HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

<u>Crl.P.No.5405 of 2015</u>

<u>ORDER</u> :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioners who are the A.1 to A.3 in C.C.No.150 of 2015 on the file of the XIV Special Magistrate, Hyderabad, for the offence under Section 138 of the Negotiable Instruments Act (for short, 'the Act') which is outcome of private complaint of the 2nd respondent/complainant, to quash the proceedings in the said C.C.No.150 of 2015.

2. Heard the learned counsel for the complainant and the 2nd respondent even served failed to attend and the matter to decide on merits, reserved for orders on 03.09.2015. It is later the complainant-R.2 represented as counter filed in the registry and to be heard, hence reopened and counter and stay vacate petition received and heard further arguments of both sides at length on 16.09.2015 and posted for judgment to 28.09.2015.

3. The averments in the private complaint as well as sworn statement of the complainant that was taken cognizance by the learned Magistrate are that the complainant's entity(M/s K.C.J. Properties Private Limited) engaged in purchase/sale of properties and its development etc., with registered office at Masab Tank, Hyderabad represented by its Manager Mr. N.Hariharan, authorized duly by letter dated 11.09.2014, that the accused, in the course of business, approached the complainant's entity on 15.11.2011 for intercompany deposit of Rs.50 lakhs to repay with 16.5% per annum interest by 15.05.2012 (6 months) and having availed the amount from transferring to the account of the accused by RTGS dated 16.07.2011 from Andhra Bank, Masab Tank branch, the accused paid only interest amount and failed to repay the principal amount supra despite requests by availment of time to repay with further interest on the principal and ultimately the A.1-entity(M/s. Quad Electronic Solutions Private Limited) represented by its Managing Director-A.2 and Director–A.3 approached the complainant and issued two cheques bearing Nos. 160640 for Rs.50 lakhs and 160641 for Rs.15,96,002/- drawn on Indian Oversees Bank, Banjara Hills Branch, Hyderabad, both on the even date 15.05.2014 and on the instructions of the accused to wait for sometime for arrangement of amount in the

account, later when presented, said cheques were returned dishonoured with the endorsement ‘account closed’ and after intimation of dishonour from the statutory notice issued on 25.08.2014 received by the accused by registered post on 26.08.2014 and also by courier service, they failed to pay and thereby they are liable for the offence. Enclosures with the complaint are 13 documents including complainant’s company registration with Memorandum and articles authorized letter, letters from the accused, bank statement of complainant, the original cheques with return memos legal notice with postal and courier receipts and acknowledgments.

4. After taken cognizance of the offence on the private complaint, the accused 1 to 3 were served with summons to appear before the learned Magistrate which is now impugned.

5. The contentions in the quash petition are that the criminal case is nothing but abuse of process without showing how the accused committed offence under Section 138 of the N.I.Act for the learned Magistrate to take cognizance and to issue process for no case made out and there are no roles specifically of any of the accused to make them liable more particularly, the A.3-Director, no other than the wife of the A.2, who resigned from the Board on 11.03.2014 besides not participating in day-to-day activities or in managing affairs of the A.1 to prosecute her besides she is not signatory to the impugned cheques and thereby the proceedings are liable to be quashed against the petitioners herein and in particular against the A.3. The other contention is that closed the account of the A.1 is not a ground to create cause of action to maintain the prosecution for the dishonour and for the notice served they issued reply dated 05.09.2014 which reply was returned unclaimed for door locked and hence the quash petition is to be allowed. Along with the quash petition, the accused persons filed Form-32 which shows Mrs. Raymen Soin(A.3) as Director of A.1-Entity represented by A.2 as its Managing Director, seized to be Director, w.e.f.11.03.2014 by resignation.

6. The counter contention of R.2-complainant is that R.3 along with R.2 approached for the amount to lend and received and failed to liquidate and having issued the cheques, made liable not only A.2 as Managing Director of A.1 but also A.3 as Director of A.1 who is also responsible for day to day affairs till date of her resignation as Director and thereby there are no grounds to quash the complaint case proceedings against A.1 to A.3.

7. From the above, the two cheques, dated 15.05.2014 in question, no doubt, were signed on behalf of A.1-entity by A.2 as authorized signatory and A.3 is not a signatory to it as drawer. No doubt it was issued by the A1-entity represented by A.2 Managing Director. In the documents filed with stay vacate petition, one copy of A.1-entity balance sheet as on 31.03.2012 and 31.03.2013 said to have been filed by the A.2 and A.3 on 23.08.2013 filed. It is in fact long before the date of resignation of A.2. Further copy of the annual return dated 10.03.2014 signed by A.2 and one Arindam Nag as Managing Director and Director as by then and since before A.3 is not Director of A.1 from said documents filed by the complaint. In the complaint, at para-3 it is averred that despite several demands for amount of 50 lakhs (the principal amount) and subsequent interest, the accused persons being A.2-Managing Director and A.3 Director of A.1-entity approached the complainant and issued the two cheques. In fact, there is no other averment that A.3 as a Director of the Company is responsible for day-to-day affairs which specific allegation as to how she is responsible for day today affairs as on date of the cheques issued and of those dishonoured which is specifically required to maintain prosecution against A.3 to fasten liability and otherwise A.3 cannot be prosecuted. No doubt, as per the complaint by the date inter-company deposit of Rs.50 lakhs taken i.e. on 15.11.2011 by A.1, A.3 was also Director not in dispute from the above documents and also from the Form 32, as her resignation as Director is w.e.f. 11.03.2014 and by then as per the complaint averments para-2 they were postponing to pay the principal amount of Rs.50 lakhs and interest from 16.05.2012 for having paid the interest at 16% p.a. only for the period of 15.11.2011 to 15.05.2012; From the averment of they promised to pay but postponing it is not suffice to say she is responsible for day to day affairs and thus no criminal liability of dishonour of cheque can be fastened against the A.3 apart from the mandatory requirement of specific averments against the A.3 to sustain and even the allegation of A.3 being Director is responsible for day-to-day affairs not suffice in the absence of saying how responsible for day to day affairs to make A.3 liable vicariously along with A.1 but for from the status of A.2 as Managing Director of A.1-entity besides as drawer of the cheque who signed on behalf of the A.1-entity. As such mere stray allegation in complaint without basis and mere serving of notice will not fasten liability against the A.3 even received with or without reply. No doubt there is a proof regarding notice issued to the three accused persons on behalf of the complainant by their advocate sent by registered post and there are acknowledgments. The reply notice dated 05.09.2014 got filed reads that Mrs.

