

+* THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 08.07.2009
% Judgment delivered on : 24.07.2009

+ Crl.M.C.No. 1951/2009 & Crl.M.A.Nos. 7276-77/2009

Rajat Pharmachem Ltd & Ors. Petitioners

versus

State Trading Corporation of India Ltd Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. Sandeep Sethi, Sr Advocate with Mr Harpreet Singh, Mr Rajesh Gupta & Mr Sumit R Sharma
For the Respondent : Mr.Ramesh Gupta, Sr. Advocate with Mr Neeraj Chaudhri, Mr Sumit Arora & Ms Meera Kaura Patel

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

RAJIV SHAKDHER, J

1. This is a petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') for quashing complaint no. 1177/3 and all proceedings emanating therefrom.

2. The Petitioners are aggrieved by virtue of the fact that vide order dated 06.05.2009, the learned Magistrate has issued summons

to them. Before me, the Petitioners have assailed the summoning
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order on four counts. First, on the ground that the institution of complaint is beyond the period of limitation prescribed under the Negotiable Instruments Act, 1981 (hereinafter referred to as the 'N.I. Act'). Second, on the ground that the cheques which are the subject matter of the complaint instituted in the Court below, were given as a security for realisation of payments by Respondent from foreign buyers. The contention being that there was no debt which the Petitioners were required to discharge, as there was no consideration flowing from the Respondent to the Petitioners. The third ground of challenge being that the reason given in the return memo dated 18.02.2009, issued by the Petitioners' bank, being 'account frozen', it would not amount to a dishonour of the cheques in issue, in terms of Section 138 of the N.I. Act. The last ground of challenge, is that the Court below did not have the requisite territorial jurisdiction to entertain the complaint.

3. In order to dispose of this petition, it may be necessary to briefly set out the facts as contained in the complaint:-

3.1 The Respondent/Complainant which is a company registered under the Companies Act, 1956 and a Government undertaking, having its Head Office at New Delhi, entered into an agreement with the Petitioner No.1 for export of pharmaceutical products. For this

purpose, contractual negotiations were held and proposals were received by the Respondent from Petitioner No.1 at its Head Office at New Delhi. The said proposals finally fructified into a formal agreement dated 04.11.2004 (in short “the agreement”). This agreement admittedly was signed and sealed in Mumbai.

3.2. In terms of the said agreement, certain obligations were undertaken by both the Petitioner No.1 and the Respondent.

3.3 Broadly, a perusal of the agreement would show that it contains recitals to the effect that, Petitioner No.1 has had regular dealings with one Loben Trading Company Pte. Ltd. having its registered office at Singapore for export of pharmaceutical formulations. The Petitioner No.1, in order to avail the advantage of Respondent’s international image and to facilitate a large volume of business, had opted to associate with the Respondent. The recitals in the said agreement go on to state that Respondent had agreed to extend its co-operation to Petitioner No.1 to promote export of pharmaceutical products. The recitals also state that Respondent has offered and Petitioner No. 1 has accepted to manufacture, supply and ship goods to the foreign buyer (described in the agreement as ‘Loben Trading Company Pte. Ltd.’) on terms and conditions set out in the export orders.

3.4 As per the Respondent/Complainant, the way the agreement is structured, the formalities for procuring the goods, packing, movement, shipment, documentation and realisation of export proceeds was to be monitored by the Petitioner No.1. Petitioner no.1 was responsible for successful execution of export agreement and realisation of proceeds. The agreement envisaged that the Respondent, through its bankers, will present to the foreign buyer, a bill of exchange for 'usance period' (90 days D.A.). Simultaneously, on a back to back basis, Respondent would accept a bill of exchange drawn upon it upto '180 days D.A.'. Thus, under the agreement what was envisaged was a back to back arrangement whereby, bills of exchange drawn upon the foreign buyer would have a due date upto a period of 90 days, which would fall on a date prior to the due date on the bills of exchange accepted by the Respondent.

