

# Arun Jain vs State Of Nct Of Delhi & Ors on 4 April, 2025

**Author: Neena Bansal Krishna**

**Bench: Neena Bansal Krishna**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Pronounced on: 04th April, 20

+ CRL.M.C. 4170/2017, CRL.M.A.16741/2017

ICICI BANK LTD.  
ICICI Bank Tower  
Bandra Kurla Complex  
Mumbai-400051

.....Petitio

Through: Mr. Rajnish Gaur, Mr. Ateev Mathur a  
Mr. Amol Sharma, Advocates.

versus

1. STATE OF NCT OF DELHI  
Through Secretary
2. CTS MANAGEMENT SERVICES PVT. LTD.  
A-203, Mod, CGHS Ltd.  
Plot No.61,  
Vasundhara Enclave  
Delhi-110096
3. PEACOCK MEDIA LTD.  
G-4, Hatkesh Udyog Nagar  
Mira Bhayender Road  
Mira Road East  
Thane-401107  
Maharashtra  
Through:  
Office of Official Liquidator  
High Court of Bombay  
5<sup>th</sup> Floor, Bank of India Building  
Mahatma Gandhi Road, Fort  
Mumbai-400023  
Ph. No. 022-22670024

.....Respond

Through: Mr. Satinder Singh Bawa, Ld. App for  
State.

Signature Not Verified

Mr. I.S. Kapoor, Mr. Manish Gandhi,

Digitally Signed

CRL.M.C. 4170/2017& connected matter

By:VIKAS ARORA

Signing Date:07.04.2025

18:22:24

Ayush Kumar, Mr.  
Advocates for R-2.

Akhil Ma

+ CRL.M.C. 4225/2017, CRL.M.A.16940/2017

ARUN JAIN  
Joint General Manager  
Cluster Banking Group  
ICICI Bank Ltd.  
ICICI Bank Tower  
Bandra Kurla Complex  
Mumbai-400051

.....Petitio

Through: Mr. Rajnish Gaur, Mr. Ateev Mathur a  
Mr. Amol Sharma, Advocates.

versus

1. STATE OF NCT OF DELHI  
Through Secretary
2. CTS MANAGEMENT SERVICES PVT. LTD.  
A-203, Mod, CGHS Ltd.  
Plot No.61,  
Vasundhara Enclave  
Delhi-110096
3. PEACOCK MEDIA LTD.  
G-4, Hatkesh Udyog Nagar  
Mira Bhayender Road  
Mira Road East  
Thane-401107  
Maharashtra  
Through:  
Office of Official Liquidator  
High Court of Bombay  
5<sup>th</sup> Floor, Bank of India Building  
Mahatma Gandhi Road, Fort  
Mumbai-400023  
Ph. No. 022-22670024

.....Responden

Through: Mr. Satinder Singh Bawa, Ld. App for

Signature Not Verified  
Digitally Signed

CRL.M.C. 4170/2017& connected matter

By:VIKAS ARORA  
Signing Date:07.04.2025  
18:22:24

Pag

State.

Mr. I.S. Kapoor, Mr. Manish Gandhi,  
Ayush Kumar, Mr. Akhil Mann,  
Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M

