2025:DHC:8901

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

% ***Pronounced on: 08th October, 2025***

\+ **CRL.M.C. 449/2018, CRL.M.A. 1719/2018**

1. **RITESH BAWRI**
   S/o Sh. Binod Kumar Bawri .....Petitioner No. 1

2. **BINOD KUMAR BAWRI**
   S/o Late Sh Nagammal Bawri .....Petitioner No. 2

3. **VINAY BAWRI**
   S/o Sh. Binod Kumar Bawri .....Petitioner No. 3

4. **SAROJ BAWRI**
   W/o Sh. Binod Kumar Bawri .....Petitioner No. 4

5. **MALA BAWRI**
   D/o Sh. Binod Kumar Bawri .....Petitioner No. 5

6. **DIMPLE BAWRI**
   W/o Sh. Ritesh Bawri .....Petitioner No. 6

   (All R/o: No. 12C, Sunny Park,
   Ballygunge, Kolkatta – 700019)

7. **NISHA BAWRI SINGH**
   D/o Sh. Binod Kumar Bawri
   R/o: 1st Floor, No. 35, Lance Down Terrace,
   Nearby National High School,
   Kolkatta – 700156 .....Petitioner No. 7

8. **M/s. SAROJ VANIJYA PVT. LTD**
   Represented by its GPA Holder .....Petitioner No. 8

9. **M/s. SAROJ SUNRISE PVT. LTD**
   Represented by its GPA Holder .....Petitioner No. 9
   Office at: No. 31, Padmavathy Complex,

H.No. 38, G.S. Road,
Thimapur, Nagaland - 797112

10. PRADIP BANSAL
S/o Sh. Niroti Lai Bansal
GPA Holder of Petitioner No. 1 to 9

(All Office at: Office at : Floor, No. 3A,
Ecospace, Plot No. 2F/11,
New Rajarhat,
Kolkatta - 700156) .....Petitioner No. 10

Through: Mr. Praveen Kumar, Mr. Vinayak Bhandari, Mr. Sarthak Gupta, Ms. Teesta Mishra, Mr. Suman Raj, Advocates.

versus

1. **STATE**
(Govt of NCT of Delhi) ....Respondent No. 1

2. **DALMIA CEMENT BHARAT (LTD)**
(Through Sh. Pankaj Kumar Singh, AR)
Office at: Hansalya Building,
11th & 12th Floor, 15
Barakhamba Road,
New Delhi 110001.

Registered office,
at Dalmiapuram, Tiruchi ....Respondent No. 2

Through: Mr. Shoaib Haider, APP for the State. Sr. Adv. Vaibhav Gaggar, Adv. Viren Bansal, Adv. Adhirath Singh, Adv. Aman Kothari & Adv. Ambikka Singh 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 present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) by the Petitioners seeking the quashing of *Complaint Case No. 58775 of 2016,* titled *'Dalmia Cement Bharat Delhi, v. Ritesh Bawri & others'*, filed by Respondent No. 2, and the consequent Order dated 08.05.2017 summoning the Petitioners for offences punishable under *Sections 499/500 read with Sections 34 and 109 of the Indian Penal Code, 1860* (IPC).

2. ***The brief facts*** as stated in the Complaint, are that the Petitioners were the Founders and Promoters of Calcom Cement India Ltd. (*hereinafter "CCIL"*), situated in Assam. In 2012, Respondent No. 2, Dalmia Cement Bharat (Ltd) (*hereinafter "the Complainant*"), invested in CCIL and subsequently, the management of CCIL, was transferred to them, while minority shareholding of about 20% shareholding remained with the CCIL.

3. Disputes arose between the parties concerning the management of CCIL, with the Petitioners alleging that the Complainant neglected its duties as per the definitive Agreements. This led the Petitioners to initiate multiple legal proceedings, including Company petitions and Arbitration matters, which are pending before various judicial forums.

4. The genesis of the present Criminal Complaint is a Letter dated 15.12.2015, addressed by the Petitioners to the Managing Director of *GuarantCo, Frontier Markets Fund Managers Limited, London*, a lender to CCIL. The Petitioners claim this Letter was written *bona fide* to apprise an interested party of the ongoing mismanagement and disputes within CCIL.

5. This letter dated 15.12.2015 was forwarded by *GuarantCo* to the Complainant on 11.01.2016, seeking clarification on the allegations contained therein. Based on this Letter, the Complainant filed the impugned Criminal Complaint for *defamation*, alleging that the statements made by the Petitioners in the Letter were false, malicious, and intended to harm its reputation.