3.5 The agreement provided that the Respondent's service charges equivalent to 2% of CIF value of the exports, were to be deducted alongwith all other 'incidentals' from export proceeds realised and, the remaining amount was to be utilized for payment of bills of exchange accepted by the Respondent. In the event of there being any surplus amount, the same was to be paid to Petitioner No.1 or their nominated banker.

3.6 The clause in the agreement on which the Respondent has laid particular stress on in the complaint is Clause 4(ii) of the agreement which provides that Petitioner No.1 would furnish post-dated cheques equivalent to the value of the bills of exchange accepted by the Respondent. These cheques were to be retained by the Respondent and were to be returned to Petitioner No.1 only after realisation of the export proceeds. The clause, however, makes it clear that the cheques would be encashed in the event of non-receipt of export proceeds on the due date.

3.7 It appears that there was no difficulty in so far as the said arrangement was concerned till April, 2008. On or around 21.04.2008, the foreign buyers started committing defaults which resulted in the outstandings reaching USD 142 million, which is, equivalent to approximately Rs 578 crores. The Respondent in the complaint, has also alleged that contrary to the understanding with Petitioner No.1, the bills of exchange and the invoices which the Respondent had accepted had been discounted by Petitioner No.1 with their bankers. Consequently, Petitioner No.1 has received huge amounts from its bankers.

3.8 To continue with the narration, in view of the circumstances that payments were not forthcoming from the foreign buyers,

Respondent proceeded to encash all 221 cheques issued in its favour, amounting in all to Rs 1,28,32,23,576/- (Rupees One hundred twenty eight crores thirty two lacs twenty three thousand five hundred seventy six). These cheques were presented for encashment on 17.02.2009, by the Respondent with their local bank, which is, State Bank of India, Ballard Estate Branch, Mumbai. To the Respondent's surprise, they received information from their afore-mentioned banker, on 19.02.2009 that the cheques had been dishonoured. The said communication of their banker was accompanied by a return memo dated 18.02.2009 issued by Punjab National Bank, Bharat House, 1st Floor, Mumbai Samachar Marg, Fort, Mumbai, alongwith the cheques in issue. The return memo dated 18.02.2009 contained the remark 'account frozen'.

3.9. Left with no alternative, a legal notice dated 17.03.2009 was issued by the Respondent through its Advocates, through registered post. The copies of speed post receipts filed with the complaint seem to suggest that it was issued from Mumbai. The counsel for the Respondent has accepted this fact.

3.10. Petitioners, through their Advocates, responded to the afore-mentioned legal notice vide communication dated 25.03.2009. Apart from the fact that, the Petitioners/Accused denied their liability on

various grounds including the ground that the 221 cheques were issued as security towards quality assurance of products and claims thereof, if any; they also demanded in the form of a counter claim a sum of Rs 570,25,25,934/- (Rupees Five hundred seventy crores twenty five lakhs twenty five thousand nine hundred thirty four). Consequently, the Respondent felt constrained to institute a criminal complaint under Section 138 read with Section 142 of the N.I. Act. To be noted that even though the allegation in the instant case is with regard to dishonour of 221 cheques, the instant complaint is confined to two (2) cheques bearing No. 923292, dated 10.01.2009 in the sum of Rs 61,76,700/- and cheque bearing No. 923293, dated 10.01.2009 in the sum of Rs 61,81,300. Both cheques were drawn on Punjab National Bank, Mid Corporate Branch, Brady House, Fort, Mumbai (PNB). Based on the material on record and pre-summoning affidavit dated 04.05.2009 of one Mr V.Pal Kishtafar, the learned Metropolitan Magistrate, issued summons to the Petitioners on 06.05.2009.

