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

% *Order delivered on: 24th April, 2015*

\+ **Crl.M.C. No.5463/2014**

NIAZ AHMAD ..... Petitioner

Through Mr. Arun Francis and Mr. Sanjay Kr. Chhety, Advocates.

versus

M/S INDCAP LEASING AND FINANCE PVT LTD ..... Respondent

Through Mr. Mohan K. Kukreja and Mr. B.L. Khatri, Advocates.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. for setting aside the order dated 15th November, 2014 passed by Civil Judge and for quashing of the Criminal Complaint being CC No. 582/2013 titled as *M/s Indcap Leasing and Finance Pvt. Ltd. vs. Niaz Ahmad* filed by the respondent under Section 138 of Negotiable Instruments Act (hereinafter referred to as the "Act").

2. Brief facts of the case as per complaint are that:

(i) On 25th January, 2012, the respondent company through its authorized representative Shri Paramjeet Dhingra filed a complaint under Section 138 of the Act.

(ii) In the year 2007 the petitioner along with his wife Mrs. Shama Niaz Ahmad and one Mr. Arindom Ganguly approached the respondent's company for financial assistance to revive M/s Integrity Geosciences Pvt. Ltd., a company promoted and floated by the petitioner, his wife and Arindom Ganguly. Thereafter, the respondent company on the faith and trust, of the several representations and assurances made by the petitioner, his wife and Arindom Ganguly vide agreement dated 29th October, 2007 agreed to and invested a sum of Rs. 32.454 million in their company M/s Integrity Geosciences Pvt. Ltd.

(iii) Admittedly, there was gross mismanagement and blatant breach of the agreement and criminal breach of trust as well as criminal misappropriation of funds, particularly the funds being diverted and extraordinary and even personal expenses being given preference (and even personal assets being created) over contracted liabilities. The petitioner as well as others, however failed to act and work even according to stipulated scheme dated 16th February, 2009 and were not even responding to the respondent company with the progress and update of the working of the company M/s Integrity Geosciences Pvt. Ltd.

(iv) Thereafter the respondent company served the petitioner and others with legal notice demanding refund of its investment, i.e. Rs. 32.454 million with interest @ 24 % p.a.

(v) The petitioner and Mr. Arindom Ganguly issued and handed over 13 cheques (bearing No. 320351 to 320363), (twelve of the said cheques for Rs. 25 lakh each and one cheque for Rs. 24.54 lakh) all dated 1st October, 2010 and drawn on ABN Amro Bank. However, the petitioner and Mr. Arindom Ganguly could not bring in any investor, yet they requested the respondent company not to cash the cheques that were issued in terms of the Memorandum of Understanding dated 12th April, 2010 and requested for further time for payment. A part payment of Rs.1,00,00,000/- was made leaving a balance of Rs.22.454 million.

(vi) Vide Memorandum of Understanding dated 31st March, 2011, the petitioner issued 10 cheques, in the name of respondent company, all drawn on the petitioner's savings bank account with The Royal Bank of Scotland. However, contrary to the petitioner's assurances and representation, except for one cheque, all the other 9 cheques were dishonoured and without payment, with remarks 'Funds Insufficient'.

3. On 28th January, 2012 the Metropolitan Magistrate took cognizance of the matter and issued summons in the matter to the petitioner. The petitioner appeared in the matter on 16th November, 2013 and on the same date notice was framed under Section 251

Cr.P.C. wherein the petitioner in his statement denied his liability and stated that the cheques in question were not issued towards any legally enforceable debt or liability.

4. An application was filed by the petitioner under Section 203 Cr.P.C. before Civil Judge for dismissal of complaint on the ground that the complaint which was preferred by the respondent company through an authorized representative lacks the necessary assertion/averment in the complaint that the said authorized representative has the knowledge of the transaction and as such the complaint is not maintainable. The said application was dismissed by order dated 15th November, 2014.

5. Counsel for the respondent has pointed out that the petitioner in the past too had been making frivolous applications before Metropolitan Magistrate, revision petitions before the District Sessions Courts and petitions under Section 482 Cr.P.C. before this Court, as tabulated below:

Sl. No.	Date	Particulars	Stage of case	Result
1.	21.09.12	Petitioner/Accused filed **CRL.M.C. 3423/2012** u/s 482 Cr.P.C. seeking quashing of the criminal complaint	Appearance of the petitioner / accused	Dismissed as withdrawn on 24.09.12
2.	08.10.12	Petitioner/Accused filed **CRL.M.C. 3610/2012** seeking quashing of the criminal complaint	Appearance of the petitioner / accused	Dismissed as withdrawn on 10.10.12
3.	16.01.13	Application filed by Petitioner/ Accused, before the Ld. Trial Court, challenging territorial	Appearance of the petitioner/ accused	Dismissed on 10.07.13

