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

Judgment reserved on :01.05.2018
Date of decision : 04.06.2019

+   Crl.M.C.No.2811/2016

SHRI RAKESH ARORA .....Petitioner
Through: Mr. T.K. Ganju, Sr. Adv. with Mr. Rohit Gandhi, Advocate

versus

HAMDARD (WAKF) LABORATORIES ..... Respondent
Through: Mr. Pawan Upadhyay, Adv.

+   Crl.M.C.No.2814/2016

SHRI RAKESH ARORA .....Petitioner
Through: Mr. T.K. Ganju, Sr. Adv. with Mr. Rohit Gandhi, Advocate

versus

HAMDARD (WAKF) LABORATORIES ..... Respondent
Through: Mr. Pawan Upadhyay, Adv.

and

+   Crl.M.C.No.2815/2016

SHRI RAKESH ARORA .....Petitioner
Through: Mr. T.K. Ganju, Sr. Adv. with Mr. Rohit Gandhi, Advocate

versus

HAMDARD (WAKF) LABORATORIES ..... Respondent
Through: Mr. Pawan Upadhyay, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

<u>JUDGMENT</u>

<u>ANU MALHOTRA, J.</u>

1. The three petitions bearing CRL.M.C. No.2811/2016, CRL.M.C. No.2814/2016 & CRL.M.C. No.2815/2016 filed by the same petitioner Shri Rakesh Arora against the same respondent Hamdard (Wakf) Laboratories seek the quashing of the summoning order dated 22.03.2006 in CC No.2174/2001, order dated 02.12.2005 in CC No.2175/2001 and order dated 27.04.2006 in CC No.2176/2001 whereby the petitioner herein has in each of the said cases been summoned for the alleged commission of the offences punishable under Section 138 of the Negotiable Instrument Act, 1881. The said three orders read to the effect:

(i) Order dated 22.03.2006 in CC No.2174/2001:-

> *"File received on transfer. It be checked and registered as per rules.*
>
> *Affidavit of CW1 Sh. Javed Akhtar filed in pre-summoning evidence of the complainant. Be taken on record.*
>
> *I have gone through the material available on record. I found sufficient material on record to summon the accused for the offence U/S 138 of the Negotiable Instruments Act. 1 hereby take the cognizance of the offence and summon the accused of trail.*
>
> *Issue summons to the accused on the filing ofPF/RC/Speed Post/Courier for 03.08.2006."*

(ii) Order dated 02.12.2005 in CC No.2175/2001:-

"I have perused the file and documents placed on record. From document placed on record and taken into consideration the affidavit, a prima facie case under Section 138 N.I. Act is made out against the accused be summoned on PF/ RC and by courier DTDC. Put up for report on 23.02.2006."

(iii) Order dated 27.04.2006 in CC No.2176/2001:-

"Affidavit of pre-summoning evidence has already been filed on record on behalf of the complainant. I have gone through the contents of the complaint, affidavit in pre-summoning evidence and documents in support of the complaint. After going through all the material available on record, I found sufficient material on record to take cognizance of the offence under Section 138 of the Negotiable Instruments Act. I hereby take the cognizance of the offence U/S 138 of the Negotiable Instrument Act and summon the accused for the offence and to try him for the offence."

2. The chief contention raised through the petitions is that the said three complaint cases in which the summoning orders have been issued are not maintainable in as much as the summons had been issued on the basis of the deposition of a Power of Attorney holder who had no personal knowledge of the facts and circumstances of the case and without any specific assertions as to the knowledge. The petitioner further submits that the deposition that has been made through the pre-summoning evidence is of Shri Javed Akhtar who has also signed the complaint alleging himself to be the power of attorney holder of the complainant. The petitioner has further submitted that the said power of attorney has been filed as alleged to be executed by Shri Abdul Mueed, Chief Mutwali and that in the entire complaint or

the affidavit there is no whisper as to how the said alleged Power of Attorney holder had the personal knowledge of the facts and circumstances of the case and as to how he was directly involved in the sequence of events. The petitioner has further submitted that in terms of the verdict of the Hon'ble Supreme Court in ***A.C. Narayanan Vs. State of Maharashtra and Anr. (2014) 11 SCC 790,*** no notice can be issued on a complaint under Section 138 of the Negotiable Instruments Act,1881 upon the deposition of a power of attorney having no knowledge of the facts and circumstances of the case and not directly involved in the sequence of events.

