

48 CC NI ACT / 5368/2025

**Berger Paints India Ltd Vs. Palakeerthi Siva Krishna Proprietor of Ms SR Paints
And Hardwares**

07.08.2026

**Court Proceedings are also being conducted through Video Conferencing using
CISCO WEBEX application.**

Present : Sh. Abhimanyu, Ld. Counsel for the complainant in person.

None for proposed accused.

As per service report filed by Ld. Counsel for complainant, the notice on application for condonation of delay has been duly served upon proposed accused through speed post. However, despite repeated calls, none has appeared on behalf of the proposed accused today. Therefore, the proposed accused, by failing to enter into appearance, has **waived off his right to be heard at this stage.**

Complainant has filed an application u/s 142(1)(b) of NI Act seeking condonation of delay in filing of the present complaint. It is submitted that there has been a delay of 04 days in filing of the present complaint as there was inadvertant error in calculation of limitation time period. Though, the reason so furnished is not so justifiable, but the delay in itself does not seem to be so substantial so as to defeat the substantive right which has accrued in favour of the complainant. The Court must always lean in favour of protecting rights of an innocent complainant rather than dismissing the complaint on mere technical grounds. Therefore, in the interest of justice, the said application stands allowed and **the delay stands condoned.**

Arguments heard. Records perused.

This Court has perused the complaint, GST certificate of accused firm, cheque, bank return memo, legal notice, postal receipt and service report pertaining to the legal notice. Perusal of the said record reveals that this Court has the territorial jurisdiction to entertain the same. Further, as per the averments made in the complaint, *prima facie*, an offence u/s 138 of Negotiable Instruments Act, 1881 appears to

have been committed Therefore, in view of the same, this Court takes **cognizance of offence u/s 138 NI Act.**

Hon'ble Supreme Court has laid down in the cases of *AC Narayanan v. State of Maharastra* and *Re Expeditious Trial of NI Act cases* that the examination of complainant and his witnesses on oath is a matter of discretion of the Magistrate and their evidence given on affidavit, if found satisfactory, maybe read as it is for the purpose of issuance of process. Thus, as the present case has been filed in complete particulars, this Court does not deem it necessary to call upon the complainant and his witnesses and conduct their examination on oath.

Considering the averments made in the complaint, documents filed along-with and affidavit of the complainant in support of the complaint, this Court finds that there is sufficient material on record to summon the accused.

Accordingly, let summons be issued to the afore-said accused for NDOH, **through all permissible modes including electronic mode** i.e., e-mail or Whatsapp (to be mentioned on the PF form) on filing of PF by the Complainant within 30 days from today. Copy of the complaint along with documents shall accompany the summons. **In case the house/premises of the accused is found to be locked, summons be served by way of affixation.** Furthermore, if the Complainant fails to file PF within time, the complaint shall be liable to be dismissed u/s 227(4) of BNSS.

Complainant is at liberty to serve copy of the summons on accused person(s) through Registered post/speed post/authorized courier service and via electronic mode i.e., e-mail or WhatsApp as well. Further, the complainant is directed to place on record 'proof of service of summons' before this Court by NDOH.

Put up for report on **summons/appearance of accused** and further proceedings on **09.01.2027.**

(Surbhi Sharma)
JMFC(NI ACT) -08/SED
Saket/New Delhi/07.08.2026