3.11 The Petitioners have impugned the said summons by way of the present petition.

4. Mr Sandeep Sethi, learned Senior Advocate appearing for the Petitioners has assailed the summoning orders, as indicated

hereinabove, on three grounds. The first being, that the petition had been filed beyond the period of limitation prescribed under the N.I. Act. For this purpose, he brought to my notice, the relevant dates which are contained in Paragraph 7(H) of the present petition. For the purpose of convenience, the same are extracted hereinbelow:-

- | | | |
|--------|---------------------------------------|--------------------|
| (i) | Date of cheque(s): | 10.01.2009; |
| (ii) | Date of memorandum of dishonour | 18.02.2009; |
| (iii) | Date of bank debit advice: | 19.02.2009; |
| (iv) | Date of issuance of statutory notice: | 17.03.2009; |
| (v) | Date of receipt of notice: | 18.03.2009; |
| (vi) | 15 days expired on: | 02.04.2009; |
| (vii) | limitation of complaint expired on: | 02.05.2009; |
| | (according to the Petitioners) | (Working Saturday) |
| (viii) | complaint filed on: | 04.05.2009 |
| | (Monday)” | |

4.1 Based on the dates indicated above, he submitted that in terms of Section 142(b), the complaint had to be filed by the Respondent within ‘**one month**’ of the date on which the cause of action arose as per clause (c) of the Proviso to Section 138 of the N.I. Act. He, therefore, submitted that pursuant to the demand for payment of money, made vide notice dated 17.03.2009 which was received by

the Petitioner No. 1 on 18.03.2009; the 15 (fifteen) day period prescribed under Section 138 clause (c) of the proviso to the N.I. Act, within which, the demanded amount had to be paid; expired on 02.04.2009. Consequently, the limitation for instituting the complaint, prescribed under Section 142(b) of the N.I. Act expired on 02.05.2009; which undisputedly fell on working Saturday. Therefore, the institution of the complaint by Respondent on 04.05.2009 was beyond limitation.

4.2 On the second aspect, he submits that the cheques in issue which are the subject matter of the complaint, had been issued as a security and not towards discharge in whole or in part of any 'debt' or 'other liability'. To buttress his submission, he relied upon a judgment of the Supreme Court in the case of *M S Narayana Menon alias Mami vs State of Kerala and Anr (2006) SC 3366* as also the judgment of this Court in the case of *Collage Culture vs Apparel Export Promotion Council: Crl.M.No. 3011/2004* decided on *11.10.2007*.

4.3 The third prong of the Petitioners' attack vis-à-vis the impugned order is that, the Court concerned had no territorial jurisdiction to entertain the complaint. The learned counsel submitted that undeniably, the agreement was entered into between

the Petitioner no.1 and the Respondent, in Mumbai; the cheques in issue were drawn on a bank having its branch in Mumbai; the cheques were presented by the Respondent to their banker for encashment in Mumbai; the communication of the alleged dishonour of cheques was received by the Respondent through its banker, in Mumbai; the legal notice was issued by the Respondent's Advocate from Mumbai, which was posted to the Petitioners' address at Mumbai, where it was duly received; and lastly, the reply to the said notice was issued by the Petitioners' Advocate from Mumbai. He, thus, submitted that the offence, if any, was not committed within the territorial jurisdiction of the Courts in Delhi. In support of his submission, he placed reliance on the judgment of the Supreme Court in the case of *Harman Electronics Private Limited and Anr vs National Panasonic India Private Limited: (2009) 1 SCC 720*. The learned counsel also took me through the assertions made by the Respondent in respect of jurisdiction in Para 18 of the complaint.

5 As against this, Mr Ramesh Gupta, learned Senior Advocate submitted as follows:-

5.1 On the issue of limitation, while the learned counsel did not dispute the dates, he submitted that the 30 day period prescribed for instituting the complaint would necessarily have to exclude the date

on which the cause of action arose after the completion of the 15 day period stipulated in the legal notice for making the payment by the Petitioners. In other words, according to the learned counsel, since the 15 day period expired on 02.04.2009, limitation would commence from 04.04.2009, and the one month period prescribed under Section 142(b) of the N.I. Act for instituting a complaint would expire on 04.05.2009. Therefore, the complaint which was filed in the Court below, on 04.05.2009, which was a Monday, was within time. To buttress his submission, he relied upon the judgment of the Supreme Court in the case of ***Jindal Steel and Power Limited and Anr vs Ashoka Alloy Steel Limited and Anothers: 2006 (9) SCC 340.***

5.2 As regards the second contention of the Petitioners that the cheques were in the nature of a security and were not issued towards discharge in whole or in part of any debt or liability, he relied upon the provisions of the agreement and averments in the plaint to demonstrate to the contrary.