6. Learned Magistrate took cognizance and issued summons to the Petitioners *vide* Order dated 08.05.2017.

7. The Petitioners have sought the quashing of the criminal proceedings on the ground that *no part of the alleged offence of defamation arose in Delhi* as the Letter was written in Kolkata and sent to a Company in London. The consequence, if any, did not ensue within the jurisdiction of the Delhi courts. Therefore, the Ld. Trial Court erroneously took cognizance of the Complaint, *ignoring the provisions of Section 178 Cr.P.C.in regard to territorial jurisdiction.*

8. The ***second ground*** is that allegations and counter-allegations are deeply rooted in ongoing Shareholder and Management disputes, which are already the subject matter before the Company Law Tribunal and Arbitral Tribunal. The Criminal Complaint *is a malicious attempt to give a criminal colour to a purely civil dispute.*

9. The ***third ground*** is that the statements made in the Letter *are true and made in good faith,* to protect the interests of minority shareholders and guarantors for Lenders. It is asserted that the Ld. Magistrate passed a mechanical and non-speaking Summoning Order without applying judicial mind to the facts and the applicability of the Exceptions to Section 499 IPC.

The statements are protected under the *Exceptions 8 and 9 to Section 499 of the IPC.*

10. The ***fourth ground*** is that the Ld. Magistrate has failed to conduct the mandatory inquiry under Section 202 Cr.P.C. before issuing summons, despite the fact that the *Petitioners are residents of Kolkata, which is outside the territorial jurisdiction of the Court in Delhi.*

11. The ***Fifth ground*** is that this Criminal Complaint along with another similar Complaint filed in Trichy, has been instituted with the ***ulterior motive of harassing the Petitioners*** and pressuring them to withdraw their legitimate claims in other legal forums. The Complaint fails to specify the individual role of Petitioners 1 to 9, *making the invocation of Section 34 IPC untenable*.

12. Respondent No. 2, Complainant filed ***a detailed Reply*** to vehemently oppose the Petition. It is submitted that the Ld. Trial Court has the requisite ***territorial jurisdiction*** as the defamatory Letter was received and read by the employees of the Complainant Company at its Corporate Office in New Delhi. The consequence of the offence, i.e., the harm to reputation, ensued within the jurisdiction of the P.S. Barakhamba Road, New Delhi.

13. The Letter is *ex-facie* defamatory; containing *false, sarcastic, and vexatious allegations* intended to tarnish the Complainant's hard-earned reputation. The Ld. Magistrate rightly found a prima facie case after considering the Complaint and the pre-summoning evidence of its witnesses, namely CW-1 *Sh. Pankaj Kumar Singh and CW-2 Sh. Bijay Kumar Aggarwal*.

14. The Complainant has specifically averred and provided evidence of harm to its reputation. Its employee, *Sh. Bijay Kumar Aggarwal*, upon

reading the Letter, expressed his intention to leave the Company, demonstrating that the Complainant's reputation was lowered in his eyes.

15. The pendency of Shareholder disputes does not grant the Petitioners' a license to defame the Complainant. The defamatory Letter constitutes a *fresh and distinct cause of action*, for which criminal proceedings are maintainable.

16. The Petitioners have deliberately misrepresented the Order of the erstwhile Company Law Board, which merely recorded the Petitioners' allegations and did not give any finding on merits. The Petitioners have also concealed that their allegations of mismanagement were later dismissed by the National Company Law Tribunal, Guwahati, vide Order dated 05.01.2017.

17. The Ld. Magistrate duly conducted an inquiry by recording the statements of the Complainant's witnesses before issuing summons, thereby complying with the legal requirements.

18. The subject of the defamatory Letter explicitly names the *"Dalmia Group,"* of which the Complainant Company is the flagship entity. The allegations directly impact the business and reputation of the Complainant, making it an *"aggrieved person"* under Section 199 Cr.P.C.

Submissions heard and record along with Written Submissions perused.

19. It is trite law that the power under Section 482 Cr.P.C. is an extraordinary one, to be exercised sparingly and with caution. Its purpose is to prevent the abuse of the process of any court or otherwise to secure the ends of justice. The ***core issue*** before this Court is *whether the continuation of criminal proceedings against the Petitioners for the offence of defamation*

constitutes an abuse of the process of the court, warranting intervention under the inherent powers of this Court under Section 482 Cr.P.C.

The Law on Defamation and its Exceptions:

20. Before considering the facts on merit, it would be relevant to first consider the contours of Defamation. Section 499 of the IPC defines the offence of defamation. It is extracted as under:

> *"**499. Defamation -***
> *Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person."*

21. Section 499 criminalizes the act of making or publishing any imputation concerning any person with the intention to harm or knowing or having reason to believe that such imputation will harm the reputation of such person. However, the provision is not absolute and is subject to ten exceptions. If a person's case falls within any of these exceptions, the imputation does not amount to defamation.