E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid two Petitions have been filed on behalf of ICICI Bank and its Joint General Manager Sh. Arun Jain, under Section 482 Cr.P.C. to challenge the Order dated 07.07.2017 of learned ASJ who has set aside the Order of the learned ACMM dated 04.04.2016 dismissing the Complaint filed by the Respondent No.2/CTS Management Services Pvt. Ltd. (hereinafter referred to as "Complainant") under Section 200 Cr.P.C for taking cognizance of the offences under Section 420/120/34 IPC against the ICICI Bank and Respondent No.3/Peacock Media Limited, and had remanded the case for reconsideration.
2. Briefly stated, the Complainant (Respondent No.2) had filed a Complaint under Section 200 Cr.P.C for the offence under Section 420/120/34 IPC against the ICICI Bank (Accused No.1) and Peacock Media Limited (Accused No.2). The Complainant stated that it was a Company engaged in providing coach- cleaning services to Indian Railways since its inception and was acting as service franchisee to M/s Eureka Forbes Limited on exclusive basis for Railways from June, 2006 to December, 2008.
3. Accused No.2 was engaged in Advertising and Media services. During the course of business, Complainant came in contact with Accused No.2 and they both decided to utilize the specialization of each other to generate business for mutual benefit. To give shape to the joint business, the Complainant decided CRL.M.C. 4170/2017 & connected matter Signing Date: 07.04.2025 18:22:24 to provide his specialization of mechanized coach cleaning, and platform cleaning while Accused No.2 decided to contribute by taking media and advertising part in Railways. Initially, in January, 2008 Accused No.2 secured train sets comprising of 5 trains for advertising and publicity which was sponsored by brand „Airtel . This trial joint venture operation was a grand success and resulted in good profit to Accused No.2. The Contract ended in May, 2009.
4. The Complainant further asserted that showing the rosy picture of huge business generated during the course of „Airtel project, Accused No.2 made the Complainant sever its ties with M/s Eureka Forbes Limited in 2008 and to work exclusively with Accused No.2 for advertising on trains.
5. Sometime in November, 2009 because of financial crisis and for expansion of business by taking 40 trains from Railways for advertising/publicity purposes, Accused No.2 approached Accused No.1/ ICICI Bank for loan/credit facilities. The loan was awarded to Accused No.2 by Accused No.1 vide Loan Facility Agreement dated 26.03.2010.
6. The Complainant was assigned Sub-contract for coach up-gradation and cleaning and maintenance of these trains during the entire contract period for the project cost @ 50.00 lakhs per year for 3 years for 40 trains. As per Schedule 3 of the Loan Facility Agreement, the entire term loan was to be repaid by Accused No.2 in 20 equal quarterly instalments with special conditions contained in Schedule IV like 33.33% project cost was to be brought in pro rata at each stage of disbursement. In other words, ICICI Bank had specified that the quarterly instalment shall not be disbursed unless 33.33% of Project cost was introduced by Accused No.2. The Complainant alleged that Accused No.1 ICICI Bank in utter disregard to all the reasonable principles of disbursement of loan, gave the loan amount to Accused No.2.

CRL.M.C. 4170/2017& connected matter Signing Date:07.04.2025 18:22:24

7. The credit facilities to the tune of Rs.480 Millions were sanctioned in terms of Credit Arrangement Letter dated 30th November, 2009. As per this Sanction Letter, the Complainant was required to provide Performance Guarantee for the Complainant's work i.e. Coach Cleaning and Housekeeping to Accused No.2. As per Schedule-I and Schedule-II of Loan Facility Agreement dated 26.03.2010 between Accused No.2 and Accused No.1.

8. The Complainant further asserted that in furtherance of conspiracy between Accused No.1 and 2, they approached the Complainant through e-mail, to sign the loan documents. Despite his request to provide him the details of loan documents, he was assured that these are standard loan documents of Bank pertaining to Performance/Personal Guarantee. The Complainant was compelled to sign the documents on 26.03.2010 at the office of Accused No.1, Jhandewalan, New Delhi in the presence of various Officers, which he did since Accused No.2 had already secured Trains for publicity, advertising from various Railways and the Complainant had already started his work on this Project.

9. The Complainant has asserted that he was made to sign a huge bundle of documents purported to be documents of Personal/Performance Guarantee by the Complainant in favour of Accused No.1, on behalf of Accused No.2. The Complainant in good faith signed the requisite 7-8 sets of documents each running into 200-300 pages which took more than three hours. He was assured by Accused No.1 and 2 for supply of Xerox copies of these documents, once completed in Mumbai.

10. The Complainant asserted that despite repeated requests to Accused No.2 both verbally and e-mails, for supply of the sets of papers related to Performance Guarantee, his communications were just ignored for about four months till 29.07.2010 when copy of few documents was sent by Accused No.2 to the Complainant.

CRL.M.C. 4170/2017& connected matter Signing Date:07.04.2025 18:22:24

11. On perusal of these documents, the Complainant got a shock as they pertained to Corporate Guarantee and not to Performance Guarantee. Noting such mischief, Complainant informed Accused No.2 that some fraud had been played upon him by Accused No.1 and 2, but this communication was also ignored and overlooked.