3. *Inter alia* the petitioner has submitted that the complaints are also not maintainable in as much as they are based on a power of attorney allegedly given in the name of the Trust by Shri Abdul Mueed, Chief Mutwalli and that a Trust is not a legal entity and as such neither the Trust nor a single Trustee can sue in the name of the Trust and all the trustees being the legal entity are bound to join in the action and that neither the Trust nor a single trustee can give a power of attorney to sue in the name of the Trust and trustees and that the complaints having not been filed by all trustees who were not joined in the action, the complaint cases are not maintainable in law and no summons could have been issued.

4. The petitioner has further submitted that in CS (OS) 116/1972, this Court vide judgment dated 23.12.2011 has already held that the complainant i.e. the respondent is not a **'wakf'** and cannot be described as a **'wakf'** and thus the complaint filed by the complainant alleging itself to be a **'wakf'** is not maintainable and liable to be

dismissed at the outset. *Inter alia* the petitioner has submitted that the person who had executed the power of attorney in favour of Javed Akhtar has already expired and thus the power of attorney is *non est* in the eyes of law and does not confer any right, title to institute the proceedings and that the proceedings cannot be continued on the said basis. It has also been submitted on behalf of the petitioner that the learned trial Court has proceeded to issue the summons without even recording the statement in pre-summoning evidence and thus the summoning orders could not have been issued before recording of the statement in pre-summoning evidence and that the liberties and reputation of the petitioner could not have been damaged by the impugned summoning orders in violation of the law.

5. The respondent has put in appearance and contested the petition. Para 1 in each of the three complaints is identical and reads to the effect:

> *"That the complainant is a Wakf constituted under a Wakf Deed dt.28.8.1948 and registered as a trust by declaration of Trust dated 6.9.1950 duly registered before Sub-Registrar Delhi on 12.9.1950 and amended Wakf Deed dated 1973. The complainant has its registered office at the address aforementioned and Sh. Javed Akhter, law officer in 1995 and presently Deputy Manager (Law) is the duly authorized Power of Attorney holder of the complainant authorized vide Power of Attorney dated 15.5.1995 issued in his favour by the Chief Mutwalli of the complainant.*
>
> *Thus, Sh. Javed Akhtar is fully competent to file, institute and verify the present complaint before the Hon'ble Court and the same has been accordingly duly signed verified and instituted by Sh. Javed Akhter."*

6. In fact virtually all paragraphs till para 12 of each of the complaints are identical and read to the effect:

"i. That the complainant is a Wakf constituted under a Wakf Deed dt.28.8.1948 and registered as a trust by declaration of Trust dated6.9.1950 duly registered before Sub-Registrar Delhi on 12.9.1950 and amended Wakf Deed dated 1973. The complainant has its registered office at the address aforementioned and Sh. Javed Akhter, law officer in 1995 and presently Deputy Manager (Law) is the duly authorized Power of Attorney holder of the complainant authorized vide Power of Attorney dated 15.5.1995 issued in his favour by the Chief Mutwalli of the complainant.

Thus, Sh. Javed Akhter is fully competent to file, institute and verify the present complaint before the Hon'ble Court and the same has been accordingly duly signed verified and instituted by Sh. Javed Akhter.

ii. That the complainant is one of the reputed manufacturers of Unnani and Ayurvedic Medicine besides various other consumer goods like Roohafza Saafi, Roghan Badam Shirin, etc. for last more than 50 years.

iii. That the accused in the course of his business approached the complainant and after due deliberations and negotiations, the accused was made a distributor of the complainant.

iv. That the accused was running his business in the name and style of M/s. Arora Sales Corporation and has been dealing with the complainant for last more than 10 years.

v. That the accused during the period of his distributorship took various consignments from the complainant for which invoices were duly supplied to the accused.

vi. That as the accused was one of the distributor of the complainant, running account of the accused was maintained at the end of the complainant.

vii. That the accused was always very negligent and casual in clearing the payment in respect of the goods respect of the goods received by him from the complainant at various intervals of time, however, the complainant keeping in view the long association with the accused kept on supplying goods to *the accused on credit on the assurances of the accused to clear the payment at a later stage.*

viii. That, however, the accused in gross violation of trust, placed in him by the complainant, continuously defaulted in making the payment to the complainant resultantly an amount of Rs.7,72,84,407.24/- (Rs. Seven crores seventy two lacs eighty four thousand four hundred seven rupees only) stood outstanding against the accused in the account of the complainant lastly on November, 2000.