22. Before we embark any further, it would be significant to first understand the concept of "*defamation*".

23. The Apex Court in *Mohammed Abdulla Khan vs. Prakash K.*, in Criminal Appeal No. 2059/2017 decided on 04.12.2017, after an analysis of the provision, held that to constitute an offence of defamation it requires a person to make some imputation concerning any other person:

> *"(i) Such **imputation must be made** either*
> *(a) With **intention**, or*
> *(b) **Knowledge**, or*

*(c) Having a **reason to believe** that such an imputation **will harm the reputation** of the person against whom the imputation is made.*

*(ii) **Imputation** could be, by*

*(a) Words, **either spoken or written**, or*

(b) By making signs, or

(c) Visible representations

*(iii) Imputation could be either **made or published.***

The difference between making of an imputation and publishing the same is:

If 'X' tells 'Y' that 'Y' is a criminal – 'X' makes an imputation.

If 'X' tells 'Z' that 'Y' is a criminal – 'X' publishes the imputation."

24. Halsburys Laws of England, Fourth Edition, Vol.28, defines a "defamatory statement" as under:-

> *"A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of the society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling trade or business."*

25. Simply stated, Defamation has been defined as a *"false statement about a man to his discredit"* by Justice Cave in the case of *Scott vs. Sampson* QBD1882 and applied by Indian Courts in *Bata India Ltd. vs. A.M.. Turaz & Ors.* 2013 (53) PTC 586 and *Pandey Surindra Nath Sinha vs. Bageshwari Pd.* AIR 1961 Pat. 164 (1882) QBD 491.

26. The intrinsic facet of "*Defamation*" is harm to "*reputation*" or lowering the estimation of a person in public domain. This makes it pertinent to understand what constitutes "*reputation*". The right to reputation in its vital aspect is not concerned with fame or distinction. It has regard, not

to intellectual or other special acquirements, but to repute which is slowly built up by integrity, honourable conduct, and right living. One's good name is therefore, as truly the product of one's efforts as any physical possession; indeed, it alone gives the value as source of happiness, to material possessions. *It is, therefore, reputation alone that is vulnerable; character needs no adventitious support.*

27. The right to reputation has been recognized by the Apex Court as an integral part of the right to life under Article 21 of the Constitution, in the case of *Umesh Kumar vs. State of Andhra Pradesh and Anr.* (2013) 10 SCC 591. While upholding the constitutional validity of criminal defamation in the case of *Subramanian Swamy vs. Union of India*, (2016) 7 SCC 221, the Apex Court ***extensively discussed the significance of reputation as a cherished right***. It held that the right to freedom of speech and expression under Article 19(1)(a) is not absolute and cannot be exercised to crucify the reputation of another. A balance must be struck between the two fundamental rights.

28. *In essence, any statement which has a tendency* ***to injure the reputation of the person or lower him in the estimation of members of the society*** *results in loss of reputation and* ***is defamatory.***

29. The undisputed facts of this case are that the parties are not strangers; they are business partners engaged in bitter and protracted corporate disputes pending before multiple judicial forums, including arbitration and the NCLT. The Petitioners are minority shareholders and guarantors for loans taken by CCIL.

30. The letter dated 15.12.2015, was written by the Petitioners (the minority Shareholders), to the Managing Director of *GuarantCo*, in London

who later forwarded it through email dated 11.1.2016 to Pankaj Rao of Dalmia Group. For ease of reference, the letter is extracted as under:

> *"To*
> *Mr. Chris Vermont,*
> *Managing Director,*
> *Frontier Markets Fund Manager,*
> *5th Floor,*
> *100 Cannon Street,*
> *London, EC4N 6EU*
>
> *Sub: Calcom Cement India Limited (CCIL) - Continuation, of mis-management and siphoning of public money by Dalmia Group*
> *Dear Sir,*
> *1. This is in reference and furtherance to our earlier letter dated 19.6.2015 whereby we had expressed our intention to terminate the personal guarantees and pledge on our shares in CCIL in favour of consortium of banks including your bank.*
> *2. You are aware that we handed over management of CCIL in favour of Dalmia Cement (Bharat) Limited (Dalmia Group) w.e.f 8th October 2012, which was formally recorded in an agreement dated 30th Nov, 2012 with a hope and trust that Dalmia Group would manage CCIL in prudent manner and will serve the interest of all stakeholders.*
> *3. CCIL was sanctioned financial assistance and facilities under a Corporate Debt Restructuring Scheme (CDR) pursuant to a sanction letter dated 30th March, 2012 by a Consortium of Banks/Lenders headed by your bank as a Lead Banker.*
> *4. Pursuant to sanction of the CDR as aforesaid, despite the fact that the management of CCIL was being handed over to Dalmia Group, in the larger interest of CCIL, its shareholders and investors,* ***we furnished personal guarantees and pledged our shares in CCIL in favour of the Lenders for fulfilling the conditions of CDR. You are***

aware that such personal guarantees in CCIL are of an approximate amount of Rs.585 crores.