5.3 On the issue of jurisdiction, Mr Ramesh Gupta relied upon the assertions made in the complaint in particular Paragraphs 2 and 18 thereof, to demonstrate that not only several meetings were held in the Respondent's Head Office at New Delhi but also the proposal for

the business transaction formulated by the Petitioner, was received and approved by the Respondent's head office at Delhi. In this regard, he placed reliance on the judgment of the Supreme Court in ***K Bhaskaran vs Sankaran Vaidhyan Balan and Anr : (1999) 7 SCC 510 and Shamshad Begum (Smt) vs B Mohammed: (2008) 13 SCC77.***

6. I have heard the learned counsel for the parties. On the issue of limitation, I am of the opinion that complaint is filed within the period of limitation prescribed under Section 142(b) of the N.I. Act. But let me first extract the relevant provisions of the N.I. Act.

“138.Dishonour of cheque for insufficiency, etc., of funds in the account.- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

- | | |
|---|-----------|
| (a)xxxxxx | xxxxxxxxx |
| (b)xxxxxx | xxxxxxxxx |
| (c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, | |

to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.- For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.]”

“[142. Cognizance of offences.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a)xxxxxxx xxxxxxxx

(b)such complaint is made within one month of the date on which the cause-of-action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]”

6.1 Applying the aforesaid provisions to the facts of the present case, the following emerges:-

6.2 The undisputed position is that the statutory notice under Section 138 of the N.I. Act was issued by the Petitioner No. 1 on 17.03.2009. The Petitioner No. 1 has stated that the notice was received by the Respondent on 18.03.2009. The Petitioner No. 1 has rightly contended that the 15 day window period as prescribed under proviso (c) of Section 138 of the N.I. Act, in respect of, the demanded amount ended on 02.04.2009. Consequently, the cause of action would arise in favour of the Respondent only on 03.04.2009. In terms of Section 12 of the Limitation Act, 1963 (in short the ‘Limitation Act’), this date will have to be excluded for the purposes

of calculating the period of limitation for institution of the complaint by the Respondent. Therefore, if the limitation commences from 04.04.2009, the institution of the complaint by the Respondent on 04.05.2009 is within the period of limitation. Admittedly 03.05.2009 was a Sunday, which as per Section 4 of the Limitation Act, is to be excluded. This according to me, is no longer *res integra* in view of the judgment of the Supreme Court in the case of ***Saketh India Ltd & Ors vs India Securities Ltd (1993) 3 SCC 1***. This judgment was followed by the Supreme Court in a later judgment, i.e., ***Jindal Steel (supra)***. The facts in ***Jindal Steel (supra)*** were briefly as follows: on dishonour of the cheque, the complainant issued a notice to the accused under Section 138 of the N.I. Act, on 04.01.1997. The said notice was served on 10.01.1997 giving the accused 15 days time for making the payment. The 15 day period expired on 25.01.1997. The Supreme Court in these facts held as follows:-

“Cause of action to file the complaint accrued on 26.1.1997, which day has to be excluded in computing the period of limitation, as required under Section 12(1) of the Limitation Act, 1963. Therefore, the limitation would be counted from 27.1.1997 and the complaint was filed on 26.2.1997, within a period of one month from that date, as such, the same was filed well within time. We find that the point is concluded by a judgment of this Court in Saket India Ltd. Vs India Securities Ltd in which case taking into consideration the provisions of Section 12(1) of the Limitation Act, it was laid down that the day on which cause of action had accrued has to be excluded for reckoning the period of limitation for filing

a complaint under Section 138 of the Act. In the present case, after excluding the day when cause of action accrued, the complaint was filed well within time; as such the High Court was not justified in holding that there was two days' delay in filing the complaint. For the foregoing reasons, we are of the view that the High Court was not justified in quashing prosecution of the respondent."

