IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRM-M No.26250 of 2008

Sanjay Gupta and another

… Petitioners

Versus

Pb. State Industrial Development Corporation Ltd.

… Respondent

2. CRM-M No.12222 of 2009 (O&M)

Sanjay Gupta and another

… Petitioners

Versus

Pb. State Industrial Development Corporation Ltd.

… Respondent

3. CRM-M No.24950 of 2010 (O&M)

Sanjay Gupta and another

… Petitioners

Versus

Pb. State Industrial Development Corporation Ltd.

… Respondent

4. CRM-M No.32276 of 2010

Sanjay Gupta and another

… Petitioners

Versus

Pb. State Industrial Development Corporation Ltd.

… Respondent

5. CRM-M No.5549 of 2011

Sanjay Gupta and another

… Petitioners

Versus

Pb. State Industrial Development Corporation Ltd.

… Respondent

Date of decision: 1st September, 2015

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Amit Jhanji, Advocate for the petitioners.

Mr. Vikas Mohan Gupta, Advocate for the respondent/PSIDC.

FATEH DEEP SINGH, J.

These petitions, in all numbering five, preferred under Section 482 Cr.P.C. by the petitioner Sanjay Gupta in his personal capacity as well as Managing Director of M/s Supreme Yarns Ltd. have sought quashment of the respective complaints dated 20.01.2007, 10.02.2007, 17.03.2007, 11.05.2007, 12.04.2007 (Annexure P1 in each petition) under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (in short, 'the Act') as well as consequent summoning orders dated 21.03.2007 (Annexure P11 in CRM-M No.26250 of 2008) and dated 23.01.2008, 30.10.2007, 11.05.2009, 09.11.2010 (Annexure P13 in remaining petitions); thus in the light of the consanguinity of the facts and keeping in view that though they pertain to different cheques but are in the same set of transaction between the petitioners and respondent Punjab State Industrial Development Corporation Limited (for short, 'PSIDC') and that common questions of law being involved, have been taken up together for effective and comprehensive adjudication as well as for the sake of curbing prolixity.

Heard Mr. Amit Jhanji, Advocate for the petitioners and Mr.Vikas Mohan Gupta, Advocate for the respondent/PSIDC.

Undisputedly, the petitioners entered into a financial collaboration with the respondent vide agreement dated 07.08.1995 for facilitating setting up of a Worsted Yarn Project under the name and style of M/s Supreme Yarns Ltd. (for short, 'the Company'). In pursuance of this arrangement, PSIDC invested ₹2,25,00,000 by way of equity participation in this Company whereby petitioners were given the option to buy the equity shareholding of PSIDC after commencement of the commercial production with a stipulation that after expiry of five years the petitioners were bound to purchase the equity shareholding of PSIDC. In lieu of this undertaking, as one of the stipulations the amount invested by the respondent along with simple interest less dividends received by the respondent was the price to be paid back by the petitioners.

During the course of events, due to sticky transaction for the return of money to PSIDC and as per its policy respondent issued an advertisement on 23.06.2006 (Annexure P2) by way of liberal One Time Settlement (OTS) scheme for facilitating disinvestment in respect of PSIDC's joint/assisted direct subscription Companies and thus, an invitation for exercising option for buy-back of the shares. The petitioner's case is that he had exercised his option of OTS scheme and under the provisions of it the entire buy-back was to be completed within a period of three years by any amount of installments. Respondent issued a letter dated 12.07.2004 (Annexure P3) informing the petitioners as to approval of their request for subscribing to this OTS scheme.

It is the case of the petitioners that as on 30.06.2004 the buy-back amount was to the tune of ₹2,70,19,622 and which was to be completed by 30.06.2007 with effect from 01.07.2004. It is thereafter, PSIDC sent letters dated 11.11.2004 and 23.12.2004 (Annexure P4) calling upon the petitioners for depositing post-dated cheques for the balance amount under the OTS scheme within a period of 15 days.

The petitioners sent response vide letter dated 04.09.2004 (sic) (Annexure P5) that as per this OTS scheme payment was to be made upto a specific due date. It is the claim of the petitioners that as per the letter of PSIDC dated 04.04.2006 (Annexure P6), a total sum of ₹1,56,00,000 stood deposited by the petitioners and that the balance amount was ₹3,18,68,000. Thus, what flows from the stand of the petitioners that on the basis of their letter dated 26.04.2006 (Annexure P7) they sent 28 post-dated cheques each for a sum of ₹10,00,000, thus, totaling to ₹2,80,00,000 claiming further that after adjusting the dividends paid by the Company between 15.06.2007 to

30.06.2007 same was to be adjusted subject to adjustment of dividends paid.

It is thereafter, these cheques were presented by the PSIDC which are detailed by way of Annexure P8 and it is consequent upon dishonour of these cheques on different presentations, the complaints in question were preferred by the respondent separately for each such presentation leading to the summoning orders and that is how the parties are before this Court.

