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

% Decided on: 19th December, 2016

\+ CRL.M.C. 4724/2016

SMS PARYAVARAN LTD & ORS ..... Petitioner

Represented by: Mr. Gagan Chhabra, Ms. Richa Narang, Mr. Mayank Chawla & Mr. Rohit Puri, Advs.

versus

INTERGEN ENERGY LTD ..... Respondent

Represented by:

\+ CRL.M.C. 4746/2016

SMS PARYAVARAN LTD & ORS. ..... Petitioner

Represented by: Mr. Gagan Chhabra, Ms. Richa Narang, Mr. Mayank Chawla & Mr. Rohit Puri, Advs.

versus

INTERGEN ENERGY LTD. ..... Respondent

Represented by:

\+ CRL.M.C. 4747/2016

SMS PARYAVARAN LTD. & ORS. ..... Petitioner

Represented by: Mr. Gagan Chhabra, Ms. Richa Narang, Mr. Mayank Chawla & Mr. Rohit Puri, Advs.

versus

INTERGEN ENERGY LTD. ..... Respondent

Represented by:

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 19677/2016 in CRL.M.C. 4724/2016.
Crl. M.A. No. 19734/2016 in CRL.M.C. 4746/2016.
Crl. M.A. No. 19736/2016 in CRL.M.C. 4747/2016.

Exemption allowed subject to just exceptions.

CRL.M.C. 4724/2016 & Crl. M.A. No. 19676/2016 (stay)
CRL.M.C. 4746/2016. & & Crl. M.A. No. 19733/2016 (stay)
CRL.M.C. 4747/2016 & Crl. M.A. No. 19735/2016 (stay)

1. Aggrieved by the order dated 7th September, 2016 framing notice against the petitioners under Section 251 Cr.P.C. in complaint case nos. 4993626/2016, 4993627/2016 and 4995507/2016 all titled as Intergen Energy Limited Vs. SMS Paryavaran Limited & Others pending before the learned Metropolitan Magistrate-1 (Negotiable Instrument Act), South West, Dwarka, New Delhi, the petitioners preferred three revision petitions before the Learned ASJ, which were dismissed vide the impugned order dated 25th November, 2016. Hence, the present petitions.

2. Complaints were filed by the respondent as noted above *inter-alia* alleging that the petitioners approached the complainant representing that they had been awarded a project work by Nashik Municipal Corporation (NMC) for carrying out design, construction, supply etc. of sewerage treatment plants, thus requiring investments. Therefore, on the request of the petitioners, respondent advanced a loan of ₹3.5 crores @19% per annum, which was to be repaid on 15th March, 2014 along with the total interest of ₹42 lacs accruing over a period of eight months as described in the

resolution. It was further provided that further default interest of 25% per annum would be levied on delayed payment. Thus on 12th July, 2013 a Loan-cum-Hypothecation Deed was executed between the petitioner no. 1 and the respondent No.1 with petitioners no. 2 to 4 as guarantors/confirming parties to the loan agreement. Separate personal guarantees were also issued by petitioners no. 2 to 4 on 12th July, 2013 for repayment of loan. The loan of ₹3.5 crores was transferred in two installments of ₹2.1 crores on 20th July, 2013 and ₹1.4 crores on 27th August, 2013. However, the petitioners failed to repay the amount of loan. The payment was rescheduled. Even thereafter, the petitioners failed to repay the loan amount. Extension of time for repayment was granted and Third Amendment Agreement was entered into between the parties on 5th August, 2014. However again, no payment was made. In terms of the Third Amendment Loan Agreement dated 5th August, 2014, the petitioners gave fifteen post dated cheques drawn on State Bank of India and Dena Bank in discharge of the loan amount/debt liability. When seven cheques totalling for a sum of ₹1,37,96,251/- were presented, they were returned with the memos "FUNDS INSUFFICIENT" on 22nd November, 2014 and 27th November, 2014 for which complaint case No.4993626/2016 was filed which is the subject matter of Crl.M.C. 4724/2016. Similarly, Complaint case No.4993627/2016, subject matter of Crl.M.C. 4746/2016, was filed when four cheques totalling for a sum of ₹83,38,438/- drawn on Dena Bank were returned with the memos "STOP PAYMENT" on 21st November, 2014 and 22nd November, 2014. Another Complaint case bearing No.4995507/2016 subject matter of Crl.M.C. 4747/2016 was filed when four cheques drawn on State Bank of India totalling for a sum of