6.3 Mr Sandeep Sethi has laid great stress on the judgment of the Supreme Court in the case of ***Prem Chand Vijay Kumar vs Yashpal Singh and Another: (2005) 4 SCC 417*** to buttress his submission that the complaint is barred by limitation. In my view, a close scrutiny of the ratio of the case would show that the Court was called upon to decide as to when the cause of action arises and not, as in ***Jindal Steel (Supra)***, as to whether the day on which the cause of action arises, is to be included in calculating the period of limitation of 30 days as prescribed under Section 142(b) of the N.I.Act. It is well settled that a judgment is binding precedent for what it decides and not what logically follows from it. See ***Bhavnagar University vs Palitana Sugar Mill (P) Ltd.: (2003) 2 SCC 111***. The following observations being relevant are extracted hereinbelow:-

“59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See *Ram Rakhi v. Union of India, Delhi Admn. (NCT of Delhi) v. Manohar Lal, Haryana Financial Corpn. vs*

Jagdamba Oil Mills and Nalini Mahajan (Dr) v. Director of Income Tax (Investigation)]”

7. On the aspect of the cheques being issued by the Petitioner by way of security and not towards discharge of an obligation to pay a debt in whole or in part, I am of the view that this issue can only be determined, at least in the present case, after a trial. The Petitioner’s stand that no consideration flowed from the Respondent and hence there was no debt or other liability to be discharged is a matter in respect of which the learned Magistrate can arrive at a conclusion only after the evidence is led in the matter. Prima facie, it appears to me that there was a consideration. The jural concept of consideration as is well accepted can take either a monetary form or be even in the form of a benefit or detriment. See ***K.S. Bakshi & Anr. vs State & Anr. 146 (2008) DLT 125.*** The following observations being relevant are extracted hereinbelow:-

“32. Thus where a cheque forms part of a consideration under a contract it is paid towards a liability.

33. Section 2(d) of the Indian Contract Act, 1972 defines consideration as under:-

“when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.”

34. Jural concept of consideration is as :-

“A valuable consideration in the sense of the law, may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other.”

35. The jural concept of the consideration requires that something of value must be given, and that this can either be a benefit to the promisor or some detriment to the promisee. In the decisions reported as Chidambara iyer v renga iyer AIR 1966 SC 193 and Sonia Bhatia v State of U.P. AIR 1981 SC 1271, the Supreme Court compared the jural concept of the consideration and Section 2(d) of the Contract Act and held the two as being practically the same. It was held that the word ‘valuable’ in civil law could be negative or positive.

36. Thus, “consideration” is a very wide term and is not restricted to monetary benefit. Consideration does not necessarily means money in return of money or money in lieu of goods or service. Any benefit or detriment of some value can be a consideration.”

7.1 In any event, the terms of the agreement, do seem to suggest, in particular, clause 2 and clause 4(ii), that the Petitioners were responsible not only for exclusive execution of the export agreement, but would also be responsible for the receipts, in the event of, non-receipt of export proceeds on the due date. It is for this reason that the Petitioners were required to draw bills of exchange up to 180 days D.A. (usance period) on the Respondent which the Respondent was required to accept on a back-to-back basis upon receipt of the foreign buyers pre-acceptance of the Respondent’s bills of exchange up to 90 days D.A. The purpose being that the due date for the bills of exchange accepted by the foreign buyers would fall before the due

date in respect of bills of exchange accepted by the Respondent. Therefore, in case of non-receipt of the export proceed on the due date, the debt would become due. As observed by me hereinabove, in any event, this is an aspect which requires evidence being led by parties at the trial.

