IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-9953 of 2011 (O&M)
Date of decision: 07.01.2015

M/s Atma Tube Products Ltd.
...Petitioner

Versus

Oriental Bank of Commerce
...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. V.K. Sachdeva, Advocate for the petitioner.

Mr. V.K. Sharma, Advocate for the respondent.

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Jitendra Chauhan, J. (Oral)

The present petition under Section 482 of the Code of Criminal Procedure has been filed for quashing the complaint dated 23.05.2010 (Annexure P-1), under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and the summoning order dated 31.05.2001 (Annexure P-2).

The brief facts of the case are that the respondent/bank sanctioned various working capital loans to the petitioner company, totalling Rs. 380 lacs for meeting the various working capital requirement. The said loan was sanctioned on the basis of a joint mortgage of movable and immovable properties of the petitioner company in consortium with some financial institutions. The accounts of the petitioner company were running regular but suddenly, in the year 1997, the respondent bank and other financial institutions stopped the operations in the account of the petitioner and declared them as Non performing assets, by filing their original applications before the Debt Recovery Tribunal, Jaipur, (for short 'DRT') for recovery of their alleged loan. Vide letter dated 16.08.1999 (Annexure P-3), the petitioner company submitted a proposal to the respondent for settlement of outstanding dues and for withdrawal of the case filed before the DRT and in response to the letter of the petitioner, the respondent bank had informed the petitioner to settle the account in full and final, vide letter dated 01.12.1999 (Annexure P-4).

In response to the letter of respondent bank, the petitioner company vide its letter dated 17.12.1999 (Annexure P-5) sent a reply to the effect that the petitioner company is ready for the settlement but the amount claimed by the respondent bank was not correctly reflected and there is difference in the amount and also requested to send the Draft Joint Petition to be filed before DRT, Chandigarh. The respondent bank, vide their letter dated 30.12.1999 (Annexure P-7), confirmed that all the five points raised by the petitioner company, in the letter dated 17.12.1999 (Annexure P-5), are acceptable and requested to issue a cheque as down payment in terms of settlement proposal. In response thereto, the petitioner company, vide its letter dated 30.12.1999 (Annexure P-8), sent its reply along with cheques worth Rs. 24.55 lacs, stating therein that regarding the down payment of Rs. 37.59 lacs, a sum of Rs. 13.04 lacs had already been deposited and with a specific request to deposit the cheques only after the approval and vetting of joint petition by the legal department of the petitioner. The respondent bank, vide letter dated 07.01.2000 (Annexure P-9), confirmed that the matter was taken up with higher authorities and the drafting of joint petition was under process. The petitioner company again sent letter dated 13.01.2000 (Annexure P-10), along with further cheques of Rs. 11.74 lacs towards remaining revised down payment of Rs. 36.29 lacs and stated that all the cheques given towards down payment may be deposited after finalization of the joint petition.

The respondent bank, vide letter dated 13.03.2000 (Annexure P-11), sent a draft joint petition for compromise and required the petitioner company to return the draft duly signed by the authorized official, so that the same could be filed at the DRT. However, in the said letter, the respondent bank stated that in the meanwhile, we are sending the cheques to Pune for collection. In response thereto, the petitioner company set a letter dated 16.03.2010 (Annexure P-12), stating therein that the amount mentioned in the draft petition is different as mentioned in letter dated 07.01.2000

(Annexure P-9). The draft joint petition does not contain the additional terms and conditions as mentioned in the letter dated 17.12.1999 (Annexure P-5).

It is submitted by the learned counsel for the petitioner that since as per letter dated 16.08.1999 (Annexure P-3), the petitioner company sent a proposal to the respondent bank for settlement of outstanding dues and the respondent bank, vide its letter dated 01.12.1999, had agreed to settle the account in full and final. Vide letter dated 17.12.1999 (Annexure P-5), the petitioner company sent a categorical reply stating therein that the petitioner company has agreed for the settlement and also requested to send the draft joint petition to be filed before the DRT, Chandigarh, which was duly confirmed by the respondent bank, vide its letter dated 30.12.1999 (Annexure P-7). The petitioner company sent certain cheques for Rs. 24.55 lacs towards down payment and it was agreed that the said cheques will not deposited till the joint petition has been finalized. The learned counsel for the petitioner further contended that the petitioner company has specifically stated in its letter dated 30.12.1999, that the said cheques were only deposited after the joint petition has been vetted and approved by the legal department of the petitioner and the respondent bank, vide its letter dated 07.01.2000, categorically confirmed that the drafting of joint petition of compromise is under process and shall be sent to the petitioner's company for vetting. But the respondent bank backed out against the terms of the compromise reached between the parties, much prior to 16.03.2000, the agreed date for filing the draft petition in terms of the agreement reached between the parties and send the cheques to Pune for collection. The contract had still not concluded. The petitioner company had already sent the cheques worth Rs. 36.29 lacs as security but the respondent bank had not sent all the cheques and has sent only two cheques worth Rs. 12.55 lacs which it got dishonoured which were presented without intimation. The respondent bank had already recovered the loan amount through the sale of the assets of the petitioner company.

It is contended that once the cheque has been dishonoured which were given in terms of the contract which was yet to be concluded, then the offence under Section 138 of the Act is not made out because the contract has not been concluded. The trial Court at Chandigarh has no jurisdiction to deal with the complaint as the cheques were dishonoured at Pune. The learned counsel cites **M/s Indus Airways Pvt. Ltd. & Ors.** Vs. **M/s Magnum Aviation Pvt. Ltd. & Anr.**

The learned counsel for the respondent states that the case is at the evidence stage. The petitioner company has failed to repay the loan. A huge amount is yet to be recovered from the petitioner company.

I have heard the learned counsel for the parties and have gone through the record.

Perusal of the record would reveal that the respondent bank acceded to all the five points as raised by the petitioner company in its letter dated 17.12.1999 and requested to issue cheque on account of down payment. The petitioner company, in a *bona fide* manner, issued certain cheques worth Rs. 24.55 lacs and the respondent bank has duly confirmed that the matter has been taken up with higher authorities and the draft of joint petition of compromise was under process. The respondent bank vide its letter dated 13.03.2000 (Annexure P-11), sent a draft joint petition, stating therein that the cheques were sent to Pune for collection. The respondent company has backed out from the agreed compromise and has sent the cheques for encashment. The draft joint petition was not finalized upto 16.03.2000. The respondent bank had no objection to the terms and conditions and requested the petitioner to issue a cheque towards down payment, vide its letter dated 30.12.1999 (Annexure P-7). Instead of finalization of draft joint petition, the respondent bank breached the contract. As per the contract, the cheques were to be deposited only after the draft joint petition had been finalized and signed by the petitioner company. The respondent bank had already sold the assets of the petitioner company.

Keeping in view the above facts and circumstances of the case, this Court feels that no purpose would be achieved by keeping the proceedings alive. Accordingly, complaint dated 23.05.2010 (Annexure P-1), under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and the summoning order dated 31.05.2001 (Annexure P-2) are, hereby, quashed against the petitioner. However, the bank is at liberty to recover the outstanding debts, if any, as per law.

07.01.2015 **(JITENDRA CHAUHAN)**
sumit.k **JUDGE**