₹1,43,46,395/- were returned with the memos "STOP PAYMENT" on 15th January, 2015.

3. In reply to the legal notices, the petitioners denied their liability on the pretext that Sub-contractor Agreements were entered into with the complainant. According to the complainant, the Sub-contractor Agreements had no nexus with the loan agreement. After summons were issued and petitioners entered appearance on 2nd September, 2016, the learned Metropolitan Magistrate framed the following notice under Section 251 Cr.P.C. in Complaint case No.4993626/2016 against the petitioner no.1 besides the petitioners no. 2 to 4 and in the other complaints which were also on similar lines: -

"IN THE COURT OF SH. DEEPAK KUMAR-II, MM-01, (NI ACT) SOUTH WEST DISTRICT, NEW DELHI

Intergen Energy Ltd. Vs. M/S SMS Paryavaran Ltd.
C.C. No. 4993626/16
02.09.2016

NOTICE u/s 251 Cr.P.C.

I, Deepak Kumar-II, Metropolitan Magistrate, Delhi, do hereby serve you accused company M/S SMS Paryavaran Ltd. having its office at SH-2, Vardaman Grand Plaza, Plot No. 7, Manglam Place, Sector-3, Rohini, New Delhi Through its director Sudhir Narayan Modak with the following notice:-

It is alleged against you that you accused seven cheques in question ;

	Cheque No.	*Dated*	*Drawn on*	*Amount in Rs.*
1.	*870251*	*12.10.2014*	*SBI, ND*	*1,66,583/-*
2.	*870252*	*15.10.2014*	*SBI, ND*	*12,82,417-*
3.	*870253*	*02.11.2014*	*SBI, ND*	*12,82,417-*
4.	*870256*	*15.11.2014*	*SBI, ND*	*35,00,000/-*

5.	*870254*	*12.11.2014*	*SBI, ND*	*12,82,417-*
6.	*870257*	*23.11.2014*	*SBI, ND*	*12,82,417-*
7.	*870255*	*15.11.2014*	*SBI, ND*	*50,00,000/-*

In discharge of your liability, but the abovesaid cheques when presented for encashment were dishonoured vide returning memo dated 25.11.2014 for the cheques bearing no. 870252, 870253, 870256 and 870251 with remarks "Funds Insufficient" and another returning memo dated 27.11.2014 for the cheques bearing number 870254, 870257 and 870255 despite service of legal notice dated 08.12.2014 demanding the cheques amount in question, you failed to pay the abovesaid amount within the stipulated period of 15 days and you thereby committed an office punishable U/s 138 of Negotiable Instruments Act and within my cognizance.

Show cause why you should not be punished for the said offence by this court.

(Deepak Kumar-II)
MM-01 (NI Act)/South West
Dwarka/New Delhi
02.09.2016

The abovesaid notice is read over and explained to the accused in vernacular and he is questioned as under : -

Q. Have you understood the notice?

A. Yes.

Q. Do you plead guilty or claim trial?

A. I plead not guilty and claimed trail.

Q. Do you have any defence to make?

A. We did receive the legal notice. The cheques in question bear my signature as director of the company i.e. accused no. 1. The cheques in question were issued as guarantee cheques. The amount has already been paid to the complainant in excess. The complainant company had given us the deposit towards the security for securing a sub contract from us. Complainant did not *perform the sub contract for which we have a case against the complainant company and the presently matter is pending between the parties before the arbitrator. In spite of receiving the excess payment from us the complainant company snubbed us by filing the present case.*