		jurisdiction		
4.	13.09.13	Petitioner/Accused filed revision petition (**C.R. 140/13**) before the Ld. District Sessions Judge, Saket, u/s 397 Cr.P.C. seeking quashing of the Trial Court's order dated 10.07.13 and also seeking quashing of the criminal complaint	Appearance of the petitioner/ accused	Dismissed on 11.11.13
5.	07.12.13	Petitioner/Accused filed **CRL.M.C. 5147/2013** against orders dated 10.07.13 & 11.11.13, under Article 227 of the Constitution of India read with Section 482 Cr.P.C. seeking quashing of the criminal complaint	Arguments on Petitioner/ Accused' application u/s 145(2) NI Act & Complainant Evidence	Dismissed on 10.12.13
6.	06.02.14	Application by Petitioner/Accused for rejecting and taking off from the Court record the affidavit of the Respondent's witness Mr. Rahul Bhutoria	Complainant Evidence	Dismissed on 06.02.14
7.	17.02.14	Petitioner/Accused filed revision petition, u/s 397 Cr.P.C., before the Ld. District Sessions Judge, against order dated 06.02.14 passed by the Ld. Trial Court	Complainant Evidence	Dismissed on 05.06.14
8.	20.08.14	Petitioner/Accused filed application u/s 203 Cr.P.C. seeking dismissal of the complaint	Complainant Evidence	Dismissed on 15.11.14
9.	28.11.14	Petitioner/Accused filed the present **CRL.M.C. 5463/2014**, u/s 482 Cr.P.C. against the order dated 15.11.14 passed by the Ld. Trial Court	Complainant Evidence	

The petitioner had even filed an SLP (Crl) No.1177/15 before the Supreme Court, which was dismissed on 16th February, 2015.

6. Aggrieved by the order dated 15th November, 2014, the petitioner filed the present petition.

7. The only argument addressed by the learned counsel for the petitioner is that the respondent company has filed its complaint through Paramjeet Dhingra. It has not specifically alleged in the complaint that Mr. Dhingra who had filed the complaint on behalf of the respondent company had the necessary knowledge or had witnessed the transaction as an agent of the payee/holder in due course. There is no affidavit filed along with the complaint in this regard. Counsel has placed reliance on the Larger Bench of the Supreme Court in ***A.C.Narayan vs. State of Maharashtra & Anr.*** Crl.Appeal No. 73/2007 arising out of Special Leave Petition (Crl) No. 2724/2008 decided on 13th September, 2013.

8. His next submission is that a criminal complaint by power of attorney holder is maintainable only if the knowledge of the power of attorney holder is explicitly stated in the complaint. In the absence of specific assertion made in the complaint or supporting affidavit, the complaint is not maintainable. Even in the evidence of affidavit of Sh. Paranjeet Dhingra it was stated that his knowledge is based on records maintained by the company and not his personal knowledge.

9. Admitted in the present case, the authorized representative Mr. Paramjeet Dhingra is one of the directors of the complainant company, and he has been a witness to and has due knowledge of

the transaction, much within the knowledge of the petitioner. The agreement dated 29th October, 2007 Exhibit CW1/3 bears the signatures of Mr. Paramjeet Dhingra as a witness; even the cheques in question, in this complaint were received by him; number of e-mails exchanged between the parties, used to be written (though on instructions from Shri K.S. Bhutoria) and accessed by him; in the verification clause of his affidavit it was stated that facts stated therein was true and correct to his knowledge derived from the records of the respondent company.

10. In the present case, it is not in dispute that complaint was filed by Mr. Paramjeet Dhingra authorized representative of the respondent company which was duly signed by him. Subsequently, Mr. Paramjeet Dhingra was examined as PW-1 in pre-summoning evidence. The agreement dated 29th October, 2007 was duly signed by Mr. Paramjeet Dhingra as witness No.2. As per extract of the minutes of the board meeting of the respondent company shows Mr. Paramjeet Dhingra, as Director of the company; even the cheques in question, in this complaint were received by him. Therefore, it cannot be said that the authorized representative did not have any knowledge of the case. Reliance is placed on the judgement of ***A.C.Narayan*** decided on 28th January, 2015 wherein it was held that Managing Director and Director are authorized persons of the company to file the complaint by signing and by giving evidence.

There is a clear distinction in the facts of the present case. Had the authorized representative been merely a stranger or employee of the company, the position would have been different.

Each case under these circumstances has to be decided as per its own merit.

11. The reliance placed by the counsel for the petitioner on ***A.C.Narayan*** (supra) has no bearing with the facts of the present case. The facts of the ***A.C.Narayan*** (supra) and ***G.Kamalakar vs. M/s Surana Securities Ltd***. in Special Leave Petition (Crl.) No. 2724/2008 are different and the Supreme Court mainly dealt with and focussed on the facts of the case ***A.C.Narayan*** , where the complainants were natural human individuals. As regards in G.Kamalakar (supra) wherein the complainant was a company –an artificial person, there is a clear distinction between a natural person and artificial person.

12. It is worthwhile to mention that the petitioner/accused does not deny, interalia his having issued and given the cheques, having received the notices, having agreed, vide various MOUs to pay back the moneys financed by the respondent. The petitioner/accused even paid Rs.1 Crore in March 2011 as part payment in terms of the MOUs. Out of the cheques issued by the petitioner/accused, only the cheque no.798312 for Rs.54,000/- was cleared and the rest was bounced for insufficiency of funds. Following the non-payment despite receipt of demand notice a complaint was filed against the petitioner/accused. There were several emails exchanged between the parties, whereby the petitioner/accused had simply and unequivocally been asking for time to make payment. On receiving the summons, he approached the respondent and entered into a new

MOU (dated 23rd August, 2012) to pay off the balance money and paid a sum of Rs.50 Lakh (by post dated cheque bearing No.068369 dated 11th September, 2012) while agreeing to pay the balance of Rs.1.74 Crore in quarterly instalments. On 24th August, 2012, the matter was referred, by the Metropolitan Magistrate to Mediation on joint request.

13. For the aforesaid reasons, there is no force in the submission of the petitioner. The present petition has no merit and the same is dismissed.

14. No costs.

(MANMOHAN SINGH)
JUDGE

April 24, 2015