* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Date of Decision: 3rd July, 2017***

\+ CRL.M.C. 3744/2016 and Crl.M.A.No.15652/2016

MRB PROMOTERS PVT. LTD. & OTHERS ..... Petitioner

Through: Mr,Akhil Sibal, Sr. Advocate with Mr.Jasmeet Singh and Mr.Saurabh Tiwari, Advocates.

versus

SPLENDOR LANDBASE LIMITED ..... Respondents

Through: Mr.Sacchin Puri, Sr. Advocate with Ms.Namitha Mathews, Advocate.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

I.S. MEHTA, J.

1. Instant is a petition under Section 482 Cr.P.C. for quashing the summoning order dated 30.07.2016 passed by the learned Metropolitan Magistrate, South East, New Delhi in C.C. No. 1813/2016.

2. The brief facts stated are that the respondent/complainant company, i.e., Splendor Landbase Ltd., filed a complaint under Sections 138/141/142 of the Negotiable Instruments Act, 1881 against the present petitioners.

3. The petitioner/Company entered into an agreement [Joint Venture Agreement(JVA)] dated 23.03.2007 with the respondent/complainant for construction of a residential group

housing project on 10.27 acres of land situated in the village Mewla Maharajpur, Tehsil and District Faridabad, Haryana. In pursuance to the said agreement the respondent/complainant gave an amount of Rs. 6,00,00,000/- to the petitioners.

4. The petitioners in pursuance to the said agreement requested the respondent/complainant to release the remaining amount of Rs. 6,00,00,000/- in favour of the petitioners. The respondent/complainant before releasing the subsequent amount of Rs. 6,00,00,000/- verified the title documents, licenses, permissions, etc. with regard to the said land from the petitioner No. 2 and 3 and when the respondent/complainant came to know that the petitioners failed in their obligation to do the needful the petitioners issued three cheques of Rs. 1,00,00,000/- each in favour of the respondent/complainant and entered into a deed for cancellation of the said agreement on 07.05.2009. As per the Deed of Cancellation dated 07.05.2009 petitioners agreed to repay the sum of Rs. 6,00,00,000/- paid by the respondent/complainant under the said agreement dated 23.03.2007 and further agreed to pay Rs. 1,50,00,000/- as compensation to the respondent/complainant. Against the total settled amount of Rs. 7,50,00,000/- a sum of Rs. 1,00,00,000/- had been paid by the petitioner vide cheque no. 072653 dated 16.12.2008 which was adjusted and for the balance amount of Rs. 6,50,00,000/- the petitioners handed over seven post dated cheques to the respondent/complainant. The details of the said seven post dated cheques are as under:-

S. No.	Cheque No.	Dated	Amount	Bank
1.	072679	24.04.2009	Rs. 25,00,000/-	Punjab National Bank
2.	072686	07.08.2009	Rs. 1,00,00,000/-	Punjab National Bank
3.	072687	22.08.2009	Rs. 1,00,00,000/-	Punjab National Bank
4.	072688	10.09.2009	Rs. 1,00,00,000/-	Punjab National Bank
5.	072690	30.09.2009	Rs. 1,00,00,000/-	Punjab National Bank
6.	072691	15.10.2009	Rs. 75,00,000/-	Punjab National Bank
7.	072791	30.12.2009	Rs. 1,50,00,000/-	Punjab National Bank
		Total	Rs. 6,50,00,000/-	

5. Thereafter, when the respondent/complainant out of the aforesaid seven cheques presented the three cheques, i.e. cheques Nos. 072696, 072686 and 072687, to the bank for encashment the same got dishonoured. Intimation to this effect was sent to the petitioners vide letter dated 10.02.2011 and the petitioners vide letter dated 15.02.2011 issued fresh four post dated cheques collectively amounting to Rs. 3,25,00,000/-. The details of the said four post dated cheques are as under:-

S. No.	Cheque No.	Dated	Amount	Bank
1.	381876	30.04.2011	Rs. 75,00,000/-	Punjab National Bank
2.	381877	30.05.2011	Rs. 75,00,000/-	Punjab National Bank
3.	381878	30.06.2011	Rs. 75,00,000/-	Punjab National Bank
4.	381879	30.07.2011	Rs. 1,00,00,000/-	Punjab National Bank
		Total	Rs. 3,25,00,000/-	