12. The Complainant was further surprised to see that Accused No.1 had modified the original Credit Arrangement Letter dated 30.11.2009 on 05.03.2010 revising its terms and conditions completely without any intimation, information or consent and knowledge of the Complainant.

13. The Accused No.2 assured the Complainant that the Corporate Guarantee has been taken for the movable assets created only for Trains acquired by Accused No.2 and that there was nothing to worry by the Complainant.

14. During September, 2010 Complainant approached Oriental Bank of Commerce, Noida Branch for funds for its other Projects. Though he got the sanctions, but was informed by the Bank that funds cannot be released unless Charge created by accused No.1 in the RoC (Registrar of Companies) account of Complainant, is removed. At this juncture, the Complainant came to know that some Charge was created by Accused No.1 and asked both Accused No.1 and 2 to remove the charge from RoC as no such charge is created for performance Guarantee. Accused No.1 and 2 dilly dallied in removing the charge. The Accused No.1 asked the Complainant to approach Accused No.2 as there was no privity of Contract between Accused No.1 and the Complainant. However, upon repeated insistence, Accused No.1 issued a letter dated 29.03.2011 stating that the charge so created pertains to assets created in Trains acquired by Accused No.2.

15. On 30.03.2011, Shri Sandeep Chawla Director of Accused No.2 called upon the Director of the Complainant and informed that Accused No.2 was not CRL.M.C. 4170/2017& connected matter Signing Date:07.04.2025 18:22:24 able to service the Loan taken by it from ICICI Bank and the Loan account is likely to be declared as Non performing Asset.

16. The Complainant has asserted that a fraud has been played upon him by Accused No.1 and 2 who hatched the conspiracy and roped the Complainant in it under the garb of being Associate of Accused No.2 and devised the mechanism to safeguard the interest of Accused No.1 and 2 by giving Temporary Over Draft (TOD) facility to Complainant against the securities of Accused No.2.

17. Accused No.1 sent a pre-printed request Form for TOD from its Mumbai Office and requested the Complainant telephonically to sign the form at marked spaces. Since the Complainant was not comfortable with this kind of loan transaction, he raised concerns with Accused No.2 who assured that it was an internal arrangement between Accused No.1 and 2 and he had nothing to worry. The Complainant was assured that Accused No.2 shall be wholly responsible for repayment of this loan and therefore, would sent a cheque with a formal request Letter for the same amount of Rs.1.45 crores. On the assurances of Accused No.2, Complainant sent the Request Form. On 31.03.2011, Complainant transferred Rs.1.45 crores through RTGS in the account of Accused No.2, for which a cheque dated 31.03.2011 drawn on ICICI Bank, Mumbai for the sum of Rs.1.45 crores and a Letter of Confirmation of this transaction assuring refund within 30 days was given to him by Accused No.2. However, Accused No.2 failed to make payment of the said amount compelling the Complainant to file a Complaint under Section 138 of Negotiable Instruments Act against Accused No.2.

18. The Complainant further asserted that on the instructions of Accused No.2, Accused No.1 directly deposited a sum of Rs.10.80 cores in the Bank account of the Complainant as an advance for the Services to be rendered by CRL.M.C. 4170/2017& connected matter Signing Date:07.04.2025 18:22:24 Complainant. On receipt of the said amount, Shri Sandeep Chawla Director of Accused No.2 and his associates Mohil Gupta, Manoj Kishan and Anil Dhupar instructed the Complainant through e-mail to make payment to various suppliers/vendors for supply of material equipments, Tools and other items to be used for mechanized cleaning services and up-gradation for smooth and uninterrupted supplyof materials. For this, the Complainant had a separate arrangement/agreement with Accused No.2. The Complainant believing Accused No.2, advanced the payments to the vendors shortlisted by Accused No.2 so that there was no shortfall of supply of material. However,

during the Operations, the supply of material was not sufficient for which the Complainant raised a hue and cry with Accused No.2 as the work was suffering on day to day basis. Sandeep Chawla, Director of Accused No.2, however re-assured the Complainant that the supplies are in the pipeline and there was no need to panic. However, the supplies made were so inadequate that Railways terminated the Contract of Accused No.2. It is asserted that Accused No.2 had unjustifiably enriched himself and inflicted loss and harm to the Complainant.