ix. That constrained by the above acts of the accused, the complainant were forced to discontinue the supply of its products to the accused and, thereafter, the complainant repeatedly wrote various letters to the accused to come forward and settle the accounts.

x. That, however, despite the numerous letters of complainant the accused kept on delaying the payment on the pretext or the other and after repeated consultations and meetings wherein the accused expressed his financial disability to clear the huge outstanding in one go and it was decided in July, 2004 that the accused will start making the payment of Rs. 20 lacs per month w.e.f. January, 2005 by way of two fortnight cheques of approximately Rs. 10 lacs each and in this manner, the accused will clear the payment of Rs. 70 lacs within three months and once the accused shows his bonafide in clearing the part payment further time to clear the balance payment of Rs. 7 crores would be decided mutually between complainant and the accused.

xi. That in accordance with the above understanding, the accused duly tendered to the complainant seven cheques of approximately Rs. 10 lacs each duly filled up by the accused in October, 2004 itself.

xii. That these cheques, so issued by the accused, were to be deposited for encashment w.e.f. 15.1.2005 and the complainant duly believing above understanding arrived at that the accused deposited the cheque bearing No. 365832 of Rs. 10,00,008/- with its bankers Bank of India, Hamdard Davakhana Branch, Hamdard Marg, Delhi-6 for encashment. However, to the disappointment of the complainant, the said cheque was *dishonoured by the Bankers of the accused i.e. Karnataka Bank Ltd., Connaught Place, New Delhi vide returning memo dated 10.3.2005 for the reason of insufficient funds in the account No. 2813 of the accused.*

7. The number of the cheques as allegedly issued by the petitioner herein which were however stated to have been dishonoured on presentation are however different.

8. Each of these complaints as stated in para-1 of the complaints have been signed, verified and instituted by Javed Akhtar, the then Deputy Manager (Law) of Hamdard Wakf Laboratories. Significantly, there is no affidavit annexed to any of the three complaints and the contents thereof are thus not verified. However, the impugned summoning orders and the submissions made on behalf of either side and the records of the three cases indicate that the affidavit of Mr. Javed Akhtar in pre-summoning evidence is on the record. Apparently, all the three impugned summoning orders have taken into account the said affidavit.

9. Undoubtedly, in terms of the verdict of the Hon'ble Supreme Court in ***A.C. Narayanan (supra),*** it has been held vide paras 29 to 33.5 to the effect:

"29) From a conjoint reading of Sections 138, 142 and 145 of the N.I. Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks

fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the N.I. Act. For the purpose of issuing process under Section 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the N.I. Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the N.I. Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain present before the Court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.

30) In the light of the discussion, we are of the view that the power of attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under Section 138 of the N.I. Act. An exception to the above is when the power of attorney holder of the complainant does not have a personal knowledge about the transactions then he cannot be examined. However, where the attorney holder of the complainant is in charge of the business of the complainant-payee and the attorney holder alone is personally aware of the transactions, there is no reason why the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the Power of Attorney holder about the transaction in question must be specified in the complaint. On this count, the fourth question becomes infructuous.

31) In view of the discussion, we are of the opinion that the attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceedings on behalf of his principal. We also reiterate that where the payee is a proprietary concern, the complaint can be filed (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the "payee"; (ii) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor.

32) Similar substantial questions were raised in the appeal arising out of S.L.P (Crl.) No. 2724 of 2008, which stand answered as above. Apart from the above questions, one distinct query was raised as to whether a person authorized by a Company or Statute or Institution can delegate powers to their subordinate/others for filing a criminal complaint? The issue raised is in reference to validity of sub-delegation of functions of the power of attorney. We have already clarified to the extent that the attorney holder can sign and file a complaint on behalf of the complainant-payee. However, whether the power of attorney holder will have the power to further delegate the functions to another person will completely depend on the terms of the general power of attorney. As a result, the authority to sub- delegate the functions must be explicitly mentioned in the general power of attorney. Otherwise, the sub-delegation will be inconsistent with the general power of attorney and thereby will be invalid in law. Nevertheless, the general power of attorney itself can be cancelled and be given to another person.