(Deepak Kumar-II)
RO & AC *MM-01 (NI Act)/South West*
Dwarka/New Delhi
02.09.2016"

4. The grievance of the petitioners is that while directing framing of notice, no detailed order was passed discussing the pleas of the petitioners as to why notice should not be framed and merely because the petitioners had the right to lead defence evidence, the same could not be a ground to deny discharge at the stage of framing of notice. Arbitration proceedings between the parties had been initiated and the respondent was asked not to present the said cheques however it presented the same to implicate the petitioners. In the order dated 2nd September, 2016 passed by learned Metropolitan Magistrate, it was not reflected that the petitioners had argued the issues raised before it resulting in the learned ASJ noting in the impugned order dated 25th November, 2011 that the issues raised before him were not argued before the learned Metropolitan Magistrate. The revision petitions were dismissed by noting that advancement of loan, issuance of cheques and the legal notice were not disputed and the defences if any be taken up in the cross-examination.

5. The order directing framing of notice passed by learned Metropolitan Magistrate reads as under:-

"Intergen Energy Ltd. Vs. M/S SMS Paryavaran Ltd.
C.C. No. 4993626/16

02.09.2016

Present:Sh. Sushil Shukla, Ld. Counsel for the complainant along with AR of the complainant.
Ms. Richa Narang, Ld. Counsel for the accused persons alongwith all the accused persons.

Notices U/s 251 Cr.P.C framed against all the accused persons to which theypleaded not guilty and claimed trial. Plea of defence of the accused persons have also been recorded.

At this stage, it has been pointed out by the Ld. Counsel for the accused thatthe application u/s 145(2) N.I Act has already been filed

Submissions on the application heard. Record perused.

Since the accused persons have disclosed the plausible defence therefore,they are afforded an opportunity to cross examine the complainant on the NDOH.

In compliance of directions in circular No. 255/DLSA/Estt./DLSA /2015/5207, theparties are referred to the daily continuous Lok Adalat scheduled to be held on 24.09.2016 at 4:00 PM.

Parties are directed to appear before the Lok Adalat on the said date. Ahlmad is directed to send the file complete in all respect to the daily Lok Adalat immediately.

To come up for settlement, if any/ cross examination of the complainant on 18.11.2016.

(Deepak KumarII)
MM (NI Act)01
SW/DWK/ND
02.09.2016"

6. Indubitably learned Metropolitan Magistrate in the order directing framing of notice has not recorded the satisfaction whether a case for framing of notice is made out, however this aspect has been noted by the learned Metropolitan Magistrate while framing notice. In the reply to the plea of guilt, the petitioners admitted issuance of cheques and service of legal notice. Though it would have been in the interest of fair procedure if

the learned Metropolitan Magistrate had recorded a prima facie satisfaction, but be that as it may, having heard the learned counsel for the petitioners, this Court finds that the complaints disclose case for proceeding against the petitioners by framing a notice for offence punishable under Section 138 Negotiable Instruments Act and merely because a detailed reasoned order was not passed on 2nd September, 2016 by the learned Metropolitan Magistrate, matter is not required to be remanded back. Pleas of the petitioners are that they had no liability to pay, they had instructed the respondent not to present the cheques, the cheques in question were issued as guarantee cheques, amount had been paid in excess and that the sub-contract was not performed. All these pleas can be ascertained either by cross-examination of the respondent's witnesses or if the petitioners' lead the defence evidence. At the stage of framing of notice, the Court was only required to see that on the complaint, statements of the complaint's witnesses and documents exhibited whether ingredients of offence punishable under Section 138 NI Act were made out. Having satisfied thereon, the learned Magistrate was not required to enter into an exercise of appreciating the defence of the petitioners at this stage.

7. Petitions and applications are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

DECEMBER 19, 2016
'MK'