5. Unfortunately, despite all efforts as aforesaid upon handing over the management of CCIL to Dalmia Group with the intention of providing CCIL better, efficient and effective management we have been noticing that the affairs of CCIL are not being managed in prudent like manner and ***several financial irregularities including siphoning of funds through circular transactions,*** *which are detrimental to the interest of lenders, guarantors, minority shareholders and CCIL, have been noticed in the last 3 years which we have already brought to the notice of CCIL, Dalmia Group and the* ***Hon'ble Company Law Board.*** *It may be appropriate to bring to your notice, inter alia, following vital facts, the culmination of which will be to erode the net worth of CCIL and severely impair its ability to service any loans borrowed from banks/financial institutions including your bank.*

(i) ***Operations:*** *Dalmia Group has a stated policy of running its various companies as group entities and seeks to maximize profit only at the group level, at times to the detriment of its* ***non-wholly owned subsidiaries****. It demonstrates a brazen approach to minority shareholders, even if the shareholders themselves are Government of Assam who has invested public money in COIL. It therefore has been running the business of CCIL as one of their group entities and through their active mismanagement; CCIL has suffered huge losses in last 3 years to the tune of Rs. 550crores. This, despite the fact that their nearest competitors, viz, Star Cement operating in the same area making the same product and enjoying the same fiscal advantages made a huge profit of Rs. 430 Crores of EBIDTA in FY 2014-15 alone.*

(ii) ***Overheads:*** *The Dalmia Group loads large unsubstantiated and unjustified overheads on CCIL, despite CCIL making losses year after year and in a circular transaction lends money to CCIL.*

(iii) The Dalmia Group for its own private benefits provided huge amount of ICDs at an exorbitant rates of 18% per annum to fund the related party transaction and losses caused to CCIL due to its malafide under-performance.

(iv) As you would know, the CCIL commissioned clinker unit at Umrangshu on April 2015 and despite that CCIL is unable to operate at full capacity and continues to incur losses.

With it's own clinker, CCIL should be operating the plant at peak capacity and making an EBIDTA of at least Rs. 350 - 400 Crores per annum, if run prudently.

(v) Dalmia Group has been indulging in financial transactions in contravention of Articles of Association of the CCIL, which are illegal and been made to fill their group coffers.

(vi) Recently it came to our notice that CCIL wants/ has attempted to raise another Rs. 647 Crores to fund the purported pending capital expenditure at Lanka and Umrangshu whereas both the plants are already operational, to fund operational losses caused due to malafide intent of Dalmia Group to run CCIL and ***to fill their own coffers through circular illegal transactions.***

6. To protect the interest of the minority shareholders, creditors and CCIL, we along with few other shareholders have jointly filed ***a petition under Sections 397,398 402, 403 and 406 of the Companies Act, 1956 and Sections 210 and 213 of the Companies Act, 2013 before the Hon'ble Company Law Board [C. P. No. 143 of 2015. Binod Kumar Bawri & Ors vs Calcom Cement India Limited & Ors.Jon or about June, 2015****. The Hon'ble Company Law Board upon hearing the said petition was by its order dated 27th July, 2015, inter alia, pleased to observe that it was crystal clear that CCIL was earlier controlled and managed by Bawri Group and in January, 2012, the Bawri Group decided to introduce the Dalmia Group as strategic investor.. The allegations have been levelled as to violation of certain articles contained in the Articles of Association and mismanagement including diversion of funds. The*

Company Law Board further observed that there is a prima facie case of oppression and mismanagement on account of the alleged acts of oppression and mismanagement on the part of Dalmia Group. ***The Hon'ble Company Law Board upon observing, as aforesaid, inter alia, directed*** *as Follows i) Dalmia Group/CCIL to maintain status-quo as to the shareholding of CCIL;*

ii) Dalmia Group/CCIL to maintain status-quo as to composition of Board of Directors of CCIL;

iii) All parties i.e., Dalmia Group, CCIL and Bawri Group were directed not to create further third party interest over the fixed assets of CCIL without leave of the CLB.

A copy of the aforesaid order dated 27th July, 2015 is enclosed herewith and marked with the letter "A".

