

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**(1) CRM No.A-575-MA of 2015 (O&M)**

Altruist Technologies Pvt. Ltd. ...Applicant

Versus

Mobera Systems Pvt. Ltd. and others ...Respondents

**(2) CRM No.A-576-MA of 2015 (O&M)**

Altruist Technologies Pvt. Ltd. ...Applicant

Versus

Mobera Systems Pvt. Ltd. and others ...Respondents

**(3) CRM No.A-577-MA of 2015 (O&M)**

Altruist Technologies Pvt. Ltd. ...Applicant

Versus

Mobera Systems Pvt. Ltd. and others ...Respondents

**(4) CRM No.A-578-MA of 2015 (O&M)**

Altruist Technologies Pvt. Ltd. ...Applicant

Versus

Mobera Systems Pvt. Ltd. and others ...Respondents

**(5) CRM No.A-579-MA of 2015 (O&M)**

Altruist Technologies Pvt. Ltd. ...Applicant

Versus

Mobera Systems Pvt. Ltd. and others ...Respondents

**(6) CRM No.A-580-MA of 2015 (O&M)**

Altruist Technologies Pvt. Ltd. ...Applicant

Versus

Mobera Systems Pvt. Ltd. and others ...Respondents

**(7) CRM No.A-581-MA of 2015 (O&M)**

Altruist Technologies Pvt. Ltd. ...Applicant

Versus

Mobera Systems Pvt. Ltd. and others ...Respondents

**(8) CRM No.A-582-MA of 2015 (O&M)**

Altruist Technologies Pvt. Ltd. ...Applicant

Versus

Mobera Systems Pvt. Ltd. and others ...Respondents

**(9) CRM No.A-583-MA of 2015 (O&M)**

Altruist Technologies Pvt. Ltd. ...Applicant

Versus

Mobera Systems Pvt. Ltd. and others ...Respondents

**(10) CRM No.A-584-MA of 2015 (O&M)**

Altruist Technologies Pvt. Ltd. ...Applicant

Versus

Mobera Systems Pvt. Ltd. and others ...Respondents

(11)

CRM No.A-585-MA of 2015 (O&M)

Altruist Technologies Pvt. Ltd.

...Applicant

Versus

Mobera Systems Pvt. Ltd. and others

...Respondents

(12)

CRM No.A-586-MA of 2015 (O&M)

Altruist Technologies Pvt. Ltd.

...Applicant

Versus

Mobera Systems Pvt. Ltd. and others

...Respondents

**Date of decision: August 11, 2016**

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Sunil Chadha, Senior Advocate with  
Mr.Vikas Chaudhary, Advocate  
for the applicant.

Mr.S.K.Sahijpal, Advocate  
for the respondents.

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**INDERJIT SINGH, J.**

All the above-mentioned cases are taken up together for decision as the point for the determination in all the cases is the same.

Applicant-Altruist Technologies Pvt. Ltd. has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeals against respondents Mobera Systems Pvt. Ltd., Puneet Vatsayan and Anupama Arya, challenging the judgments dated 06.02.2015 passed by learned Judicial Magistrate Ist Class, Chandigarh, whereby the complaints

filed by the complainant-applicant were dismissed and the accused-

respondents were acquitted.

It is mainly stated in the applications that accompanying appeals are likely to succeed on the grounds taken therein. It is further stated that learned trial Court has based its judgments on the basis of misreading, misinterpretation of facts and has primarily relied upon flimsy grounds which are untenable and unsustainable in the eyes of law. It is also stated that applicant shall suffer irreparable loss and injury if the special leave to file appeals is not granted by this Court. It is, therefore, prayed that leave to file appeals be granted to the applicants.

As per the record, the complainants Altruist Technologies Private Limited filed complaints against accused Mobera Systems Pvt. Ltd., Puneet Vatsayan and Anupama Arya under Section 138 of the Negotiable Instruments Act. The facts are taken from CRM No.M-575-MA of 2015. The brief facts of the case as noted down in the judgment dated 06.02.2015 passed by learned JMIC, Chandigarh, are as under:-