Raymen Soin(A.3) is not a Director having resigned long back, as can be seen from form No.32, the notice sent to her is misconceived and untenable and she never participated in the affairs of the company and not a signatory to the cheque and despite this notice, any further action being taken against her, she would move to Court for an appropriate relief and so far as the cheque in question even requested not to present the same so chosen to present and the account in question, was not closed nor issued any instructions to close by the A.1-entity to the bank at any point of time and A.1-entity availed cash credit loan of Rs.35 crores and at that relevant point of time the account was having sufficient balance and the cheque would have been normally honoured if presented and the reasons for dishonour of the cheque is unacceptable and to the surprise and shock; for the account is not closed and thereby in this situation the question of liability for dishonour of the cheque does not arise for no violation of law by A.1-entity for any penal consequence. It is not even stated in said reply by the 2nd accused person on behalf of the A.1-entity to repay the cheque amount by any particular point of time; It is not even expressed any readiness to tender amount of the dishonoured cheque, but for saying the reason for return of the cheque as ‘account closed’ is not correct. So far as A.3 is concerned, despite said reply, there are no specific allegations as to how she is liable for the A.1-entity day-to-day affairs and the cheques returned as account closed which is even subsequent to the date of her resignation. Thus she is not a Director and not liable for day-to-day affairs apart from never in-charge of the affairs of the A.1-entity. The pronote executed in favour of the complainant by A.2 on behalf of the A.1 for 50 lakhs with interest of Rs.9,43,620/- as on 31.07.2013 to pay and it was executed on 09.07.2013 by A.2 even it shows A.3 not a party for the said pronote for fastening any vicarious liability on her as a Director of A.1-entity. It is also for the reason despite said notice, there is no any specific averments in attributing any specific role of A.3 before her resignation as Director in March, 2014 to make her liable to the debt much less for the cheques subsequently issued in question. The cheques dishonour memo received for dishonour endorsed even not in dispute by A.1 and A.2 but for saying that endorsement is not correct from the account is live account and there are funds and in support of that the quash petitioners filed the account copy. In fact on 09.07.2014 the A.1-entity addressed a letter signed by the A.2 regarding the account closure without consent or information of the account holder-A.1-entity. The account copy filed shows as on date there is a balance of about Rs.34,41,28,952.62paise by June, 2014 and the cheque dishonour as account closed was in August, 2014 and the account copy clearly shows by end of June, there was a total credit and debit balance from subsequent credit of the amounts and debit of the amounts with nil balance.

8. From the above and even from the reply prima facie so far as A.1- entity and A.2 being its Managing Director who is the drawer of the cheque on behalf of the A.1- entity having signed in favour of the payee-complainant made liable as it is not issued for any guarantee purpose but for recovery of the amount and so far as A.3 for want of specific averments in the complaint to fasten liability, the prosecution against A.3 is unsustainable, so also not a drawer of the cheque to otherwise make liable vide **M/s.Aparna A.Shah Vs. Sheth Developers Private Limited.** The legal proposition is very clear so far as the liability of the A.3 is concerned placed reliance on the expression of the Apex Court in **Pooja Ravinder Devidasani vs. State of Maharashtra** and the expression of this Court in Criminal Petitions 11336 and 11561 of 2014 dated 11.09.2015 between **Sigma Agrocare Products Private Limited Vs. M/s.Greenmint India Agritech Pvt. Ltd**. , **referring to and relying upon several expressions of the Apex Court including S.M.S.Pharmasuticals Vs. Neeta Bhalla National Small Industries Corpn Limited Vs. Harmeet Singh Paintal Iridium India Telecom Limited Vs. Motorolo Incorporated and Sunil Bharti Mittal Vs. Central Buearoa of India.**

9. Accordingly, the Criminal Petition is **partly allowed by quashing** the proceedings in C.C.No.150 of 2015 on the file of the XIV Special Magistrate, Hyderabad **against A.3 only** while **dismissing so far as A.1 and A.2 is concerned**, without prejudice to the right of the contest of A.1 and A.2, so as to raise any available defence before the trial Court. Miscellaneous petitions, if any pending, in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 28.09.2015

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