7. Dalmia Group and CCIL have however despite the aforesaid directions passed by the Hon'ble Company Law Board in its order dated 27 July, 2015 have in utter disregard of the same attempted to change the composition of Board of Directors, shareholding and/or provided security of fixed assets of CCIL by passing various ambiguous, vague and illegal resolutions in its Board Meetings held on 11th May, 2015, 14th September, 2015 and 9th December,2015. It is to be noted that the Bawri Group have specifically and categorically objected to all such resolutions providing reasons in such board meetings, However, CCIL and Dalmia Group have in a surreptitious manner not recorded the submissions made on behalf of Bawri Group in such board meetings and therefore not minuted true reflection of proceedings held in the Board Meetings.

For instance, CCIL at the behest of Dalmia Group has purportedly passed a resolution on 11th May, 2015 to borrow a sum of Rs. 200 crores whereas the said resolution was neither discussed and/or approved by the Board in the said Board Meeting as the matter was adjourned. The resolution regarding enhancement of borrowing limit provided by any bank or banks and providing security was never passed and was later back-dated and inserted in the

minutes of the board meeting held on 11th May, 2015, i.e., prior to the orders passed by the Hon'ble Company Law Board. The said act is illegal in nature and has been brought to the notice of the Hon'ble Company Law Board. This can be established by the date of filing of Form MOT-14 reporting passing of such resolution as aforesaid, with the Registrar of Companies which was filed as late and only on October, 2015 after convenient delay of almost 6 (six) months to accommodate such illegal and oppressive act of the Dalmia Group with regard to CCIL.

8. Due to the aforesaid further acts of oppression, mismanagement and violation of the orders passed by the Company Law Board, the Bawri Group were again compelled to file another application before the ***Hon'ble Company Law Board for redressal of issues/C.A. No. 1863 of 2015 in C. P. No. 143 of2015. Binod Kumar Bawri & Ors vs. Calcom Cement India Limited & Ors.].*** *The said application was heard by the Company Law Board on 8th December, 2015 and upon hearing the HonlDle Company Law Board by its order dated 9th December, 2015 was, inter alia, pleased to observe that it is true that the Dalmia Group and the CCIL are mandatorily required to comply with the directions given by Company Law Board vide its order dated 27th July, 2015 and also the applicable Articles of Association of CCIL. It was, inter alia, directed that the Bawri Group's Directors ought to attend the Board Meetings of CCIL and their suggestions/objection, if any, be discussed during the course of the said Board Meetings. There is also legal obligation over the Dalmia Group and CCIL to consider and pass resolutions with proper participation of all directors including Bawri Group's directors by complying with the applicable provisions of the Articles of Association of CCIL and the resolution having bearing to ad-interim relief allowed vide the order dated 27thJuly, 2015 of Company Law Board be passed subject to approval of the Hon'ble Company Law Board. Therefore, in fact no security in respect of the fixed assets of CCIL can be*

validly/legally provided by the Dalmia Group/CCIL without leave of the Hon'ble Company Law Board.

Even if any resolution of such effect may have been passed no leave of the Hon'ble Company Law Board has yet been obtained in respect of any such resolution concerning providing security of the fixed assets of CCIL. A copy of the order dated 9th December, 2015 passed by the Hon'ble Company Law Board is enclosed herewith and marked with the letter "B".

9. Furthermore, ***Annual Accounts of CCIL for the financial year 2014-15 are still not approved by board*** *because of large-scale illegality involved in the accounts.*

10. The Bawri Group has the rights enshrined in the Articles of Association of CCIL where they carry a veto right as embodied in the Articles of Association of CCIL regarding borrowings, accounts, share capital, charges, independent directors, etc. A complete list of such veto powers as referred in Article 70(b) of the Articles of Association of CCIL is enclosed herewith and marked with the letter "D".

We have exercised our veto against any fresh borrowings contemplated by CCIL/ Dalmia group from Axis Bank, Indian Overseas Bank, Yes Bank, Guarantee, etc. Therefore, any bank loan obtained by CCIL at the behest of the Dalmia Group to which the Bawri Group has exercised its veto powers would be in complete violation of the Articles of Association of CCIL along with the orders passed by CLB on 9 December, 2015. It is to be specifically noted that veto enshrined in the articles provides that the consent of the Bawri Group is required to be obtained for all such items provided in Enclosure "C" above and that no consent in any form or manner whatsoever has at any point of time been given by the Bawri Group for acts complained of and protested against at the board meetings of CCIL held on 11th May, 2015, 14th September, 2015 and 9th December, 2015. It may also be brought to your notice that most of you were part of CDR package sanctioned to CCIL on 30th March 2012 where lenders sacrificed on interest rate in the

larger interest of CCIL. The moneys realised by CCIL pursuant to such CDR package have been used to benefit various wholly owned Dalmia Group companies ***by removing and/or siphoning of such funds under garb of various related party transaction with other Dalmia Group companies and/or associates thereof and by extracting and/or extorting huge amounts on account of interest against ICDs given to CCIL at interest rates which are much higher than CDR interest rate.***

11. It is therefore absolutely clear that the only intention of the Dalmia Group is to use CCIL as a vehicle for optimising profits of its wholly owned Group Companies ***to the detriment of CCIL shareholders, creditors and other stakeholders who are not wholly owned Dalmia Group entities.*** *We therefore hope that you will appropriately safeguard the interest of the bank and public money being invested by you. As discussed hereinbefore we have taken all legal steps that are available to safeguard the interest of the stakeholders as aforesaid.*

As always, we are willing to assist you, should you need any more information from us to safeguard interest of CCIL and yours.

