In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.M-26186 of 2014 (O&M)

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Date of decision:21.02.2019

Jindal Cotex Ltd.

...Petitioner

v.

Rahul Lomsh and others

...Respondents

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(2) CRM-M-26187-2014

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Jindal Cotex Ltd.

....Petitioner

v.

Rahul Lomsh and others

....Respondents

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(3) CRM-M-26188-2014

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Jindal Cotex Ltd.

....Petitioner

v.

Rahul Lomsh and others

....Respondents

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(4) CRM-M-26189-2014

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Jindal Cotex Ltd.

....Petitioner

v.

Rahul Lomsh and others

....Respondents

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(5) CRM-M-26190-2014
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Jindal Cotex Ltd.
....Petitioner

v.

Rahul Lomsh and others
....Respondents
.....

(6) CRM-M-26191-2014
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Jindal Cotex Ltd.
....Petitioner

v.

Rahul Lomsh and others
....Respondents
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(7) CRM-M-26192-2014
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Jindal Cotex Ltd.
....Petitioner

v.

Rahul Lomsh and others
....Respondents
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(8) CRM-M-26193-2014
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Jindal Cotex Ltd.
....Petitioner

v.

Rahul Lomsh and others
....Respondents
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(9) CRM-M-26194-2014
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Jindal Cotex Ltd.
....Petitioner

v.

Rahul Lomsh and others
....Respondents
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(10) CRM-M-26195-2014
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Jindal Cotex Ltd.
....Petitioner

v.

Rahul Lomsh and others
....Respondents
.....

(11) CRM-M-1167-2015
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Jindal Cotex Ltd.
...Petitioner
v.

Rahul Lomsh and another
...Respondents
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(12) CRM-M-1169-2015
.....

Jindal Cotex Ltd.
...Petitioner
v.

Rahul Lomsh and another
...Respondents
....

(13) CRM-M-1170-2015
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Jindal Cotex Ltd.

...Petitioner

v.

Rahul Lomsh and another

...Respondents

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(14) CRM-M-1171-2015

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Jindal Cotex Ltd.

....Petitioner

v.

Rahul Lomsh and others

....Respondents

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(15) CRM-M-1227-2015

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Jindal Cotex Ltd.

....Petitioner

v.

Rahul Lomsh and others

....Respondents

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(16) CRM-M-31710-2015

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Jindal Cotex Ltd.

....Petitioner

v.

Rahul Lomsh and another

....Respondents

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(17) CRM-M-31711-2015

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Jindal Cotex Ltd.

....Petitioner

v.

Rahul Lomsh and another

....Respondents

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(18) CRM-M-31799-2015

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Jindal Cotex Ltd.

....Petitioner

v.

Rahul Lomsh and another

....Respondents

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(19) CRM-M-31800-2015

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Jindal Cotex Ltd.

....Petitioner

v.

Rahul Lomsh and others

....Respondents

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(20) CRM-M-31806-2015

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Jindal Cotex Ltd.

....Petitioner

v.

Rahul Lomsh and another

....Respondents

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(21) CRM-M-31812-2015

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Jindal Cotex Ltd.

....Petitioner

v.

Rahul Lomsh and another

....Respondents

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(22) CRM-M-31829-2015

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Jindal Cotex Ltd.

....Petitioner

v.

Rahul Lomsh and another

....Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Satya Pal Jain, Senior Advocate with Mr. Dheeraj Jain, Advocate for the petitioner.

Mr. Vaibhav Sehgal, Advocate for respondent No.1.

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Inderjit Singh, J.

This order will dispose of the above mentioned 22 criminal miscellaneous petitions which have been filed by Jindal Cotex Limited-petitioner under Section 482 Cr.P.C. against respondent-Rahul Lomsh and others-respondents for quashing of the Criminal Complaint No.53840/2013 dated 24.9.2013 (Annexure-P.1) along with 21 connected complaints filed by respondent No.1 against the petitioner and respondents as well as summoning orders dated 17.1.2014 (Anexure-P.2) issued by learned Judicial Magistrate Ist Class, Ludhiana in the above said complaints as well as all subsequent proceedings consequent to the filing of the said criminal complaints and restraining respondent No.1 from initiating any criminal proceedings against the petitioner or its Directors/Officers with regard to advance post-dated cheques No.197445 to 197462 and 197644 to 197664 issued by the petitioner-Company; being not maintainable, illegal in the eyes of law and abuse of process of law. As these petitions are identical, the facts have been taken from Criminal Misc. No.M-26186 of 2014.