8. The reliance by the learned counsel for the Petitioners on the judgment of the Supreme Court in the case of *M.S. Narayana (supra)* is in my view not apt. The facts in brief in that case were: The second Respondent/Complainant was carrying on the business of broker. The accused/appellant entered into transactions in respect of shares through the second Respondent/Complainant in his capacity as a share broker. In that context, the cheques issued by the appellant/accused were presented for encashment by the second Respondent/Complainant, which were returned back with the remark “account closed”. The matter went to trial. At the trial, the complainant examined witnesses in support of his case. Importantly, the complainant did not produce his original books of accounts to prove transactions he had had with the accused/complainant. On the other hand, the appellant/accused disputed that he owed any debt to the complainant. The appellant/accused in evidence raised doubts about the transactions in issue, by raising the defence that the complainant had not given him the copies of the contract notes

pertaining to the transaction by which he is said to have purchased and sold shares on behalf of the accused. The matter travelled up to the Supreme Court. The issue before the Supreme Court was as to the scope of the provisions of Section 118(a) and Section 139 of the N.I. Act. The Supreme Court came to the conclusion that presumption which the law permits to be drawn both under Section 118(a) and Section 139 of the N.I. Act are rebuttable in nature. In order to rebut such a presumption, all that was needed to be done by the accused, was to raise a probable defence. The Court went on to say that, in view of the presumption which arises in law, all that the accused is required to do is to discharge the initial onus of proof. The accused is not necessarily required to disprove the prosecution's case. What is important is that, the Supreme Court said, whether in given facts and circumstances of the case, the initial burden has been discharged by an accused would be a question of fact and hence, is a matter relating to appreciation of evidence. (*See observation at page 51 para 36*). Therefore, in my view, the observations made at page 56 in paragraph 52 of the judgment, have to be read in the context of what the Supreme Court has said in the earlier part of its judgment. It is in these facts that after a full fledged trial, the Supreme Court came to a conclusion that the cheques in issue, which were given by

the accused to the complainant, were not towards discharge of any debt. No such stage has been reached in the present case.

9. Reliance was also placed on the judgment of this Court in the case of *Collage Culture (supra)*. The facts of this case in brief were: The Accused/Petitioner was in the business of export of garments. The export of garments was regulated by the complainant, that is, the Apparel Export Promotion Council. As per the policy, in the relevant year, quotas were issued to exporters such as the Accused/Petitioner, which was valid for a period of one year. These quotas were issued against a deposit of earnest money. The earnest money, in turn, could be given in the form of either a bank guarantee, FDR or post-dated cheques. Since the Petitioner was unable to utilize its quota, it sought for extension of time, and for that purpose, fresh post-dated cheques were issued. The Accused/Petitioner was not able to utilize the unexpired quota even during the extended period. This prompted the complainant to issue a notice for forfeiture of the earnest money and, therefore, encashment of cheques. After considering the reply to the notice of forfeiture issued by the complainant, an order was issued by the complainant for forfeiture of earnest money. An appeal was preferred to the first appellate authority by the accused. The first appellate authority stayed the operation of the forfeiture order. During the pendency of

the appeal, the validity period of post-dated cheques expired. On the directions of the first appellate authority, the cheques were replaced. While the appeal was pending the complainant presented the cheques for encashment. These cheques were dishonoured, resulting in a criminal complaint being instituted. It is in this context the Court was called upon to consider as to whether the cheques which were replaced during the pendency of the appeal were against a debt in present or was a debt which was payable in future upon occurrence of a contingency. In the present case, the facts are, as indicated hereinabove, entirely different. Prima facie, as indicated by me, consideration has flowed in favour of the Petitioner. Therefore, this authority has no applicability to the facts obtaining in the present case.