Thanking You,
On behalf of the Bawri Group
Pradip Bansal
pradip.bansal@bawri.co
033-40314205 Authorised Signatory"

31. This Letter as is evident from its context was a communication addressed by the Petitioner on behalf of Bawri Group, erstwhile promoters and now minority shareholder of CCIL, expressing its concerns about the financial mis management of CCIL which is controlled by the Respondent Company, being a majority shareholder. Petitioner being also a gruarantor for loans of *Rs.585 crores* taken by CCIL was concerned by the financial

affairs of CCIL and thus wrote this Letter to the Bank *GuarantCo*, a lender of CCIL.

32. The Petitioner had direct and legitimate interest in the Company's affairs and management. Viewed in this context, the act of the Petitioners in apprising a lender of what they perceived as "mismanagement" and "siphoning of funds" appears to be an act aimed at protecting their own interests as shareholders and guarantors, as well as the interests of the lender to whom the communication was addressed.

33. Pertinently, the contents of the Letter were not conjured out of thin air; but were the contents of the pleadings in the ***C. P. No. 143 of 2015, titled Binod Kumar Bawri & Ors vs Calcom Cement India Limited & Ors.J*** *under Sections 397,398 402, 403 and 406 of the Companies Act, 1956 and Sections 210 and 213 of the Companies Act, 2013 before the Company Law Board, filed on or about June, 2015.* The Petitioner, perceiving oppressive mismanagement in *Operations and Over*heads by the Dalmia group in CCIL and that the same could have an impact on its own finances, had taken legal recourse. It had also apprised the *GuarantCo, a Lender Bank based in* London, about its concerns and also the pending Litigation by way of this Letter. The contents of the Letter reflect that it was strictly in relation to the affairs of CCIL by Dalmia Group and did not say a word of general disrepute. It is evident that this Letter merely questioned the

34. The Petitioner had relied heavily on the dismissal of the Petition by NCLT on merits, on --, to buttress its contentions that it confirmed that the allegations made in the Petition and consequently the Letter, were incorrect. However, the NCLT may have found that the facts as stated in the Petition did not merit any Order in favour of Bawri group, but that in itself is not

sufficient to cause defamation. To establish defamation, there has to be loss of reputation and the contents of the letter, when read comprehensively, do not attack the reputation but were specific to the management of the affairs of CCIL. If it was to be held otherwise, the every Petition before NCLT which fails, would result in a defamatory case, which not only is not the intent of law but would be most detrimental too free environment for the trade and commerce to flourish.

35. The communication was directed to a party that had lawful authority and interest in the subject matter. Such communication made in the backdrop of existing legal disputes and for the protection of financial interests, was made to *GuarantCo* which *prima facie* falls within the protective ambit of *Exception 9 to Section 499, IPC*.

36. To allow criminal prosecution to proceed in such circumstances, where the dispute is so evidently civil and commercial in nature would be to permit the use of criminal law as a tool for harassment and to settle corporate scores. *This is precisely the kind of abuse of process that Section 482 Cr.P.C. is designed to prevent.*

Publication:

37. The *next relevant* aspect to constitute defamation is the ***'publication'*** of a defamatory imputation.

38. In *Charanjit Singh vs. Arun Puri* ILR (1982) Delhi 953, the essence of defamation has been stated ***to be publication*** of a false statement concerning another person *without justification*. There can be defence of privilege, fair comment, consent etc.

