाबीन क्रय विक्रय करने का व्यवसाय करते है। क्रमांक 2 रोहित राय, क्रमांक 3 राहुल राय, क्रमांक 4 राजेश पिल्लई, क्रमांक 5 श्रीमति टीपिगा जुटेवा, राय ब्रदर्स आर्गेनिक एग्रो प्राईवेट लिमिटेड के डायरेक्टर होकर राय ब्रदर्स आर्गेनिक एग्रो प्राईवेट लिमिटेड के द्वारा परिवादी से किए गए सौदे व संव्यवहार के समय दिन प्रतिदिन के व्यवसाय का सक्रिय रूप से संचालन करते थे तथा उसके लेन देन के लिये जिम्मेदार थे। ”

6. Title of the annexure R/2 shows that the reply of demand of notice was given by their counsel on behalf of company and also on behalf of the petitioners. Besides, para no.5 of this reply reads thus:-

“5. यह कि, आपके पक्षकार को हमारे पक्षकार द्वारा [vkafkd@ikVZ](mailto:vkafkd@ikVZ) भुगतान 9,84,459/- रुपये का आरटीजीएस के माध्यम से भुगतान किया जा चुका है और उक्त [vkafkd@ikVZ](mailto:vkafkd@ikVZ) भुगतान आपके पक्षकार को किये जाने के पश्चात कुल बिल राशि 30,06,789/- में से शेष बकाया राशि 20,22,330/- बचती है जिसका भुगतान हमारे पक्षकार द्वारा आपके पक्षकार को किया जाना है परन्तु उपरोक्त कारणों से आपके पक्षकार की बकाया राशि का भुगतान किये जाने में विलम्ब कारित हुआ है और उक्त शेष बकाया राशि का भुगतान नहीं किया जा सका है हमारा पक्षकार आपके पक्षकार की शेष बकाया राशि का भुगतान करने को तैयार है और वह 6 से 8 माह के भीतर भुगतान कर देगा जिसके लिए हमारा पक्षकार समय चाहता है। .”

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7. Proposal of the petitioners which is filed as annexure R/3 reads thus:-

“We wish to propose a settlement to close the pending outstanding matter between your and our company. We are interested in settling these issued in the interest of long term business relationship with your company which we enjoyed in the past.

We both are the victims of the evil work done by Mr. Rajesh Pillai who was responsible for handling all procurement, accounts, payments, business transactions and also was responsible for all business activities for RBOA and RB from Indore. We have started legal actions against Mr. Rajesh Pillai to recover the amounts misappropriated by him during his responsibilities in the regard and even for this we will require your active support.

We are looking for a re-start our export business from new season and that will not be possible without your creative and effective support in this regard.

We look forward to your positive response to settle the matter amicably. We can meet at the convenient time and place as mutually agreed for final settlement.”

8. In view of the aforesaid, it is clear that specific allegations have been made against the petitioners. They all have given reply to demand notice and admitting their liability. Therefore, the judgements cited by the petitioners are of no avail.

9. Therefore, in the back drop of the facts that it is not disputed that the petitioners are Directors of the Company and *prima facie* evidence that they are responsible for day to day business of the company, no ground for dismissal of the complaint is made out. The petition is bereft of merit and is **dismissed** hereby.

**(Virender Singh)**  
**Judge**

**Amit**

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