19. The Complainant has further asserted that Accused No.1/ICICI Bank also cheated the Complainant by mis-informing about the regular repayment of the amount of Rs.1.45 crores by Accused No.2. Bank also informed that it had given business to Accused No.2 to make repayment in next five years till 2017. Arun Jain of Accused No.1 Bank requested the Complainant not to raise unnecessary alarm on the default or the conduct of Accused No.2 and to keep silent so that Accused No. 1 and 2 can resolve their Loan issues.

20. The Accused No.1 despite having the information about financial irregularity, restructured the Loan account of Accused No.2 and also gave more flexible and enhanced finances/facilities for double the amount, on 27.03.2012. The Complainant was kept in complete darkness and was never informed about CRL.M.C. 4170/2017 & connected matter Signing Date: 07.04.2025 18:22:24 the status of Loan by either of the two accused prior to July, 2012 despite repeated requests and communications.

21. The Complainant had further asserted that the loan facilities extended to Accused No.2, were termed bad by Accused No.1 barely within four weeks i.e. 31.07.2012 when the Complainant repeatedly started meeting the higher officials of Accused No.1 about this fraud. He was threatened with dire consequences including recovery proceedings, by the officials of ICICI Bank.

22. The Complainant undeterred, continued to write letters on fraud and revocation of guarantees on which Accused No.1 warned Complainant by showing a Letter of Revocation of facilities provided to Accused No.2 and has been asking for the amounts for which the Complainant had not given any guarantee.

23. It was claimed that the Accused No.1 is beneficiary in terms of interest component, security collateral or otherwise and it has played fraud by suppression of material facts. The benefits have been extended by Accused No.1 to Accused No.2 by enhancing the credit limits, even though Accused No.2 had been continuously defaulting in repayments. Furthermore, not only Accused No. 2 enriched itself by routing Rs.1.45 crores through Complainant, but also cheated the Complainant by extracting Rs.5 crores through its vendors and by falsely undertaking and assuring the Complainant that supply of material is the responsibility of Accused No.2. The Complainant has claimed that Accused No.2 has enriched itself by not supplying true, correct and adequate material to the Complainant. He has been put to loss and injury by inducing and taking Corporate Guarantee fraudulently; by creating a charge on its assets and RoC; by routing and extracting 1.45 crores from Complainant's account; by embezzling the money obtained by fraud by Accused No.2 by supply of materials to the suppliers which was never made and by initiating recovery CRL.M.C. 4170/2017 & connected matter Signing Date: 07.04.2025 18:22:24 proceedings against the Complainant for the

funds that were never utilized by the Complainant. The Complainant, therefore, sought that Accused No.1 and 2 be summoned to face the trial for offences under Section 420 read with 120B and 34 IPC.

24. The learned ACMM in its detailed Order dated 04.02.2016 referred to each of the averments made in the Complaint in detail and concluded that essentially it is a civil dispute between the parties and prima facie no offence was shown to have been committed by the alleged accused persons. Therefore, the Complaint under Section 200 Cr.P.C., was dismissed.

25. Aggrieved by the said dismissal of the Complaint, a Revision Petition was preferred before the learned ASJ, who observed that the facts as detailed in the Complaint had not been appreciated completely and in the right perspective and thereby set aside the Order of the learned ACMM with the directions that one opportunity be given to the Complainant to examine the officials of Sales Tax Department or other witnesses, to prove the non-existence of the Vendors and the siphoning of the funds. The matter was thus, remanded back for additional evidence and for re-appreciation by the learned ACMM.

26. Aggrieved by the Order of Ld. ASJ, the Petitioner ICICI Bank through Shashank Raj and Anil Jain, Joint General Manager of ICICI Bank, have filed the present Petitions under Section 482 Cr.P.C. to quash the Order of the learned ASJ.

27. Ld. Counsel for the Petitioners has contended that the facts of the case had not been appreciated by the learned ASJ correctly who erroneously in the absence of any provision under Cr.P.C., allowed the impleadment of Arun Jain, Pritam Samberkar and Mr. Sandeep Chawla Director of Peacock Media Limited as parties to the Complaint under Section 200 Cr.P.C.

