

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

% Decided on: 28th February, 2018

+ **CRL.L.P. 582/2017**

APAR INDUSTRIES LTD Petitioner
Represented by: Mr. A.K. Srivastava, Adv.

versus

ALLIANCZ POLY-CHEM OVERSEAS LTD Respondent
Represented by:

+ **CRL.L.P. 587/2017**

APAR INDUSTRIES LTD Petitioner
Represented by: Mr. A.K. Srivastava, Adv.

versus

KALYANI PETROCHEM PVT LTD & ORS Respondent
Represented by:

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By these petitions the petitioners seek leave to appeal against the impugned judgment dated 30th May, 2017 whereby the respondents were acquitted for offence punishable under Section 138 of the Negotiable Instruments Act.

2. Petitioners filed two criminal complaints being No.22460/2016 and 22605/2016 titled as "*Apar Industries Limited Vs. Alliancz Poly-chem Overseas Limited*" and "*Apar Industries Limited Vs. Kalyani Petrochem*

Private Limited” for dishonor of 42 and 15 cheques amounting to ₹4,39,44,517.50 and ₹1,38,35,503/- respectively. It is the case of the petitioner that as per the purchase orders/ requests of the respondent, petitioner supplied material to the respondent as mentioned in the invoices and for the outstanding amounts cheques were issued which on presentation were dishonored with the remarks “Insufficient Funds”. Notices of dishonor of the cheques were issued to the respondents who failed to make the necessary payments in the prescribed period, hence the two complaints.

3. After the evidence of the complainant by way of affidavits was tendered, accused were summoned and after notice of accusation was served on the respondents complaints were posted for cross-examination of the complainant’s witness vide order dated 9th September, 2013. From 11th November, 2013 till 21st January 2017 the authorized representative of the complainant failed to appear in the witness box for cross-examination, hence vide order dated 21st January, 2017 and 4th February, 2017 respectively in the two complaints, complainant’s opportunity for cross-examination and further evidence of the complainant was closed. Since the authorized representative of the complainant failed to subject itself to cross-examination, the respondents were acquitted. It may be noted that in the interregnum the petitioner also filed applications under Section 311 Cr.P.C. seeking to place on record additional documents which were also dismissed.

4. The six contentions of learned counsel for the petitioner before the Trial Court were as under:

“i) *This Court is bound by the judgment of Rajesh Aggarwal Vs. State and Indian Bank Association Vs. Union of India and has to complete the trial within six months from commencement and the cross examination of the*

complainant witness cannot exceed a period of three months from commencement.

- ii) As the statutory period of time to complete the trial stands exhausted, therefore the case cannot proceed further and the accused persons have to be convicted.*
- iii) Complainant has placed on record the essential minimum required documents, based on which the cognizance of the offence was taken, therefore unnecessary cross-examination of the complainant and compelling him to produce further documents is just a technique of delaying adopted by the accused. By virtue of section 139 of the NI Act, there is a presumption in favour of the complainant which has not been rebutted in this case.*
- iv) Only accused No.3 was permitted to cross-examine the complainant, however, counsel for other accused persons without permission of this Court started cross-examining the complainant, which is an illegality.*
- v) The accused persons have failed to raise any defence, therefore, instead of cross-examining the complainant, the case should immediately go for leading of defence evidence; and as the accused persons have refused to lead defence evidence, therefore they must be immediately convicted for offence of dishonor of cheque.*
- vi) The complainant company has suffered immense losses due to the dishonor of cheques issued by the accused persons and they have deliberately and intentionally knowingly that there is not sufficient amount in their account issued the cheques and they raised false plea before the court after service of notice of accusation.”*

5. In the complaints the petitioner's/ complainant's authorized representative refrained from subjecting himself to cross-examination, thus the accused was not required to lead any defence. Petitioner not having led his evidence in accordance with law, for the reason when permission to

cross-examination of complainant was granted, the witness of complainant not being cross-examined, its evidence is incomplete. The initial burden to prove its case even on the touchstone of preponderance of probability was on the petitioner after which a presumption could be raised, where after the onus would have shifted to the respondent to rebut the presumption. Petitioner's authorized representative having failed to subject himself for the cross-examination the petitioner has not been able to discharge the initial burden. The authorized representative of the complainant stated that all the purchase orders in original were in his possession, however he did not produce the same during the course of trial. Merely because of efflux of time, which was also attributable to the complainant, the complainant does not get a right to withdraw himself from further cross-examination. Hence the finding of the learned Trial Court that there was no evidence on record against the accused person raising a mandatory presumption which they were required to rebut and thereby acquitting the accused/ respondents cannot be said to be a perverse or illegal view warranting interference.

6. Leave to appeal petitions are accordingly dismissed.

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(MUKTA GUPTA)
JUDGE

FEBRUARY 28, 2018
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