10. Mr. Sandeep Sethi also raised a plea that since the endorsement on the return memo was 'account frozen', it did not amount in law to dishonour of cheque. This submission, in my view, is untenable. A bare reading of Section 138 of the N.I. Act will demonstrate the fallacy of this submission. Once a cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person is returned unpaid, there is a presumption drawn that it was issued for discharge of a valid debt or liability even though a rebuttable presumption. The payee, on receipt of notice

from his banker that the cheque is returned unpaid, is required to issue a statutory demand notice within 15 days of such notice to the drawer, giving the drawer 15 days time to satisfy the demand from its communication.

10.1 It is axiomatic that whatever may be the reasons for return of cheque set out in the return memo of the bank, if the drawer does not satisfy the demand within 15 days of its receipt the offence stands committed in the eyes of law. In such a situation, presumption will be drawn against the drawer that the cheque was returned unpaid either on account of the amount standing to the credit of the drawer in his account being insufficient or that the cheque exceeds the amount arranged to be paid from that account by an agreement made with the drawer's bank. If Section 138 of the N.I. Act is construed otherwise, it would defeat the entire purpose of enacting these provisions. A truant drawer would get his banker to give reasons which will help him avoid the consequences of a dishonour of his cheque. An interpretation even in respect of a legislation which entails penal consequences which denudes the legislation of its efficacy is to be abjured. The Supreme Court in the case of *NEPC Micon Ltd. & Ors vs Magma Leasing Ltd (1994) 4 SCC 253* was called upon to consider as to whether a remark in the return memo to the effect "account closed" would amount to dishonour of a cheque

within the meaning of the provisions of Section 138 of the N.I. Act.

In this context, the following observations being apt are extracted

hereinafter:-

“7. Further, the offence will be complete only when the conditions in the proviso (a) (b) and (c) are complied with. Hence, the question is, in a case where cheque is returned by the bank unpaid on the ground that the 'account is closed' would it mean that cheque is returned as unpaid on the ground that 'the amount of money standing to the credit of that account is insufficient to honour the cheque'. In our view, the answer would obviously be in the affirmative because cheque is dishonoured as the amount of money standing to the credit of 'that account' was 'nil' at the relevant time apart from it being closed. Closure of the account would be an eventuality after the entire amount in the account is withdrawn. It means that there was no amount in the credit of "that account" on the relevant date when the cheque was presented for honouring the same. The expression the amount of money standing to the credit of that account is insufficient to honour the cheque is a genus-of which the expression "that account being closed" is specie. After issuing the cheque drawn on an account maintained, a person, if he closes 'that account' apart from the fact that it may amount to another offence, it would certainly be an offence under Section 138 as there was insufficient or no fund to honour the cheque in 'that account'; Further, cheque is to be drawn by a person for payment of any amount of money due to him 'on an account maintained by him' with a banker and only on "that account" cheque should be drawn. This would be clear by reading the Section along with provisos (a) (b) & (c).

8. Secondly, proviso (c) gives an opportunity to the drawer of the cheque to pay the amount within 15 days of the receipt of the notice as contemplated in proviso (b). Further, Section 140 provides that it shall not be a defence in prosecution for an offence under **Section 138 that the drawer has no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that Section.** Dishonouring the cheque on the ground that account is closed is the consequence of the act of the drawer rendering his account to a cipher. Hence, reading Section 138 and 140 together, it would be clear that dishonour of the cheque by a bank on the ground that account is closed would be covered by the phrase 'the amount of money standing to the credit of that account is insufficient to honour the cheque'.

*9. Learned Counsel for the appellants, however, submitted that Section 138 being a penal provision, it should be strictly interpreted and if there is any omission by the Legislature, wider meaning should not be given to the words than what is used in the Section. **In our view even with regard to penal provision, any interpretation, which withdraws life and blood of the provision and makes it ineffective and a dead letter should be averted. If the interpretation, which is sought for, were given, then it would only encourage dishonest persons to issue cheques and before presentation of the cheque close 'that account' and thereby escape from the penal consequences of Section 138.**" (emphasis is mine)*