CRL.M.C. 4170/2017& connected matter Signing Date:07.04.2025 18:22:24

28. Furthermore, it has been overlooked that till an accused is summoned by the Magistrate in exercise of its powers under Section 204 Cr.P.C, the accused had no right to participate in the proceedings. The learned ASJ had also committed an error in directing the Complainant to adduce additional evidence, as this amounts to filling up of the lacunae in the case of the Complainant, which could not have been directed. It is evident from the perusal of the Complaint that it is vague and lacks material particulars. Moreover, the dispute is inter-se the Complainant and Accused No.3 and does not pertain to Accused No.1 ICICI Bank, the Petitioner. The allegations that the Guarantee was signed by the Complainant on the representation that Performance Guarantee filed is absolutely false and unbelievable as there is neither any evidence nor is there any allegation that the Officers of the ICICI Bank had given any such statement about Performance Guarantee. Learned ASJ has also not considered the Board Resolution dated 15.03.2010 of the Complainant, which stipulates that all documents pertaining to guarantees and facilities availed by the Complainant Company are circulated and placed before the Board for approval. The Complainant was, therefore, well aware of all the documents executed and the contents thereof.

29. The learned ASJ has also failed to appreciate that the dispute between the parties is essentially civil in nature, as was rightly observed by the learned ACMM. The impugned Order is, therefore,

liable to be set aside.

30. Learned counsel for the Petitioners has placed reliance on Amit Kapoor vs. Ramesh Chander &Anr., 2012 9 SCC 460 and Munna Devi vs. State of Rajasthan &Anr., 2001 9 SCC 631 to define the scope of interference in the exercise of jurisdiction under Section 482 CrPC.

31. Reliance has also been placed on A.M. Mohan vs. State &Anr., 2024 SCC OnLine SC 339 and Naresh Kumar &Anr. Vs. State of Karnataka, 2024 SCC CRL.M.C. 4170/2017 & connected matter Signing Date: 07.04.2025 18:22:24 OnLine SC 268, wherein it was observed that the civil disputes must not be given the colour of criminal cases.

32. Ld. Counsel for the Respondent has contended that the Order of the Ld. ASJ has duly appreciated the facts of the case and has rightly remanded the matter back to the Ld. ACMM for recording of evidence from the Sales Tax Department to corroborate the case of the Complainant.

33. It is further contended that the Accused persons have misrepresented to the Complainant at various instances during their business dealings. The Accused No. 1 in collusion with the petitioners has caused wrongful loss to the Complainant by giving a list of some non-existent vendors who were supposed to supply material to the Complainant for meeting its obligations. Non-supply of the requisite material led to cancellation of their contract and thus, resultant loss.

34. It is further contended that the dispute inter-se the parties is not civil rather a criminal offence. It is submitted that the Accused Persons misrepresented to the Complainant that the loan documents being signed by him on behalf of the Complainant were standard loan documents pertaining to Performance Guarantee.

Submissions heard and record perused.

35. It is the case of the Complainant that he and Accused No.2 entered into a Joint Business Venture in the year 2008 which was a great success and he was encouraged to further enter into business ventures with Accused No.2.

36. It is his own case that Accused No.2 expanded his business by taking 40 Trains from Railways for advertising/publicity purpose. For this business expansion and on account of his financial constraints, he entered into a Loan Facility Agreement dated 26.03.2010 with ICICI Bank which sanctioned Credit CRL.M.C. 4170/2017 & connected matter Signing Date: 07.04.2025 18:22:24 Facility to the tune of Rs.480 millions in terms of the credit arrangement Letter dated 30.11.2009.

37. The Accused No.2 then entered into a Sub-contract with the Complainant for coach up-gradation and cleaning and maintenance of these trains during the entire contractual terms with project cost of Rs.50 lakhs per year for three years for 40 trains. The Complainant itself looking at the prospective profits from the business, to enter into the Sub-contract with Accused No.2, who in turn had taken a Loan Credit Facility for his business.