33) While holding that there is no serious conflict between the decisions in MMTC (supra) and Janki Vashdeo

Bhojwani (supra), we clarify the position and answer the questions in the following manner:

33.1 Filing of complaint petition under Section 138 of N.I Act through power of attorney is perfectly legal and competent.

33.2 The Power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions.

33.3 It is required by the complainant to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint and the power of attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case.

33.4 In the light of section 145 of N.I Act, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the N.I Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant of his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.

33.5 The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person."

10. Though thus, in terms of Section 2(d) of the Cr.PC, 1973, no formal form of a complaint is required, in terms of the verdict in ***A.C. Narayanan (supra)*** with specific reference to para 29 thereof, it does appear that an affidavit is to be submitted by the complainant in support of the complaint and if an affidavit has been filed in support of the complaint before the issuance of the process under Section 200 of the Cr.PC, 1973, it has been thus held that this becomes a matter of discretion for the Magistrate whether to call upon the complainant to remain present before the Court and to examine him upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the Negotiable Instruments Act, 1881 and that for the purpose of issuing the process under Section 200 of the Cr.PC, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the Negotiable Instruments Act, 1881 and it is only if and where the Magistrate, after considering the complaint under Section 138 of the Negotiable Instruments Act, 1881 and documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that the examination of the complainant or his witness is required, the Magistrate may call upon the complainant to remain present before the Court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the Negotiable Instrument Act, 1881.

11. As observed elsewhere hereinabove, no affidavit of the complainant nor of the General Power of Attorney holder had been

annexed to the complaints, which form subject matter of the three petitions. However, the affidavit in pre-summoning evidence has been filed in each of them. The impugned orders which have been reproduced elsewhere hereinabove have apparently taken the said pre-summoning evidence into account apart from the other documents on the record and the process has thus been directed to be issued. Substantially, thus, the implicit conditions of the affidavit to the complaint and the verification of the averments of the affidavit stand satisfied.

12. The other aspect which needs consideration is that it has been contended by the petitioner that the verifications in each of the three pre-summoning affidavits indicate that none of them have been verified to the knowledge of the General Power of Attorney holder and thus the observations in para 30 of the verdict of the Hon'ble Supreme Court in ***A.C. Narayanan (supra)*** do not stand fulfilled in as much as the explicit assertions as to the knowledge of the power of attorney holder about the transaction in question has not been specified in the complaint. It has also been submitted on behalf of the petitioner that the observations in para 33.2 and 33.3 of the said verdict have also not been fulfilled in as much as the stated general power of attorney holder of the complainant has not verified that he has witnessed the transaction as an agent of the payee/holder in due course or that he possesses due knowledge regarding the said transaction and that the stated general power of attorney holder has not made any specific assertion explicitly in the complaint of having knowledge regarding the transaction. It is essential to observe that the

verification to affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit of rival parties as laid down by the Hon'ble Supreme Court in ***A.K.K. Nambiar Vs. Union of India and Anr.*** (1969) 3 SCC 864 vide para 8 thereof as allegations may be true to the knowledge or allegations may be true to the information received from persons or allegations may be based on records. Para 8 of the said verdict reads to the effect:

> *"The appellant made allegations against the Chief Minister of Andhra Pradesh and other persons some of whose names were disclosed and some of whose names were not disclosed. Neither the Chief Minister nor any other person was made a party. The appellant filed an affidavit in support of the petition. Neither the petition nor the affidavit was verified. The affidavits which were filed in answer to the appellant's petition were also not verified. The reason for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence."*

13. In the instant case, the affidavits in CC No.2174/2001 CC No.2175/2001 & CC No.2176/2001 in pre-summoning evidence of Mr. Javed Akhtar are to the effect:

(1) Affidavit in CC No.2174/2001:-

i. *I state that the complainant is a Wakf Constituted under a Wakf Deed dt: 28.8.1948 having ifs registered office a. the address aforementioned the copy of wakf deed dt: 28.8.1948 is exhibited as Ex CW1/1.*

ii. *I state that I was the, law officer of the complainant in 1995 and am presently Deputy Manger (Law) and as such duly authorised Power of Attorney holder of the complainant authorised vide Power of Attorney dated 15.5.1995 issued in my favour by the Chief Mutwalli of the complainant. That the copy of the power of attorney in my favour is Exhibited as Ex. CW 1/2.*

iii. *I state that the complainant is one of the reputed manufacturers of Unani and Ayurvedic Medicine besides various other consumers goods like Roohafza Saafi, Roghan, Badam Shirin, etc. for over 50 years.*