39. The meaning of '*publication'* in the context of Criminal defamation, was considered by the Apex Court in *Mohammed Abdulla Khan* (supra)

while relying on two judgments of *Khima Nand vs. Emperor*, (1937) 38 Cri LJ 806 (All); *Amar Singh vs. K.S. Badalia*, (1965) 2 Cri LJ 693 (Pat), wherein it was observed that *"the essence of publication in the context of Section 499, is the* ***communication of defamatory imputation to persons other than the persons against whom the imputation is made****."*

40. To further clarify the meaning and import of *'publication,'* reference may be made to the case of *Dow Jones & Company Inc vs. Gutnick* (2002) 20 CLR 575 at [26], wherein the High Court of Australia observed as under:

> *"Harm to reputation is done when a defamatory publication is comprehended by the reader, the listener, or the observer. Until then, no harm is done by it. This being so it would be wrong to treat publication as if it were a unilateral act on the part of the publisher alone. It is not.* ***It is a bilateral act - in which the publisher makes it available*** *and* ***a third party has it available for his or her comprehension.****"*

41. The *publication* thus, necessarily requires a second party to whom the imputation is made available for his own comprehension and consequently results in lowering of estimation of the Complainant. According to the Petitioner, the alleged defamatory Letter originally written by the Petitioners and addressed to *GuarantCo*, got *published* when the letter was received by the Complainant at their Delhi office in the inbox of one Pankaj Rao, their employee/ Authorised Representative.

42. Evidently, on coming to know about alleged mismanagement, the Letter herein was forwarded to the Complainant on email by *GuarantCo* Bank, London, as received from the Petitioner, to seek clarification about the pending Litigation in NCLT. It was natural for *GuarantCo* Bank to do so. Pertinently, the letter was not written to any third Party but to the Dalmia

Group itself, to whom it pertained. This Letter sent to email of the Complainant, was accessed by Sh. Pankaj Rao, its authorized Representative. The affairs and litigation against the Complainant cannot be said to be unknown to its employees.

43. Further, to establish that there was lowering of reputation of the Complainant in public eye, the Complainant examined CW-2/ SH. B. K. Aggarwal its own employee, who on reading the Letter, wanted to resign from the Company. There cannot be evidence more conjured than this; it is a Company email which is accessible only to the authorized employees and not to third party.

44. Further, there is no publication to any third party; the Company's authorized employees are aware and dealing with the affairs of the Company and it cannot be termed as publication to third party. Also, there is nothing to show the lowering of the reputation in the eyes of third party.

45. Thus, the essential requirement of the defamatory imputations being published is not established.

46. For this reason alone the Complaint *qua* the Petitioners is liable to be quashed.

The Application of 9th Exception:

47. The Petitioners, in the instant case, have primarily taken defence of ***Good Faith*** as provided in **Exception 9** to Section 499, IPC, which reads as follows:

> ***"Ninth Exception - Imputation made in good faith by person for protection of his or other's interests***. –
> *It is not defamation to make an imputation on the character of another provided that the imputation be made in good*

faith for the protection of the interest of the person making it, or of any other person, or for the public good."

48. But first preliminary question which poses itself is the stage at which benefit of Exception can be taken. While examining the question whether the exceptions to Section 499 could be considered at the stage of issue of process under Section 204 CrPC and equally for the High Court examining a petition to quash under Section 482, the Apex Court in *Iveco Magirus Brandschutztechnik GMBH vs. Nirmal Kishore Bhartiya and Anr.*, (2024) 2 SCC 86 had the following to say:-

"60.What the law imposes on the Magistrate as a requirement is that he is bound to consider only such of the materials that are brought before him in terms of Sections 200 and 202 as well as any applicable provision of a statute, and what is imposed as a restriction by law on him is that he is precluded from considering any material not brought on the record in a manner permitted by the legal process. As a logical corollary to the above proposition, what follows is that the Magistrate while deciding whether to issue process is entitled to form a view looking into the materials before him. ***If, however, such materials themselves disclose a complete defence under any of the Exceptions, nothing prevents the Magistrate upon application of judicial mind to accord the benefit of such Exception to prevent a frivolous complaint from triggering an unnecessary trial.***

*62. In the context of a complaint of defamation, at the stage the Magistrate proceeds to issue process, he has to form his opinion based on the allegations in the complaint and other material (obtained through the process referred to in Section 200/Section 202) as to whether "****sufficient ground for proceeding****" exists as distinguished from "****sufficient ground for conviction****", which has to be left for determination at the trial and not at the stage when process is issued.* ***Although there is nothing in the law which in***

express terms mandates the Magistrate to consider whether any of the Exceptions to Section 499 IPC is attracted, there is no bar either. *After all, what is "excepted" cannot amount to defamation on the very terms of the provision. We do realise that more often than not, it would be difficult to form an opinion that an Exception is attracted at that juncture because neither a complaint for defamation (which is not a regular phenomenon in the criminal courts) is likely to be drafted with contents, nor are statements likely to be made on oath and evidence adduced, giving an escape route to the accused at the threshold.* ***However, we hasten to reiterate that it is not the law that the Magistrate is in any manner precluded from considering if at all any of the Exceptions is attracted in a given case; the Magistrate is under no fetter from so considering, more so because being someone who is legally trained, it is expected that while issuing process he would have a clear idea of what constitutes defamation. If, in the unlikely event, the contents of the complaint and the supporting statements on oath as well as reports of investigation/inquiry reveal a complete defence under any of the Exceptions to Section 499 IPC, the Magistrate, upon due application of judicial mind, would be justified to dismiss the complaint on such ground and it would not amount to an act in excess of jurisdiction if such dismissal has the support of reasons.***

