IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.18455 of 2016 (O&M)

Date of Decision: 24.05.2018

M/s New Tekneek Industry
through its Partner-Bhushan Verma and others

.....Petitioners

Versus

M/s Polylon Fabrics Private Limited
through its Director-Nikhil Gupta

.....Respondent

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Harkesh Manuja, Advocate for the petitioners.

Mr. Ashwani Talwar, Advocate for the respondent/complainant.

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MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") for quashing of Complaint dated 24.12.2015 (**Annexure P-4**) as well as summoning order dated 24.12.2015 (**Annexure P-5**), passed by the learned Judicial Magistrate 1st Class, Panipat, whereby the petitioners have been summoned for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

Brief facts of the case are that respondent-M/s Polylon Fabrics Private Limited Ltd. filed a complaint under Section(s) 138/142 of the Act through its Director-Nikhil Gupta against the petitioners by alleging that the complainant is doing the business of manufacturing and sale of different kind of fabric/s as well as zip/s across the country. Petitioner No.1 is alleged to be a registered Firm, whereas petitioner No.2-Kul Bhushan Verma @ Bhushan Verma and petitioner No.3-Vipin Mittal are its partners and thus, they are liable to the act, conduct and ratification of the said Firm. It is further alleged that the complainant/respondent was having the business dealings with the petitioners and in due course, the petitioners purchased the material from the respondent since the Financial Year 2013 onwards in the bulk quantities and there was outstanding payments against the petitioners. It is further alleged that in the Financial Year 2013-2014, bulk purchase of Rs.9,06,23,490/- was made and against which, the petitioners issued a Credit Note of Rs.32,92,390/- and paid Rs.7,74,89,911/- plus General Transfer through M/s Lokesh Textile of Rs.58,470/- and Cash tender of Rs.1,00,000/- adjusting Rs.4,09,496/- on account of cheque bounce. Thereafter a sum of Rs.38,62,860/- was carried forward for the subsequent Financial Year as balance outstanding after adjustment of rebate and discount of Rs.28,47,429/-

Similarly, for the Financial Year 2014-2015, the bulk purchase was made worth Rs.26,72,98,882/- and again a Credit Note of Rs.25,34,388/- was issued and thereafter, for the Financial Year 2015-2016, till October, 2015, the petitioners purchased material worth Rs.16,56,92,601/-.

To discharge their liability on account of payment of outstanding amount, mentioned above, the petitioners issued a Cheque bearing No.474601 dated 23.10.2015 (**Annexure P-2**), drawn on Canara Bank, Panipat, Main Branch for Rs.5,00,00,000/- (Rupees Five Crores only) from the account of petitioner No.1/Company in favour of the complainant/respondent with the assurance that the cheque issued by the Company will be honoured as and when the same is presented for collection by the complainant/respondent. In the result, the said cheque was presented for the collection by the complainant/respondent through its banker, namely, State Bank of India, SME Branch, Panipat, but the same was returned unpaid by the Bank with the remarks "*Payment stopped by Drawer*", vide memorandum dated 29.10.2015 (**Annexure P-8**) and thus deliberately, the petitioners have committed an act of fraud, cheating and coercion with the respondent/complainant. It is also alleged that above said Cheque was issued for discharge of the outstanding payment of Rs.5,41,82,290.50/-, but by playing a mischief, the petitioners had mentioned at the back of the cheque for "security purpose". The cheque was dishonoured and thus the petitioners have committed the offence punishable under Section 420 of the Indian Penal Code (for short 'IPC') and Section(s) 138/142 of the Act.

It is also pleaded that Legal Notice dated 09.11.2015 (**Annexure P-1**) was issued through their Counsel to petitioner No.2-Bhushan Verma and petitioner No.3-Vipin Mittal (both Partners of M/s New Tekneek Industry-petitioner No.1) and the same was replied by petitioner Nos.2 and 3 through their counsel on 26.11.2015. So far as the business dealings between the parties are concerned, the same is not disputed; rather admitted and the stand taken by the petitioners in their reply to the Legal Notice is that the cheque in question was issued for the purposes of security only and the same has been misused for collection with *mala fide* intention.

After filing of the complaint, the complainant/respondent appeared as CW-1 and led preliminary evidence by way of his affidavit Ex.CW-1/A along with other documents Ex.C-1 to C-17 and on the basis thereof, learned J.M.I.C., Panipat found that *prima facie*, case for the commission of offence punishable under Section 138 of the Act is made out and summoned the petitioners for 21.03.2016 to face trial.

It is contended by learned Counsel for the petitioners that Nikhil Gupta, Director was not an authorised person to file the complaint on behalf of the respondent and the cheque in question was only for security purpose. Lastly, it is argued that no Legal Notice has been issued to petitioner No.1/Firm and therefore, the same is in violation of Section 141 of the Act.

On the other hand, learned Counsel for the respondent has opposed the submissions of learned Counsel for the petitioners and submitted that these are all disputed questions of fact, which will be decided after leading evidence by both the parties and moreover, petitioner No.1/Firm has already been impleaded as a party/respondent in the complaint and as such, the present petition is liable to be dismissed.