iv. *I state that the accused in the course of his business approached the complainant and after due deliberations and negotiations, the accused was made a distributor of the complainant.*

v. *I state that the accused is running his business in the name and style of M/s. Arora Sales Corporation and has been dealing with the complainant for last more than 10 years.*

vi. *I state that the accused during the period of his distributorship took various consignments from the complainant for which invoices were duly supplied to the accused.*

vii. *I state that as the accused being one of the distributor of the complainant, a running account of the accused was maintained at the end of the complainant. The copy of the running account of the accused maintained at the end of the complainant is exhibited as Ex CW 1/3.*

viii. *I state that the accused was always very negligent and casual in clearing the payment in respect of the goods received by him from the complainant at various intervals of time, however, the complainant keeping in view the long association with the accused kept on* *supplying goods to the accused on credit on the assurances of the accused to clear the payment at a later stage.*

ix. *I state that, however, the accused in gross violation of trust, placed in him by the complainant, continuously defaulted in making the payment to the complainant resultantly an amount of Rs. 7,72,84,407.24/- (Rs. Seven crores seventy two lacs eighty four thousand four hundred seven rupees and twenty four paisa only) stood outstanding against the accused in the account books of the complainant, lastly on November, 2000.*

x. *I state that constrained by the above acts of the accused, the complainant were forced to discontinue the supply of its products to the accused and, thereafter, the complainant repeatedly wrote various letters to the accused to come forward and settle the accounts.*

xi. *I state that, however, despite the numerous letters of complainant, the accused kept on delaying the payment on one pretext or the other and after repeated consultations and meetings wherein the accused expressed his financial disability to clear the huge outstanding in one go and it was decided in July, 2004 that the accused will start making the payment of Rs.20 lacs per month w.e.f. January. 2005 by way of two fortnightly cheques of approximately Rs. 10 lacs each and in this manner, the accused will clear the payment of Rs. 70 lacs within three months and once the accused shows his bona fide in clearing the part payment further time to clear the balance payment of Rs. 7 crores would be decided mutually between complainant and the accused.*

xii. *I state that in accordance with the above understandings, the accused duly rendered to the complainant seven cheques of approximately Rs.10 lacs each duly filled up by the accused in October, 2004 itself.*

xiii. *I state that these cheques, so issued by the accused, were to be deposited for encashment w.e.f. 15.1,2005 and the complainant duly believing above understandings arrived a, with the accused deposited die firs, cheque of Rs. 10,00,005/. bearing No. 365829 with its bankers Bank of India, Hamdard Dawakhana Branch, Hamdard Marg, Delhi-6 on, 15.1.2005 for encashment. However, to the disappointment of the complainant, the said cheque was dishonoured by the Bankers of the accused i.e. Karnataka Bank Ltd., Connaught Place, New Delhi vide returning memo dated 17.1.2005 for the reasons of insufficient funds in the account No. a813 of the accused. That the original dishonoured cheque bearing No. 365829 is exhibited as Ex. CWI/ 4 and the original cheque returning memo dated 17.1.2005 issued by the banker of the accused is Exhibited as Ex. CW1/5.*

xiv. *I state that, soon thereafter, the accused contacted the complainant for the inconvenience caused due to dishonour of the said cheque and assured that future cheques will be duly honoured and thus requested the p complainant to present the dishonoured cheque after the payment of all the rest cheques were cleared.*

xv. *1 state that believing the bonafide of the accused, the complainant duly presented the next cheque dated 31.1.2005 with its bankers above named for encashment, however the said cheque No. 365830 was also reported. dishonoured for the reasons of insufficient funds in the account No 2813 of the accused vide returning memo dated 2.2.2005, That the original dishonoured cheque bearing No. 365830 is exhibited as Ex. CW1/ 4 and the original cheque returning memo dated 2.2.2005 issued by the banker of the accused is Exhibited as Ex. CW 1/5.*

