IN THE COURT OF SH. AKASH JAIN
ADDITIONAL SESSIONS JUDGE-04
EAST DISTRICT, KARKARDOOMA COURTS: DELHI

CNR No. DLET01-001516-2025
Cr. Rev. No:- 88/2025

Mr. Ramesh Navaladi
S/o Sh. S. N. Ranganathan
R/o 313, DDA SFS Flat
Hauz Khas, New Delhi-110016 …… **Petitioner**

Versus

M/s D. C. Agencies Pvt. Ltd.
Having its registered office at:-
B-6, Ground Floor, Mayapuri Industrial Area
Phase-I, New Delhi-110064 …... **Respondent**

Date of Institution	:	**27.03.2025**
Date of reserving Order	:	**14.03.2026**
Date of pronouncement	:	**15.05.2026**

<u>ORDER</u>

1. By way of the present revision petition under Section 397 r/w Section 399 of The Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C'), the petitioner has assailed the impugned order dated 13.03.2024 passed by the court of Ld. MM (MCD), East District, Karkardooma Courts, Delhi in complaint CC NI Act No. 430/2024 titled as *M/s D. C. Agencies Pvt. Ltd. v. M/s Fenway Pharmaceuticals Pvt. Ltd. & Ors.,* vide which petitioner/ accused no. 3 was summoned for the offence under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act').

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2. For the sake of convenience, I shall be referring to the parties as per their nomenclature before the Ld. Trial Court and therefore, the petitioner shall be referred to as 'accused no. 3' and respondent shall be referred to as 'complainant'.

3. Briefly stated, a complaint case under Section 138 of NI Act was filed by the complainant before the Court of Ld. MM (MCD), East District, Karkardooma Courts, Delhi. It was averred that complainant company is India's top distributor in pharma distribution and supply chain services and accused persons placed number of orders to complainant company for supply of various products. It was averred that complainant company supplied several products to accused persons in terms of separate invoices. It was averred that the original invoices raised by the complainant company are in the power and possession of accused persons and the description of goods supplied were mentioned in the respective invoices.

4. It was averred that accused no. 1 is a company having CIN No. U24239DL2021PTC382105 and accused no. 2 and 3 are its directors and responsible for day-to-day affairs. It was further averred that based on the representations and assurances provided by accused persons, complainant company supplied goods to them vide invoices raised between 25.02.2023 to 31.05.2023 which had been duly accepted by accused persons. However, accused persons had not made payment qua said goods despite various requests made by the complainant company. It was averred that as per the books of complainant company, maintained

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in regular course of business, a sum of Rs. 2,24,97,404/- is due from the accused persons and in discharge of their legal liability, they had issued post dated cheque of sum of Rs. 80,00,000/- bearing no. 000816 dated 31.12.2023 drawn on ICICI Bank, New Okhla Phase-I branch to the complainant. However, on presentation of said cheque, same got dishonored on account of "funds insufficient". Thereafter, legal notice dated 19.01.2024 was sent by the complainant company to accused persons to make the payments, but in vain. The complainant was thus, constrained to file complaint case bearing CC NI Act no. 430/2024 before the Court of Ld. MM (MCD), East District, Karkardooma Courts, Delhi on 13.03.2024 and summons were ordered to be issued against all the three accused persons including petitioner herein on the same date.

5. Being aggrieved of the abovesaid summoning order, the accused no. 3 has assailed the same on inter-alia following grounds:-

> *(i) That the impugned order passed by Ld. Trial Court is arbitrary and based on conjectures and surmises;*
>
> *(ii) That the impugned judgment is passed in mechanical manner and without proper application of judicial mind;*
>
> *(iii) Ld. Trial Court failed to appreciate that cheque in question was not issued by accused no. 3/ petitioner and there are no averments qua the petitioner in the complaint and he has been arrayed as an accused merely on the ground of being a Director of accused no. 1 company;*
>
> *(iv) That Ld. Trial Court failed to appreciate that*

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essential ingredients of offence under Section 138 of NI Act are not fulfilled against the petitioner.

6. Reply was filed on behalf of the complainant to the present revision petition wherein it was stated that the present revision petition is devoid of any merit, abuse of process of law and liable to be dismissed. It was further averred that the impugned order dated 13.03.2024 is just, reasonable and does not warrant any interference.