Heard both sides and perused the paper-book.

So far as the first argument regarding authorization is concerned, the same is not tenable in view of the fact that there is a valid Resolution dated 02.11.2015, passed by the respondent/Company in which, Nikhil Gupta, Director has been authorised to file the complaint against the petitioners and the same is on record and thus the argument is rejected.

The next argument that the cheque in question was issued as a "security cheque" is also not tenable at this stage as the same will be adjudicated after producing the evidence by both the parties during trial and thus, it is too early to record any such findings at this stage either way, while exercising powers under Section 482 Cr.P.C. Consequently, this argument is also rejected.

The last argument is that no Legal Notice has been issued to petitioner No.1/Firm and as such, the same is in violation of Section 141 of the Act and consequently, the entire proceedings are vitiated.

As per the Partnership Deed, which is appended with the petition, petitioner Nos.2 and 3 are the Partners of petitioner No.1-Firm in equal share i.e. 50% each and according to Clause 13 thereof, it is stipulated that as per the needs of the business and convenience, both the partners may mutually authorise any person to carry on the business of the Firm and in such a case, all the acts of that person shall be binding on the Firm. Further Clause 14 of the Deed reveals that except as stated above, for all other purposes, the relation of the Partners shall be governed by the provisions of the Indian Partnership Act, 1932 and there is no dispute that both the Partners i.e. petitioner Nos.2 and 3 have signed the cheque in question on behalf of petitioner No.1/FIrm being duly authorised.

In the Partnership deed, the address of petitioner No.3-Vipin Mittal, Partner is H.No.1085, Sector 12, HUDA, Panipat and address of petitioner No.2-Kulbhushan Verma is H.No.965, Sector 12, HUDA, Panipat; whereas the name and style of petitioner No.1 i.e. M/s New Tekneek Industry is at Dadola Road, Sewah, Panipat and there is a clear cut recital in the Legal Notice that work address of petitioner Nos.2 and 3 has been written as Dadola Road, Sewah, Panipat.

Even the heading of reply dated 26.11.2015 submitted by petitioner Nos.2 and 3 to the Legal Notice dated 09.11.2015 also reads as under:-

> *“ Reply to your Notice dated 11.09.2015 (09.11.2015) served upon M/s New Tekneek Industry under Section 138 read with Section 142 of the Negotiable Instruments Act. ”*

Still further, the proviso (b) and (c) to Section 138 lays down the requirement of giving a Notice in writing to the “drawer” of the cheque and if upon such notice, the “drawer” fails to make the payment of said cheque amount, then a complaint can be filed under Section 138 of the Act. In the present case, the drawer of the cheque are petitioner Nos.2 and 3 being partners, as is clear from the perusal of the Cheque (**P-2**) itself and undisputedly, the Legal Notice was duly served upon both the petitioners.

Again, there is no dispute that petitioner Nos.2 and 3 were the authorized signatories on behalf of petitioner No.1-Firm and keeping in view that authorization, they had signed and issued the cheque in question in favour of the complainant/respondent and thus within the parameters of Section 7 of the Act, both the petitioners are to be construed as drawer and as discussed above, a Legal Notice in terms of proviso (b) and (c) to Section 138 was duly issued to both of them and thus, there was a sufficient compliance for the issuance of the Legal Notice before filing the complaint against the petitioners. Therefore, the petitioners cannot take any benefit of the argument that no Legal Notice was issued to the Firm/petitioner No.1 and a reference in this regard can be made to the judgment, rendered by the Hon'ble Supreme Court in **Aneeta Hada** *Versus* **Godfather Travels and Tours Private Limited, (2012) 5 Supreme Court Cases 661** and para 20 of the same being relevant reads as under:-

> *" Section 7 of the Act defines "drawer" to mean the maker of a bill of exchange or a cheque. An authorised signatory of a company becomes a drawer as he has been authorised to do so in respect of the account maintained by the company. "*

Therefore, keeping in view the facts of the present case, this Court is fully convinced that *prima facie,* there is a substantial compliance of Clause (b) and (c) of the provisions of Section 138 of the Act while issuing Legal Notice to the petitioners and they cannot take shelter under Section 141 of the Act for quashing of the complaint as well as summoning order at this stage. Since these are disputed questions of facts and the same will be adjudicated after leading evidence by both the parties during trial.

There is no dispute that petitioner No.1-Firm has been arrayed as party respondent No.1 in the complaint and, therefore, the argument raised to the effect that no Legal Notice has been sent to the petitioner No.1-Firm is not acceptable and the same is also rejected.

In view of the facts and circumstances, discussed hereinabove, this Court does not find any merit in the present petition and the same is dismissed.

It is clarified that the observations made hereinabove shall not be construed as expression of an opinion on the merits of the case.

However, keeping in view the fact that the complaint is pending since October, 2015, therefore, the learned trial Court is requested to expedite the trial.

May 24, 2018 **(MAHABIR SINGH SINDHU)**
Gagan **JUDGE**

Whether speaking/reasoned	Yes
Whether Reportable	*Yes*