xvi. *I state that the complainant disillusioned and aggrieved by the above acts of the accused, repeatedly tried to contact the accused, however, no response was forthcoming from the end of accused. The complainant* *even dispatched a legal notice of demand dated February; 2005 to the accused. The true copy of the legal notice of demand dated 14th February, 2005 is Exhibited as* ***Ex. CW 1/6*** *and the original U.P.C receipt is Exhibited as* ***Ex. CW 1/7*** *while the original Regd. A.D. receipts are Exhibited as* ***Ex. CW 1/8 'Colly'*** *while the Original A.d. Card received back from one of the addresses of the accused is Exhibited as* ***Ex. CW 1/9****, Original. Regd. A.d. Envelope received back from one of the addresses of accused is Exhibited as* ***Ex. CW 1/10****, and the Original. U.P.C envelope I back from one of the addresses of the accused is Exhibited as* ***Ex. CW1/11****.*

xvii. *I state that the legal notice was dispatched within a stipulated time as per the provisions of law.*

xviii. *I state that the accused has failed to discharge his liability despite receiving the notice of demand.*

xix. *1 state that the said cheques were dishonoured vide returning memo dated 17.1.2005 and 2.2.20005 respectively and a collective demand notice dated 14th February, 2005 was issued within 30 days of the knowledge of dishonour of cheques.*

xx. *I state that the Hon'ble Court has the jurisdiction to entertain the present complaint as the complainant and its bankers are located within the jurisdiction of the Hon'ble Court.*

I state that the accused may kindly be summoned and prosecuted in accordance with the law for the offence committed by him.

Verification:

Verified at Delhi on this 28th day of June 2005 that the contents of the above affidavit of mine are true and correct and based on the records available in the office of the complainant as also on the basis of the interaction between the complainant and the accused and nothing material has been concealed from the above affidavit of mine."

(2) Affidavit in CC No.2175/2001:-

i. *I state that the complainant is a Wakf Constituted under a Wakf Deed dt: 28.8.1948 having ifs registered office a. the address aforementioned the copy of wakf deed dt: 28.8.1948 is exhibited as Ex CW1/1.*

ii. *I state that I was the, law officer of the complainant in 1995 and am presently Deputy Manger (Law) and as such duly authorised Power of Attorney holder of the complainant authorised vide Power of Attorney dated 15.5.1995 issued in my favour by the Chief Mutwalli of the complainant. That the copy of the power of attorney in my favour is Exhibited as Ex. CW 1/2.*

iii. *I state that the complainant is one of the reputed manufacturers of Unani and Ayurvedic Medicine besides various other consumers goods like Roohafza Saafi, Roghan, Badam Shirin, etc. for over 50 years.*

iv. *I state that the accused in the course of his business approached the complainant and after due deliberations and negotiations, the accused was made a distributor of the complainant.*

v. *I state that the accused is running his business in the name and style of M/s. Arora Sales Corporation and has been dealing with the complainant for last more than 10 years.*

vi. *I state that the accused during the period of his distributorship took various consignments from the complainant for which invoices were duly supplied to the accused.*

vii. *I state that as the accused being one of the distributor of the complainant, a running account of the accused was maintained at the end of the complainant. The copy of the running account of the accused maintained at the end of the complainant is exhibited as Ex CW 1/3.*

viii. *I state that the accused was always very negligent and casual in clearing the payment in respect of the goods received by him from the complainant at various intervals of time, however, the complainant keeping in view the long association with the accused kept on* *supplying goods to the accused on credit on the assurances of the accused to clear the payment at a later stage.*

ix. *I state that, however, the accused in gross violation of trust, placed in him by the complainant, continuously defaulted in making the payment to the complainant resultantly an amount of Rs. 7,72,84,407.24/- (Rs. Seven crores seventy two lacs eighty four thousand four hundred seven rupees and twenty four paisa only) stood outstanding against the accused in the account books of the complainant, lastly on November, 2000.*

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xi. *I state that, however, despite the numerous letters of complainant, the accused kept on delaying the payment on one pretext or the other and after repeated consultations and meetings wherein the accused expressed his financial disability to clear the huge outstanding in one go and it was decided in Wy, 2004 that the accused will start making the payment of Rs.20 lacs per month w.e.f. January. 2005 by way of two fortnightly cheques of approximately Rs. 10 lacs each and in this manner, the accused will clear the payment of Rs. 70 lacs within three months and once the accused shows his bona fide in clearing the part payment further time to clear the balance payment of Rs. 7 crores would be decided mutually between complainant and the accused.*

xii. *I state that in accordance with the above understandings, the accused duly rendered to the complainant seven cheques of approximately Rs.10 lacs each duly filled up by the accused in October, 2004 itself.*