38. The Complainant has stated that the entire loan was to be repaid to ICICI bank by Accused No.2 in 20 equal quarterly instalments with special conditions contained in Schedule-IV of the Loan Facility Agreement like 33.33% of disbursement.

39. The Apex Court recently in Delhi Race Club (1940) Ltd. vs. State of U.P, 2024 SCC OnLine SC 2248, again culled out the essential ingredients of the offence of cheating under Section 420 IPC, which are as follows:

"1) deception of any person, either by making a false or misleading representation or by other action or by omission;

2) fraudulently or dishonestly inducing any person to deliver any property, or

3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."

40. The facts as detailed in the Complaint may thus, be considered to ascertain if the aforesaid parameters are satisfied to make out a case of cheating.

41. The first act of alleged cheating claimed by the Complainant, is that he was approached by Accused No.2 Sandeep Chawla to sign the loan documents i.e. Performance/personal Guarantee as part of the Loan documents. He had requested the Accused No.2 to provide him the details/draft of loan documents for which though assurances were given, but the draft was never supplied to CRL.M.C. 4170/2017& connected matter Signing Date:07.04.2025 18:22:24 him. He was compelled to sign the documents on 26.03.2010 at the office of ICICI Bank at Jhandewalan. He signed in good faith 7-8 sets of documents which took more than three hours. Both ICICI Bank and Accused No.2 assured him for supply him Xerox copies of these documents once the formalities were completed in Mumbai Office. It is alleged by the Complainant that despite his repeated requests both verbal and through e-mail, he was only provided with few documents from which he came to know that he had signed as Corporate Guarantee and not as Performance Guarantee.

42. From the averments made in the Complaint, it is evident that the loan had been availed by Accused No.2 for which he needed a Guarantor to secure the payments for which he requested the Complainant to which he agreed and signed the requisite documents.

43. The Corporate Guarantee by its very definition is a financial guarantee provided by one Company i.e. the Guarantor on behalf of another entity i.e. the borrower to assure repayment of a loan on fulfilment of an obligation.

44. The Performance Guarantee on the other hand, is a commitment provided by a Bank or Financial Institution on behalf of a Contractor or Supplier to ensure that specific contractual obligation, is fulfilled. If the Contractor fails to meet the performance criteria, the beneficiary can claim compensation from the Guarantor.

45. From the very definition of the two concepts, it is evident that the Complainant had stood as a Corporate Guarantor for and on behalf of Accused No.2. His assertions that he was not aware of the nature of documents are completely fallacious. He having signed the documents to secure the loan given by ICICI Bank in favour of Accused No.2; cannot now claim that he was induced or fraudulently compelled to sign the documents. It is a pure civil transaction, to which no culpability can be attached.

CRL.M.C. 4170/2017& connected matter Signing Date:07.04.2025 18:22:24

46. The second aspect which has been agitated by the Complainant, is that the original Credit Letter dated 30.11.2009 was modified on 05.03.2010 by ICICI Bank without any information or intimation to the Complainant. In so far as the limits of the liability under the Corporate Guarantee is concerned, it is strictly confined to the undertakings/covenants contained therein and the Complainant cannot be held bound for the transactions or the modifications which are done after he has stood as a Corporate Guarantor. In case there is any such additional liability which is sought to be attached to him by ICICI Bank, it is essentially a civil matter for which the Complainant is at liberty to pursue the legal remedies. Again, in this regard there cannot be any dishonest contention imputed to the two accused.

47. The third set of allegations as claimed by the Complainant, are that Accused No.2 had assured him that the Corporate Guarantee has been taken for the movable assets created only for Trains and that he had nothing to worry about. Subsequently, the Complainant in September, 2010 approached Oriental Bank of Commerce, Noida for funds for its own Projects. At that time, he got to know that the funds cannot be released by the Bank, unless the charge created by ICICI Bank in ROC account of the Complainant is removed.