6. Thereafter, the respondent/complainant presented the first post dated cheque No. 381876 of Rs. 75,00,000/- dated

30.04.2011 however, the said cheque stood dishonoured with remark "Funds Insufficient". Further on various reminders the petitioner paid a sum of Rs 50,00,000/- vide Pay Order bearing No. 491992 on 08.09.2011. When the respondent/complainant requested the petitioners to clear the balance amounts, the petitioner No.1 through the petitioner No.3 issued a letter dated 02.12.2011 wherein it was stated that the old cheques were replaced by cheques bearing Nos. 440712 and 440713 amounting to Rs. 1,00,00,000/-(Rupees One Crores only) after adjusting the amount of Rs. 50,00,000/- paid vai aforementioned pay order. Thereafter, the petitioner Nos.2 and 3 requested the respondent/complainant to wait for the payment of the said two cheques amounting to Rs. 1,00,00,000/- (Rupees One Crores only) as well as the earlier cheques bearing Nos. 381878 and 381879 amounting to Rs. 1,75,00,000/- (Rupees One Crores Seventy Lakhs only). When the respondent/complainant did not get the said cheques encashed amounting to a total of Rs. 2,75,00,000/- (Rupees Two Crores Seventy Five Lakhs only) , the respondent approached the petitioner on which the petitioners sought time till January 2014, citing that they were suffering from financial crisis and could not pay the amount.

7. Thereafter, on 17.02.2016 the petitioners again acknowledged the outstanding amounts and requested that the respondent/complainant fill in the date as 19.02.2016 on the undated cheques bearing Nos. 440712 of Rs. 25,00,000/- and

440713 of Rs. 75,00,000/- both drawn on Oriental Bank of Commerce, A-30-33, First Floor, Connaught Place, New Delhi which were handed over to the respondent/complainant. On 20.02.2016 the respondent/complainant presented the said cheques but the same were dishonoured vide return memo dated 23.02.2016 with remarks "Insufficient Funds".

8. Consequently, the respondent/complainant company issued legal demand notices dated 23.03.2016 which was duly served upon the petitioner(s). The petitioner(s) replied to the said legal demand notice on 11.04.2016. However, when the petitioner(s) failed to make the payment despite expiry of 15 days notice period, the respondent/complainant company was constrained to file the present complaint resulting into the instant summoning order dated 30.07.2016 qua against the petitioners.

Hence, the present petitions.

9. The learned Senior counsel for the petitioners has submitted that in the instant petition the cheques issued are time barred which does not come under the preview of Section 138 NI Act therefore, the summoning order dated 30.07.2016 is bad *ab initio*.

10. On the contrary the learned Senior counsel for the respondent/complainant has submitted that once the cheque without filling up of the date is given to the respondent/complainant it was deemed to be filled up at the subsequent date and in the present case it was specifically

authorized to do so. This presumption has to be rebutted by the petitioner(s) in the trial and all the grounds which are raised by the petitioner(s) in the present petition are disputed question of facts which cannot be decided by this Court in the inherent jurisdiction under Section 482 Cr.P.C. Reliance is placed on the judgments ***Mojj Engineering Systems td. & Ors. vs. .B. Sugar Ltd.; 2009 (107) DRJ 142*** and ***Purshottam Maniklal Gandhi vs. Mahohar K. Deshmukh & Anr.; (2007) 4 BOMCR 404***.

11. In rebuttal, the learned Senior counsel for the petitioners has further submitted that the arguments contended by the learned Senior counsel for the respondent does not stand good in law and further submitted that the cheques were issued on 02.12.2011 and it is the case of the respondent/complainant that it is only in 2016 that alleged authority to put the sign was given. Consequent to that, the date put was 19.02.2016 and on that date there was no legally enforceable debt qua the petitioners therefore, the cheque in question is barred by law. Reliance is placed on the judgments ***Prajan Kumar Jain vs. Ravi Malhotra; 2009 (113) DRJ 275*** and ***Vijay Polymers t. Ltd. & Anr. vs. Vinnay Aggarwal; 162 (2009) DLT 23***.

12. The instant petition is arising out of the summoning orders passed in C.C. No. 1813/16 wherein the petitioners are claiming that the impugned summoning order is bad and is nothing but abuse of process of law.

13. The proceedings under Section 138 read with Section 142 and section 142 of the NI Act are undoubtedly criminal

proceeding which the respondent/complainant is initiating qua against the present petitioners for the wrongful act on the part of the petitioners. The standard of proof in the criminal proceeding is higher than that of a civil proceeding which thus gives the platform to the creditor to run criminal as well as civil proceedings parallely. This Court has already said so in the case ***Sanjay Aggarwal vs. G.S. Tayal & Ors.;*** Crl. M.C. No. 4144/2009 decided on 11.04.2012 and reliance is also placed on the judgment of the Apex court in the case ***Sh. Vishnu Dutt Sharma vs. Smt. Daya Sapra,*** **(2009) 13 SCC 729**.