*“1. Complainant company instituted instant complaint alleging that it entered into an agreement to lease dated 01.02.2012 with accused for taking first and second floor of building to be constructed by accused on Plot No.18, Sector 22, IT Park, Panchkula. It was further alleged that complainant company gave a refundable interest free security amount of ₹ 5,00,00,000 (Rs. Five Crores) to accused as per the terms of lease deed. Accused agreed to perform the obligations mentioned in the lease deed and issued inter alia others, post dated cheque bearing No.386214 dated 01.11.2012 for a sum of ₹5,00,00,000/- drawn on ICICI Bank, Chandigarh Branch, which the complainant was entitled to utilize in case the amount of ₹5 Crores is not refunded by accused. Later on accused failed to perform his obligation regarding construction of building on plot and agreed to return the amount of ₹5 Crores to complainant. Thereafter accused also failed to return the amount of ₹5 Crores and told the complainant to present aforementioned cheque for encashment. Complainant presented the cheque, but the same was returned back unpaid by banker of accused with remarks “Payment Stopped by Drawer” vide memo dated 05.01.2013.*

*Complainant sent a legal notice dated 02.02.2013 through registered post demanding the payment of amount mentioned in the cheque, but accused failed to make good the payment of amount mentioned in cheque within stipulated statutory period of 15 days. Complainant prayed for summoning and punishing accused for commission of offence punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter called "N.I. Act")."*

Learned JMIC, Chandigarh, after appreciating the evidence, acquitted the accused-respondents vide impugned judgments dated 06.02.2015.

Notice of motion was issued in all the applications and learned counsel for the respondents appeared and contested each application.

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

From the perusal of the judgments passed by the Court below, I find that the reasoning has been given as per evidence and law. The evidence has been appreciated in right perspective. In no way, the judgments can be held as perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below.

The accused took the plea in the statement under Section 313 Cr.P.C. that he had issued 12 post dated cheques total for ₹20,00,00,000/- as security and that were to be utilized by complainant only on occurrence of an 'event of default' on his part. Accused further stated that no default ever occurred on his part, but the complainant defaulted in performing its part of making payment of ₹ 5 Crores within four weeks of signing of agreement to lease. Accused pointed out all the relevant clauses of agreement to lease and stated that the complainant company was not legally entitled to utilize their

cheques and that they are not under any liability of repayment of any amount to complainant company.

I have gone through the lower Court record, especially the agreement in question between the parties and have also gone through the evidence produced by the parties.

CW-1 Anuj Aggarwal admitted that clause 6.2 of agreement dated 01.02.2012 contain condition for use of all cheques in question. He further admitted that clause 3 mentions event of default and clause 3.2 mentions the situation which does not make an event of default. The complainant further admitted that he did not pay ₹ 5 Crores in favour of MSPL within four weeks of agreement i.e. on or before 01.03.2012. He volunteered that during this period of one month it was mutually agreed that ₹ 5 Crores need not be paid. He admitted that no written agreement was executed regarding this mutual agreement. The complainant also admitted that accused is indebted to him for ₹ 5 Crores and he presented all the cheques worth ₹20 Crores for encashment. The complainant further admitted that accused had pledged 50,86,486 equity shares held by Puneet, 47,21,344 equity shares held by Anupama in MSPL, 6000 equity shares held by MSPL, 2000 equity shares each held by Puneet and Anupama in MATPL with him. CW-1 stated that there was a mutual agreement between the parties that balance amount is not required to be paid on or before 01.03.2012 and he has e-mails. The cross-examination of CW-1 was deferred and he was asked to produce the e-mails but on the next date of hearing, he could not produce any e-mail to prove mutual agreement.

From the perusal of the record, I find that the complainant paid

within one month, he has to pay ₹5 crores. It is admitted case of the parties that ₹5 crores has not been paid by the complainant and complainant prima facie has committed breach of the contract. It is also admitted case that security cheques of ₹20 crores were given to the complainant for performance of the contract by the accused and perusal of the agreement shows that there is specific clause in the agreement that these post dated cheques shall be presented for payment by the complainant only on the occurrence of event of default. In the present case, event of default has not occurred because the complainant has himself not paid the amount of ₹5 crores within four weeks of the agreement as agreed.

Furthermore, it is also admitted fact that complainant has only paid ₹5 crores, as per agreement, to the accused and the security cheques were given for ₹20 crores and all the cheques have been presented by the complainant and complaints on the basis of all the cheques amounting to ₹20 crores have been filed. Therefore, the cheques which were not encashed by the bank are for the amount much more than the liability.

In view of the above discussion, I find that, in no way, the findings given by learned Court below can be held as perverse or illegal. Rather, the findings have been given as per evidence and law. The impugned judgments dated 06.02.2015 passed by learned JMIC, Chandigarh, are correct, as per law and evidence and do not require any interference from this Court. No ground is made out for grant of leave to appeals and therefore, all the above-mentioned applications stand dismissed.

**August 11, 2016**

Vgulati

Whether speaking/reasoned

Whether reportable

**(INDERJIT SINGH)**

**JUDGE**

**Yes**

**No**