63. Adverting to the aspect of exercise of jurisdiction by the High Courts under Section 482 CrPC, in a case where the offence of defamation is claimed by the accused to have not been committed based on any of the Exceptions and a prayer for quashing is made, law seems to be well settled that the High Courts can go no further and enlarge the scope of inquiry if the accused seeks to rely on materials which were not there before the Magistrate. This is based on the simple proposition that what the Magistrate could not do, the High Courts may not do. We may not be understood to undermine the High Courts' powers saved by Section 482 CrPC; such powers are always available to be

> *exercised* ***ex debito justitiae i.e. to do real and substantial justice for administration*** *of which alone the High Courts exist. However, the tests laid down for quashing an FIR or criminal proceedings arising from a police report by the High Courts in exercise of jurisdiction under Section 482 CrPC not being substantially different from the tests laid down for quashing of a process issued under Section 204 read with Section 200,* ***the High Courts on recording due satisfaction are empowered to interfere if on a reading of the complaint, the substance of statements on oath of the complainant and the witness, if any, and documentary evidence as produced, no offence is made out and that proceedings, if allowed to continue, would amount to an abuse of the legal process.*** *This too, would be impermissible, if the justice of a given case does not overwhelmingly so demand."*

49. The same has been reiterated by the Apex Court in the case *Shahed Kamal & Ors. vs. M/s A. Surti Developers Pvt. Ltd. & Anr*, 2025 INSC 502.

50. It has been further held that what is ***"excepted"***, cannot amount to defamation on the very terms of the provision and that the Magistrate is not in any manner precluded from considering if at all, any of the Exceptions is attracted in a given case.

51. It is in this background that the facts of the case may be considered to ascertain whether the offence of defamation is made out in the facts and circumstances of this case.

52. For the 9th Exception to apply, two essential ingredients must be satisfied: **(i)** the imputation must be ***made in good faith***; and **(ii)** it must be ***for the protection of the interest*** of the person making it, or of any other person, or for **the public good**.

53. **Section 52 IPC** defines the term "***good faith***" as anything which is done or believed with "due care and attention". The onus to prove that their case falls within an exception lies on the accused.

54. The Court in *D.K. Pandey* (supra) in regard to defamation, has held that publishing a *truthful statement* cannot be considered an act to harm reputation. Issuing a Caution Notice to customers or the public in **good faith** is protected under the **ninth Exception** to Section 499, IPC. This includes informing the public that certain parties are not authorized Dealers and cautioning them about the genuineness of products sold at higher discounts.

55. It has been held by the Apex Court in *Chaman Lal v. State of Punjab*, (1970) 1 SCC 590, that under the 9th Exception to Section 499, if the imputation is made in **good faith** for the protection of the person making it or for another person or for the public good, it is not defamation. It has also been held that the interest of the 16 persons has to be real and legitimate when communication is made in protection of the interest of the person making it.

56. As already discussed above, this letter was intended in *Good faith*, for the protection of financial interest of the Bawari Group as well of Guarantco Bank, which was one of the Lender bank to CCIL. Clearly, was not intended to cause general harm or bring dispute to Dalmia Group, but was strictly confined to affairs of CCIL in which Bawri Group, and was intended to protect its own legitimate interest, being a minority shareholder. The act of the Petitioner, on behalf of Bawri Group, is squarely covered in 9th Exception of Good Faith.

Conclusion:

57. In light of the aforesaid discussion, it is held that the continuation of the criminal proceedings against the Petitioners would be *an abuse of the process of the court*. The dispute between the parties is quintessentially a civil and corporate dispute, which is already being agitated before the appropriate forums. The impugned Letter dated 15.12.2015, when viewed in its proper context, is found to be a communication made *inter se* the parties involved and concerned with the affairs of CCIL and was in *good faith* for the protection of the interests of the makers and the recipient, and is covered by Exception 9 to Section 499 of the IPC.

58. Therefore, the essential ingredients of the offence of criminal defamation are not made out.

59. Consequently, the **Petition is allowed.**

Relief:

60. **The Complaint Case No. 58775 of 2016** pending before the Court of Ld. Metropolitan Magistrate, New Delhi and all the proceedings including the Summoning Order dated 08.05.2017 emanating therefrom, **is hereby quashed.**

61. The Petition and all pending Application(s), if any, are accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 08, 2025
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