Notice of motion was issued in these petitions.

Mr. Vaibhav Sehgal, learned Advocate has appeared on behalf of respondent No.1 and contested these petitions.

I have heard learned counsel for the parties and have gone through the record.

Learned senior counsel for the petitioner argued that all the cheques are post-dated cheques given as security and there was no liability to pay this amount and, if at all, it is a civil liability. Therefore, he argued that the complaints should be quashed. He further argued that in the complaints there is no mention of earlier transactions or other complaints filed by the complainant. Learned senior counsel for the petitioner further argued that liability can be against the Director who had signed the cheques and not against other Directors.

On the other hand, learned counsel for the respondent No.1 argued that this Court is not to give the finding of fact as to whether there is liability at the time of presentation of cheque or not as finding of fact is to be given by the trial Court on the basis of evidence. He argued that otherwise also from the bills/receipts Ex.R.1 and accounts statement Ex.R.2 and from the petitions itself the liability on the face of it is there to pay the amount. Learned counsel for the respondent No.1 further argued that the Directors are not petitioners in these petitions. Only Jindal Cotex Limited – Company is the petitioner.

From the record, I find that the post-dated cheques are valid cheques and these can be presented for encashment by the holder of the cheque. It is rather the case of the petitioner that they have given the post-dated cheques. Presumption under Section 139 of the NI Act arises that these cheques are for the discharge of legal liability. Otherwise also, the finding of fact cannot be given in petitions for quashing filed under Section 482 Cr.P.C. by this Court without any evidence. The finding of fact is to be given by the trial Court on the basis of evidence which is yet to be produced before it as to whether at the time of presentation of cheque any liability was there or not. Learned counsel for the respondent No.1 placed reliance on the law laid down by the Hon'ble Supreme Court in HMT Watches Ltd. v. M.A. Abida and another, 2015(2) Law Herald [P&H] 1594 (SC), wherein it has been held that High Court would be exceeding its jurisdiction by giving its opinion on disputed question of facts, before the findings of trial Court. In para 10 of the said judgment, it has been held as under:-

> "Having heard learned counsel for the parties, we are of the view that the accused (respondent no.1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our

opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of N.I. Act stood uncomplied, even though the respondent no.1 (accused) had admitted that he replied the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorized by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it."

Learned counsel for respondent No.1 further relied upon the law laid down by the Hon'ble Supreme Court in Sampelly Satyanarayana Rao v. Indian Renewable Energy development Agency Limited, 2016(4) Law Herald [P&H) 3433 (SC), wherein it has been held as under:-

"We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in **Indus Airways** (supra) with reference to the explanation to Section 138 of the Act and the expression "for discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. If on the date of the cheque liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise.

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In **Rangappa versus Sri Mohan**, [2010(4) Law Herald (SC) 2296] : (2010) 11 SCC 441, this Court held that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can rely upon the material submitted by the complainant. However, mere statement of the accused may not be sufficient to rebut the said presumption. A post dated cheque is a well recognized mode of payment, **Goaplast (P) Ltd. versus Chico Ursula D'Souza**, (2003) 3 SCC 232."

I have gone through the law laid down in both these judgments, which fully applies to the facts of these cases.

As regards the fact that the complainant has not mentioned in the complaint regarding the other complaints filed by it, at this point, I find that all the complaints have been filed at Ludhiana and has been admitted at the time of arguments that all are pending before the same Court. Therefore, on this ground also I cannot doubt the conduct of the complainant and the complaints cannot be quashed. The complainant has not filed the complaints at various stations qua the same transaction to harass the accused. Rather all were filed at one place and are pending in one Court. Further, I find that this is not the law that the Director, who had signed the cheque, is only liable. The Company as well as all the Directors, who are responsible for day to day affairs of the Company etc., are liable and can be sued. Furthermore, in the present cases only the Company has filed the petitions for quashing the criminal complaints. The Directors have not filed these petitions for quashing the complaints.

A perusal of the petitions itself shows that the petitioner is admitting the transactions between the parties and also pendency of liability at the time of presentation of the cheques. Keeping in view the above facts, I find that, in no way, the filing of complaints can be held as an abuse of the process of law or it amounts to miscarriage of justice. Therefore, the complaints are not liable to be quashed.

Finding no merit in these petitions, the same are dismissed.

However, nothing stated above will constitue my opinion on the merits of these cases.

February 21, 2019. **(Inderjit Singh)**
Judge

hsp

NOTE: Whether speaking/reasoned: Yes
Whether reportable: Yes