48. The Complainant himself had asserted that the Corporate Guarantee was provided by him in respect of his movable assets created for the Trains acquired by Accused No.2 The ROC record which are in public domain also reflected a charge on the moveable assets of the Complainant. He having entered into a business transaction of standing as a Corporate Guarantor while entering into a Sub-contract with Accused No.2, cannot now turn around to say that there was any fraudulent representations made by either ICICI Bank or Accused No.2 or that he had been induced into entering into these business transactions. There is CRL.M.C. 4170/2017& connected matter Signing Date:07.04.2025 18:22:24 not an iota of any kind of deceit or inducement made out from the averments made by the Complainant.

49. The fourth aspect upon which cheating has been claimed, is that the Complainant was given pre-printed request form for TOD which he signed on the assurance of Accused No.2 that there was nothing to worry and that it/Accused No. 2 shall be responsible for repayment of the loan. On the assurance of Accused No.2, the Complainant send the Request Form and transferred Rs.1.45 crores in the account of Accused No.2 for which a cheque dated 31.03.2011 in the sum of Rs.1.45 crores and a Letter of Confirmation was given by Accused No.2 to the Complainant with the assurance of refund within 30 days.

50. This again entirely is a business transaction. If the cheque got dishonoured on presentation under 138 NI Act, the Complainant has already resorted to a Complaint under Section 138 NI Act. There is nothing to show that the Accused No.2 had any dishonest intention when he requested the Complainant to sign the TOD Form or to credit Rs.1.5 crores to his account.

51. The fifth set of averments made by the Complainant, are that on the instructions of Accused No.2, ICICI Bank directly deposited a sum of Rs.10.8 crores in the bank account of the Complainant as an advance for the services to be rendered by the Complainant. Had there been any dishonest intention on the part of Accused No.2 to induce the Complainant to stand as a Corporate Guarantor or to enter into an Agreement without performing his part of the Agreement, he would not have directed ICICI Bank to directly credited Rs.10.80 crores in the account of the Complainant.

52. The Complainant had further contended that he advanced these payments to the vendors short listed by Accused No.2 so as to ensure that there is no short fall of supply of material. However, there was no sufficient supply CRL.M.C. 4170/2017& connected matter Signing Date:07.04.2025 18:22:24 of material on account of which the work suffered on day to day basis. The Vendors were those to whom the Complainant himself had given the Orders and in case the vendors failed to perform or supply the goods, the Accused No.2 cannot be held responsible. The shortfall in supply was not on account of Accused No.2, but because of non-performance by the vendors. And Accused No.2 cannot be held responsible for the same in any manner. Even if it is accepted that the list of vendors had been provided and recommended by the Accused No.2, then too deficiency in supply of material by Vendors, perse does not establish any cheating, especially by the Petitioners, who are in no way concerned with it.

53. In the end, it is contended that the ICICI Bank misinformed him/Complainant about the regular repayment of TOD amount of Rs.1.45 cores by Accused No.2. The Bank also informed that the Accused No.2 was required to make the repayment in next five years i.e. till 2017. Moreover, Arun Jain of ICICI Bank had requested the Complainant not to raise unnecessary alarm on the default or the conduct of Accused No.2.

54. However, merely because the Accused No.2 defaulted in repayment of loan to ICICI Bank, cannot be termed as an act by which the Complainant got cheated by Accused No.1/ ICICI. Merely because Loan facilities extended to Accused No.2 were termed Non-Performing Assets in itself is also cannot be termed as an act of fraud.

55. None of the averments made in the Complaint to allege that the Complainant has been cheated or defrauded, are not made out.

56. The learned ACMM had rightly concluded in his Order dated 04.04.2016, that the Complaint disclosed civil dispute and thereby rightly dismissed the Complaint under Section 200 Cr.P.C.

CRL.M.C. 4170/2017& connected matter Signing Date:07.04.2025 18:22:24

57. The ld. ASJ erroneously set aside the Order of Ld. ACMM by directing in recording of additional witnesses from Sales Tax Department.

58. The present Petitions are hereby allowed. The impugned Order dated 07.07.2017 of learned ASJ is hereby set aside and the Order of the learned ACMM is restored and the Complaint is dismissed.

59. The Petitions along with pending Application(s) stand disposed of.

(NEENA BANSAL KRISHNA) JUDGE APRIL 04, 2025 va CRL.M.C. 4170/2017& connected matter  
Signing Date:07.04.2025 18:22:24