Appreciating the rival contentions of the two sides, the own letter dated 27.06.2007 of PSIDC (Annexure P12) depicts that under this OTS scheme as on 30.06.2007 calculation sheets were sent to the petitioners which are at Annexure P13 and under which the amount received, balance interest and payment that was due shows that the total balance amount on that day is ₹2,38,12,719 and as has been brought to the notice of this Court on behalf of the petitioners by their counsel Mr.Amit Jhanji, Advocate, the own letter of respondent PSIDC (Annexure P15) which is dated 30.06.2007 shows that the respondent admitted that a sum of ₹2,38,12,719 stood paid as per OTS scheme but the petitioners have not tendered the undertaking filled in the proforma so sent to them and thus, were called upon to submit undertaking by 30.06.2007 (sic) and by that analogy as has been contended by the petitioners' counsel the entire amount stood paid and subject to the furnishing of the undertaking by the petitioners whenever completed all the necessary formalities culminating into the completion of this arrangement in entirety.

It is worthwhile to refer here that as per the own stand of the respondents in their reply to the instant petition, the stipulations earlier laid down in the OTS scheme stood modified in terms of Clause (d) of this scheme and that the Board of Directors (BOD) of the respondent has taken a decision for execution of supplementary agreement and admitted that these post-dated cheques were secured by the respondent in order to ensure that conditions of OTS scheme were honoured and these post-dated cheques were taken not by way of security but in order to ensure that quarterly payments were made by the Collaborator in terms of the decision of the BOD and thus, admitted having received the 28 cheques in question which are detailed in the written reply as well and that some of these cheques had bounced and the payments were not made within the stipulated time leading to filing of the criminal complaints.

The most important admission by the respondents in their stand reflects that they admitted that the payments have been made by the petitioners as per Annexures P14 and P15 but in the light of an order passed in a Public Interest Litigation, the respondent had secured vide letter dated 22/23.06.2007 by way of undertaking as per the proforma that the petitioners were to be bound by such a decision of the Court which the petitioners failed to do so and that the State

Government by its decision dated 02.12.2008 had withdrawn OTS scheme to all the Collaborators of profit making ventures on the basis of Court order in PIL regarding which Notification was duly issued and thus, leads to the inference that as on that day OTS scheme has been given a decent burial and which decision was conveyed to the petitioners.

Thus, from this, it flows that at the relevant time when the cheques were dishonoured, firstly there was no legally enforceable and recoverable debt owed by the petitioners towards the respondents qua this OTS arrangement and that the arrangement that has been entered into between the petitioners and respondent in the light of Court orders passed in Public Interest Litigation stood withdrawn by the State Government and therefore, those cheques so dishonoured cannot be taken to be in acknowledgement of that legally recoverable debt but was by virtue of an understanding between the parties and on account of which understanding having been rendered otiose. Thus any act in furtherance of it does not binds the other party and that too, when as has been discussed above the amount so due as per letter of the respondent stood paid and therefore, the question of the petitioners having committed a criminal offence is highly fallacious. By now, it is well settled law reference of which can be taken note of the ratio laid down in **'Krishna Janardhan Bhat v. Dattatraya G. Hegde' 2008(4) SCC 54,** which lays down that a complaint under Section 138 of the Act must contain essential ingredients as to there being a legally enforceable debt and that the cheques so drawn from the account of the Bank of the accused were for discharge in whole or in part of any debt or other liability and therefore, presupposes a legally enforceable debt. By virtue of Section 139 of the Act, the presumption that the holder of a cheque received the cheque of the nature referred to in Section 138 of the Act for the discharge, in whole or in part, of any debt or other liability is rebuttable.

Thus, from the proven stand of the petitioners and own admission of the respondent, it is emphatically made clear that the cheques which are subject matter of these complaints were issued by the petitioners not in discharge of any debt or liability which existed as on the date of dishonour of the cheques, issuance of the notice, expiry of the period of notice as well as the filing of the complaint. Apparently, no recourse was initiated by the respondent for the recovery of debt but was only a one time settlement and thus apparently cheques were not part of acknowledgement of that debt but were part of OTS settlement.

Thus, in the light of these discussions, the process of prosecution of the accused petitioners is pure and pure misuse of the process of the Court and in the light of ratio laid down in **'State of Haryana and others v. Ch.Bhajan Lal and others' 1992 AIR SC 604**, trial of the complaints in question would be a futile exercise and thus, to prevent abuse of the process of the Court and miscarriage of justice which could immensely affect the rights of the petitioners, impels this Court to allow the prayer made in these petitions and thereby quashing complaints dated 20.01.2007, 10.02.2007, 17.03.2007, 11.05.2007, 12.04.2007 (Annexure P1 in each petition) along with consequent summoning orders dated 21.03.2007 (Annexure P11 in CRM-M No.26250 of 2008) and dated 23.01.2008, 30.10.2007, 11.05.2009, 09.11.2010 (Annexure P13 in remaining petitions).

The instant petitions stand allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

September 1, 2015
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