

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

% Decided on: 20th April, 2018

+ **CRL.L.P. 258/2018**

M/S. APS FOREX SERVICES PVT. LTD.

..... Petitioner

Represented by: Mr. Varinder Kumar Sharma
and Ms. Parul Sharma,
Advocates

versus

SHAKTI INTERNATIONAL FASHION
LINKERS & ORS

..... Respondent

Represented by: None

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI.M.A. 7279/2018 (Exemption)

Allowed, subject to all just exception.

CrI.M.A. 7278/2018

For the reasons stated in the application, delay of 62 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 258/2018

1. Petitioner (APS Forex Services Pvt. Ltd.) filed complaint case no. 613773/16 under Section 138 Negotiable Instruments Act, 1881 (in short 'NI Act') alleging that in discharge of liability arising out of issuance of foreign exchange/USD card under LERM scheme vide request letters dated 10th Januray, 2014, 20th February, 2014 and 22nd February, 2014, respondent no. 1 (Shakti International Fashion Linkers) issued four cheques totaling to

Rs.12,55,513/- which were dishonored. When the aforesaid fact was brought to the knowledge of the respondent, fresh cheque bearing no. 374941 dated 31st May, 2014 for a sum of Rs.9,55,574/- drawn on Oriental Bank of Commerce, Defence Colony Branch, New Delhi was issued. Aforesaid cheque was also returned unpaid vide memo dated 2nd June, 2014 with remarks 'Stop Payment'. Petitioner issued a legal notice dated 10th June, 2014 through registered post but the respondent failed to make the payment. Hence, the present complaint.

2. To prove the case, authorized signatory of petitioner examined himself as CW-1 and tendered his evidence by way of an affidavit as Ex.CW-1/2 and also exhibited request letters dated 10th January, 2014, 20th February, 2014 and 22nd February, 2014 as Ex.CW-1/D, Ex.CW-1/E and Ex.CW-1/F respectively, letter dated 22nd February, 2014 as Ex.CW-1/G, invoice no. 9865 as Ex. CW-1/I, invoice no. 10020 as Ex.CW-1/K, invoice no. 10021 as Ex.CW-1/L, original cheque as Ex.CW-1/M, cheque returning memo as Ex.CW-1/O and legal demand notice as Ex.CW-1/P. During his cross-examination, the petitioner proved his statement of ledger account as Ex.CW-1/T (colly), bank statement as Ex. CW-1/U (colly), details of debtors and creditors as Ex. CW-1/D2, service tax details as Ex.CW-1/D3 (colly), statement of travel card as Ex.CW-1/D6 and list of sundry creditors as Ex.CW-1/D7.

3. Sushil Kumar, partner of respondent no. 1, in his statement recorded under Section 313 Cr.P.C. stated that he was the signatory to the cheque and the cheque was issued as blank security cheque wherein the amount was filed by the petitioner. He further submitted that the request letters were forged and fabricated. He also submitted that the cards, for which payment

was sought, were not issued by respondent no. 1.

4. Anuj Sharma, respondent no. 2, in his statement recorded under Section 313 Cr.P.C. stated that he was also a partner of respondent no. 1 and took the same stand as Sushil Kumar.

5. Respondents did not lead any defence evidence.

6. It is the case of the petitioner that Sushil Kumar approached the Petitioner for issuance of foreign exchange/USD card under LERM Scheme vide request letters dated 10th January, 2014, 20th February, 2014 and 22nd February, 2014. Petitioner had issued USD card of 15,000/- amounting to Rs. 9,45,746/- vide invoice no. 9865 dated 10th January, 2014, travel card of \$10,000 amounting to Rs.6,35,554/- vide invoice no. 9993 dated 20th February, 2014, foreign exchange of USD (CN) 2500 amounting to Rs.1,60,010/- vide invoice no. 10020 dated 22nd February, 2014 and foreign exchange of USD (CN) 2500 amounting to Rs.1,60,010/- vide invoice no. 10021 dated 22nd February, 2014. Aforesaid transactions totaled to Rs. 19,01,320/-, out of which part payment was made by the respondent firm of Rs. 6,45,307/-. In discharge of the foresaid liability, cheque for a sum of Rs. 9,55,574/- was issued.

7. From the documents placed on record, it is evident that USD card for a sum of 15,000/- was issued on 10th January, 2014, however, the travel for the card was allegedly issued to commence from 8th January, 2014. The bill was not raised in the name of individual traveller and the USD card reached the traveller who would have already reached his destination on the day when the bill was raised. How the USD card reached the traveller who would have been already at the destination was not explained. USD card issued to the traveller on 10th January, 2014 against the ticket of scheduled

travel of 8th January, 2014 was also not explained. Thus, the issuance of USD card of 15,000/- against request letter dated 10th January, 2014 was doubtful.

8. Furthermore, the petitioner failed to produce vouchers containing acknowledgement of receipt of two transactions of foreign exchange of USD (CN) 2500 dated 22nd February, 2014. With respect to the transaction pertaining to issuance of travel card of \$10,000 amounting to Rs.6,35,554/- vide invoice no. 9993 dated 20th February, 2014, the amount actually withdrawn therefrom was not proved. Though the petitioner produced the statement of account of travel card Ex.CW-1/D6, however, the same was neither proved in terms of Bankers' Book Evidence Act, 1891 nor accompanied by certificate under section 65B of Indian Evidence Act, 1872, thus inadmissible in evidence.

9. Considering the evidence on record, the learned Trial Court rightly held that the petitioner failed to prove that there was any legal liability of the respondents to pay the cheque amount and dismissed the complaint, thereby acquitting the respondents. Finding of the learned Trial Court is neither illegal nor perverse warranting interference.

10. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 20, 2018
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