11. This leaves me with the last issue as to whether the Court had the jurisdiction to entertain the present petition. Admittedly, in the present case, the agreement between the Petitioner No. 1 and the Respondent was executed in Mumbai. The cheques in issue were drawn by the Petitioner no. 1 on their bankers, Punjab National Bank, Mumbai Branch; the cheques in issue were deposited by the Respondent with their bankers, the S.B.I., Mumbai Branch; and hence the dishonour took place in Mumbai; the Respondent received the intimation of dishonour vide communication dated 19.02.2009 through their banker, SBI, in Mumbai; the said communication dated 19.02.2009, was accompanied by a return of memo dated 18.02.2009 issued by the Petitioner no. 1's banker, Punjab National Bank through its Mumbai branch; and lastly, the legal notice dated 17.03.2009 was issued by the Respondent's Advocates from Mumbai which was received by Petitioner No. 1 in Mumbai. If these are the facts then; in order to determine as to which Court has jurisdiction to

entertain the complaint, the provisions of Section 177 to 179 of the Cr.P.C. read with Section 138 of the N.I. Act may be relevant. Section 177 of the Cr.P.C. provides that every offence shall ordinarily be enquired and tried by the Court within whose jurisdiction it was committed. Section 178 of the Cr.P.C. takes care of a situation where there is uncertainty as to which of the several local areas is the offence committed or where an offence is committed partly in one local area and partly in another or where the offence is a continuing one, and continues to be committed in more local areas than one or even where it consists of several acts done in different local areas, then it could be enquired into and tried by the Court having jurisdiction over any of such local areas. Section 179 of the Cr.P.C. widens the scope of jurisdiction as it takes into account a situation where an act committed is an offence, and by virtue of such an act consequences flow, the offence may be tried either by the Court within the local jurisdiction of which such an act was done or by such Court within whose jurisdiction the consequences ensue. The Supreme Court in the case of *K. Bhaskaran (supra)*, considered the aforesaid provisions of the Cr.P.C. in the context of an offence under Section 138 of the N.I. Act. The observations of the Court as set out at page 518 in paragraphs 14 to 16, being relevant are extracted hereinbelow:-

“14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

“178. (a) - (c)

(d) where the offence consists of several acts done in different local areas, it may be enquired into or tried by a court having jurisdiction over any of such local areas.”

16. Thus it is clear, if the five different acts were done in a five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act.”

12. A perusal of the observations extracted above when applied to the facts of the present case would show that none of the ingredients of the offence occurred in Delhi. As explained by the Supreme Court

in the case of ***Harman Electronics*** (*supra*) after analysing its earlier judgment in the case of ***K.Bhaskaran*** (*supra*), a distinction must be drawn between the ingredients of an offence and commission of an offence. In view of the said observations of the Supreme Court, it is quite clear that the offence is committed only on the service of such notice and the failure on the part of the accused to satisfy the demand within the statutory period of 15 days thereafter. The necessary ingredients would be the five factors referred to in ***K.Bhaskaran*** (*supra*).

13. Mr Ramesh Gupta, learned Sr. Advocates on behalf of the Respondent, however, submits that the cause of action for the purpose of jurisdiction would also arise in the instant case, at the place where the Head Office of the Respondent is located, which is Delhi, as the proposal for the business arrangement was received and approved at the Head Office. For this purpose, he relies upon the averments made in paragraph 18 of the complaint. I am unable to agree that the place where the proposal for the business arrangement was received and approved would confer jurisdiction on the Courts in Delhi. This fact even if assumed to be true, as it must at this stage, is not an ingredient of the offence as contemplated under the provisions of Section 138 of the N.I. Act, which would accord jurisdiction to the Courts in Delhi.

14. In these circumstances, I am of the view that the Court in Delhi has no jurisdiction to entertain the complaint. Resultantly, the impugned order dated 06.05.2009 summoning the Petitioners is quashed. The learned Magistrate shall return the complaint to the Respondent for presentation to the proper Court with an endorsement to that effect. Accordingly, the petition is disposed of.

JULY 24, 2009
mb/kk

RAJIV SHAKDHER, J.