14. The object of Chapter XVII of the NI Act is to promote the efficacy of banking operations and to ensure credibility in transacting business through cheques. Reliance is placed on the judgment of the Apex Court in the case ***Modi Cements Ltd. vs. Kuchil Kumar Nandi; (1998) 3 SCC 249***.

15. Section 138 of the Negotiable Instruments, Act 1881 is reproduce as under:

> *"**138. Dishonour of cheque for insufficiency, etc., of funds in the account**. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other*

provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

16. The Hon'ble Supreme Court in the case of ***Kusum Ingots & Alloys Ltd. vs. Pennar Peterson Securities Ltd. And Others; (2000) 2 SCC 745*** <u>has laid down the following ingredients for taking cognizance under Section 138 of the NI Act</u>:-

" (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn of within the period of its validity whichever is earlier;
(iii) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;
(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;"

17. Section 20 of the Negotiable Instruments Act, 1881 is reproduced as under:

"Section 20 in The Negotiable Instruments Act, 1881 20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 1[India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he

signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder."

18. Bare perusal of Section 20 of the NI Act shows that there is a presumption that a person signing on the cheque(inchoate stamped instrument) shall be responsible for its encashment on presentation and such person thereby gives *prima facie* authority to the holder thereof to make or complete as the case may be upon it, a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp. The reliance is placed on the judgment of the this Court in the case ***Ravi Chopra vs. State and Anr.; 2008 (102) DRJ 147***.

19. The Bombay High Court in case ***Purushottam Maniklal Gandhi vs Manohar K. Deshmukh & Anr.; 2006 SCC Online Bom 932*** has observed that when a drawer of a cheque delivers a signed cheque, he obviously gives an authority to the holder to put a date of his choice. Therefore, there would be no question of the instrument becoming time barred, since it would become time barred only from the date of issue, which, in view of the provision 118 would be the date on the cheque, which, under Section 20, the holder had the authority to fill.

20. The contention of the learned senior counsel for the petitioner that the cheques in question were of the year 2011 and by putting the date on the said cheques does not create any

fresh liability qua the petitioners does not seems to be correct on the following grounds:-

1) Issuance of the cheques in question is not disputed between the parties.
2) The cheques issued were in consequence of the two agreements dated 23.03.2007 and 07.05.2009 entered between the parties.

21. In the instant petition the issuance of the post dated cheques by the petitioners is not been disputed and the said cheques were issued on the basis of the agreements dated 23.03.2007 and 07.05.2009 executed between the parties. There is no plea on behalf of the petitioners that the said liability to repay the amount has been discharged with.

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22. In the instant petition what is emerging is that the respondent/complainant in its complaint at para 22 has specifically alleged that the petitioners had acknowledged the outstanding payments/liability and issued the undated cheques, i.e. Cheque No. 440712 of Rs 25,00,000/- and Cheque No. 440713 of Rs. 75,00,000/-, and had authorised the respondent/complainant to fill in the date as 19.02.2016 on the said undated cheques which is reproduced as under :-

> *"That the Accused have neither replied to the said legal notice nor intimated any payment schedule qua same. The representatives of the Complainant had again followed up with Accused No.2 and 3 and reminded them to make the outstanding*

payments due to the Complainant. <u>Thereafter, on 17.02.2016, the Accused Nos. 1 to 3 again acknowledged the outstanding amounts and requested that the Complainant fill in the date as "19.02.2016" on the undated cheques bearing number 440712 amounting to Rs 25,00,000/- (Rupees Twenty ve Lacs only) and Cheque No. 440713 of Rs. 75,00,000/-(Rupees Seventy Five Lacs only both drawn on Oriental Bank of Commerce, A-30-33, First Floor, Connaught Place, New Delhi which were handed over to the Complainant</u>. That the Complainant accordingly filled the date of 19.02.2016 on the said cheques and presented the same with its banker HDFC k Ltd., Jasola Vihar, New Delhi on 20.02.2016. However, both the said cheques were dishonored and returned with remarks "Insufficient Funds" vide memo dated 23.02.2016 which were received by the Complainant on 27.02.2013. Copy of Cheque No. 440712 of Rs 25,00,000/- and Cheque No. 440713 of Rs. 75,00,000/- alongwith cheque return memo are annexed herewith and marked Annexure-C9 'Colly'". (Underlining Supplied)

23. In response to that the petitioners had claimed that the claim of the respondent/complainant is barred by law of limitation and has relied on the judgments:-

i. ***Vijay Polymers Pvt. Ltd. & Anr. vs. Vinay Aggarwal;162 2009) DLT 23***.
ii. ***Prajan Kumat Jain vs. Ravi Malhotra; 2009 (113 DRJ 275***.
iii. ***Smt. Ashwini Satish Bhat vs. Shri Divakar Lolinenkar; 2000 (5) BOMCR 9***.