7. I have heard the arguments on behalf of both the parties and carefully perused the record.

8. Before dwelling upon the rival submissions, it is imperative to discuss Section 141 of NI Act, which reads as under:-

> **" Section 141:- Offences by companies.**
>
> *(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*
> *Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence...."*

9. In the case of ***SMS Pharmaceuticals Ltd. v. Neeta Bhalla and Anr.,*** **(2005) 8 SCC 89,** Hon'ble Supreme Court of India discussed the law pertaining to Section 141 of NI Act and was pleased to hold 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 question posed in sub-para (b) has to be in 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 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 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 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 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…."

10. In ***N. K. Wahi v. Shekhar Singh & Ors.,* 2007 (2) Crimes 352 (SC),** Hon'ble Supreme Court of India had observed that:-

"…. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are incharge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a

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conclusion in facts of each case. But still in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable….”

11. Further, in the case of ***National Small Industries Corp. Ltd. v. Harmeet Singh Paintal & Anr.,*** **Criminal Appeal No. 320-336 of 2010,** Hon'ble Supreme Court of India had clarified legal position with regard to Section 141 of the NI Act and held as following:-

> *“…. (i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.*
> *(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.*
> *(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.*
> *(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.*
> *(v) If accused is Managing Director or Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.*
> *(vi) If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.*
> *(vii) 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*

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averred as a fact as there is no deemed liability of a Director in such cases….”

12. While, relying upon the judgments of Hon'ble Supreme Court of India in aforementioned cases, Hon’ble Delhi High Court in the case of ***Har Sarup Bhasin v. M/s Origo Commodities India Pvt. Ltd.,*** **2020 (1) JCC 280,** had held that in the absence of specific averments in relation to the specific role attributed against the petitioner, merely making a bald cursory statement that the petitioner was in-charge and responsible for the day to day affairs of the company, does not suffice to make the petitioner vicariously liable for dishonoring the cheques not signed by him.

13. Thus, in a nutshell it could be concluded that merely being a director of a company is not sufficient to make the person liable under Section 141 of the NI Act. A director in a company cannot be deemed to be in charge of and responsible to the company for 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.

14. In the present case, accused no. 3/ petitioner herein is admittedly not a Managing Director or Joint Managing Director in the accused no. 1 company. He is also reportedly not the authorized signatory of the company and has admittedly not signed the cheque in question in the present case. It is the case of accused

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no. 3/ petitioner that he is father of accused no. 2 Akshay Navaladi who agreed to take directorship in accused no.1 company for meeting statutory requirement of incorporation of private limited company which requires minimum two persons to hold directorship position in the company. It is further the case of accused no. 3/ petitioner that while accused no. 2 holds 22% (approx.) equity share capital in accused no. 1 company, accused no. 3 owns only 10 shares out of 2,34,529 shares i.e. 0.004% of the equity in accused no. 1 company. It is further the case of accused no. 3/ petitioner that he is merely a sleeping Director who had neither participated in any of the company's affairs nor had any knowledge of operations of the company, let alone business dealings with complainant company.

15. Perusal of the record further reflects that no specific averment has been made by the complainant company in the entire complaint reflecting any direct role of accused no. 3/ petitioner during business transactions between complainant company and accused no. 1 company. In terms of complaint itself, the email trail between both the companies also reflect that the correspondences on behalf of accused no. 1 company was being carried out by accused no. 2.

16. Keeping in view the totality of circumstances and ratio of judgments discussed above, accused no. 3/ petitioner thus, could not be held liable for offence under Section 141 of the Act for merely being a Director of accused no. 1 company when nothing substantial is averred against him or brought on record to

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show that he was in-charge and responsible for day to day affairs of accused no. 1 company at the time of business transactions or issuance of cheque in question. Thus, impugned order dated 13.03.2024 is set-aside to the extent of summoning of accused no. 3 for offence under Section 138 of the NI Act by Ld. Trial Court. Needless to say that any observation made in the present order shall have no effect upon the trial of remaining accused persons before Ld. Trial Court.

17. The petitioner/ accused no. 3 is directed to furnish bail bonds under Section 437-A Cr.P.C. before Ld. Trial Court on **20.05.2026.**

18. Copy of this order along with Trial Court record be sent back to the Ld. Trial Court for information and compliance.

19. File be consigned to Record room after due compliance.

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ANNOUNCED IN OPEN COURT ON 15.05.2026

(AKASH JAIN)
ASJ-04, EAST DISTRICT
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DELHI

This order contains 09 pages and each paper is signed by me.

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