24. However, the petitioner has relied on its reply dated 11.04.2016 to the notice dated 23.03.2016 of the respondent/complainant wherein the petitioners have stated that the aforesaid cheques were given to the respondent/complainant in good faith in furtherance of bonafide intent and the petitioners always intended to repay which is reproduced as under:-

> *"**1.5** On 08.09.2011 my Clients further paid a sum of Rs. 50,00,000(Rupees fifty lakhs only to Mr. Vikram Bhatia/SLL vide a pay order bearing no. 491992. Since the earlier two cheques, i.e. cheque no. 381876 dated 30.04.2011 and cheque no. 381877 dated 30.05.2011 each for Rs. 75,00,000/- Rupees seventy five lakhs only) entrusted to Mr. Vikram Bhatia/SLL were no longer valid, my Clients in good faith an in furtherance of their bonafide intent, once again under cover of letter dated 02.12.2011 entrusted Mr. Vikram Bhatia/SLL with two undated cheques, i.e. cheque no. 440712 for Rs 25,00,000/- (Rupees twenty five lakhs only) and cheque no. 440713 for Rs. 75,00,000/- (Rupees seventy five lakhs only). From aforesaid facts it is evident thatmy Clients always intended to repay SLL."* (Underlining Supplied)

25. The petitioner in his defence in the instant petition has replied that the aforementioned cheques, i.e. Cheque No. 440712 of Rs 25,00,000/- and Cheque No. 440713 of Rs. 75,00,000/-, were issued in favour of the respondent/complainant in good faith and in furtherance of their bonafide intent and always intended to repay in the said reply dated 11.04.2016. The respondent/complainant specifically

alleges in the complaint that the petitioners made acknowledgement of existing liability and thereafter the respondent/complainant issued the legal notice dated 23.03.2016 and reply to the said legal notice is dated 11.04.2016 relied upon by the petitioners themselves wherein the petitioners they themselves have stated that the cheques issued were in good faith in furtherance of their bonafide intent.

26. As per the General Clauses Act good faith means an act done in furtherance of honest belief. Whereas, under Section 52 IPC good faith means whether the act so done was with due care and attention. Section 52 IPC is reproduced as under:-

"52. "Good faith".—Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

27. The act of due care and attention is to be acted by a person who is acting in good faith and he has reason to act so in good faith. Simple belief or actual belief by itself is not enough. Instant is a petition under the Code of Criminal Procedure and Section 52 IPC puts the burden on the petitioner to show that whether the cheques issued were without acknowledging its liability under the aforesaid agreement. Mere escaping the liability by using the word good faith is not enough.

28. The factum of issuance of the aforesaid cheques in good faith without acknowledgment of its liability in the instant petition lies on the petitioner which will be determined during the trial. The petitioner cannot escape its liability under Section

52 IPC by mere saying that the cheques issued were in good faith only. The determination of good faith of issuance of cheques with acknowledgement of outstanding liability remains to be determined during the trial. Reliance is placed on the judgment of the Apex Court in ***Harbhajan Singh vs. State of Punjab; AIR 1966 SC 97*** and the judgment of this Court in ***Mojj Engineering Systems td. & Ors. vs. .B. Sugar Ltd.; 2009 (107) DRJ 142***.

29. In the instant petition both the aforesaid facts are emerging as a question of facts and law which unequivocally are giving rise to a mixed question of facts and law which is to be determined during due course of trial. Therefore, invocation of inherent jurisdiction of this Court under Section 482 Cr.P.C. is unwarranted at this stage.

30. As discussed above, I find no merit in the contentions of the learned Senior counsel for the petitioners and the judgments relied are not helpful in existence of petitioners own reply dated 11.04.2016.

31. Consequently, the present petition is dismissed. One copy of this judgment be sent to the concerned Court. No order as to costs.

I.S.MEHTA, J

JULY 03, 2017/km