xiii. *I state that these cheques, so issued by the accused, were to be deposited for encashment w.e.f. 15.1.2005 and the complainant duly believing above understandings arrived at with the accused deposited the third cheque of Rs. 10,00,008/- bearing No.365832 with its bankers Bank of India, Hamdard Dawakhana Branch, Hamdard Marg, Delhi-6 on 28.2.05 for encashment. However, to the disappointment of the complainant, the said cheque was dishonoured by the Bankers of the accused i.e. Karnataka Bank Ltd., Connaught Place, New Delhi vide returning memo dated 10.3.05 for the reasons of insufficient funds in the account No. 2813 of the accused. That the original dishonoured cheque bearing No. 365832 is exhibited as Ex. CW1/ 4 and the I original cheque returning memo dated issued by the banker of the accused is Exhibited as Ex. CW1/5.*

xiv. *I state that believing the bonafide of the accused, the complainant duly presented the fourth cheque dated 16.3.05 with its bankers above named for encashment, however, the said cheque No.365833 was also reported dishnoured for the reasons of insufficient funds in the account No.2813 of the accused vide returning memo dated 17.3.05. That the original dishonoured cheque bearing No.365833 is exhibited as Ex.FW1/4A and the original cheque returning memo dated 10.3.05 issued by the banker of the accused is Exhibited as Ex.CW1/5A.*

xv. *I state that the complainant disillusioned and aggrieved by the above acts of the accused, repeatedly tried to contact the accused, however, no response was forthcoming from the end of accused. The complainant even dispatched a legal notice of demand dated 28.3.05 to the accused. The true copy of the legal notice of demand dated 28.3.05 is Exhibited as Ex. CW 1/6 and the original U.P.C receipt is Exhibited as Ex. CW 1/7 while the original Regd. A.D. receipts are Exhibited as Ex. CW 1/8 'ColIy' while the Original. A.d. Card* *received back from one of the addresses of the accused is Exhibited as Ex. CW 1/9, Original. Regd. A.d. Envelope received back from one of the addresses of the accused is Exhibited as Ex. CW 1/10.*

xvi. *I state that the legal notice was dispatched within a stipulated time as per the provisions of law.*

xvii. *I state that the accused has failed to discharge his liability despite receiving the notice of demand.*

xviii. *I state that the aid cheques were dishonoured vide returning memo dated 10.03.05 and 16.3.05 respectively and a collective demand notice dated 28.3.05 was issued within 30 days of the knowledge of dishnour of cheques.*

xix. *I state that the Hon'ble Court has the jurisdiction to entertain the present complaint as the complainant and its bankers are located within the jurisdiction of the Hon'ble Court.*

I state that the accused may kindly be summoned and prosecuted in accordance with the law for the offence committed by him.

Verification:

Verified at Delhi on this 28th day of June 2005 that the contents of the above affidavit of mine are true and correct and based on the records available in the office of the complainant as also on the basis of the interaction between the complainant and the accused and nothing material has been concealed from the above affidavit of mine"

(3) Affidavit in CC No.2176/2001:-

i. *I state that the complainant is a Wakf Constituted under a Wakf Deed dt: 28.8.48 and registered as a Trust by declaration of Trust dated 6.9.1950, having it's registered office at the address aforementioned. The copy of Wakf Deed dt: 28.8.48 and copy of the declaration of Trust dated 6.9.1950 are exhibited as Ex.CW 1/1 and Ex.CWl/2 respectively.*

ii. *I state that I was the, law officer of the complainant in 1995 and am presently Deputy Manger (Law) and as such duly authorised Power of Attorney holder of the complainant authorised vide Power of Attorney dated 15.5.1995 issued in my favour by the Chief Mutwalli of the complainant. That the copy of the power of attorney in my favour is Exhibited as Ex. CW 1/3.*

iii. *I state that the complainant is one of the reputed manufacturers of Unani and Ayurvedic Medicine besides various other consumers goods like Roohafza Saafi, Roghan, Badam Shirin, etc. for over 50 years.*

iv. *I state that the accused in the course of his business approached the complainant and after due deliberations and negotiations, the accused was made a distributor of the complainant.*

v. *I state that the accused is running his business in the name and style of M/s. Arora Sales Corporation and has been dealing with the complainant for last more than 10 years.*

vi. *I state that the accused during the period of his distributorship took various consignments from the complainant for which invoices were duly supplied to the accused.*

vii. *I state that as the accused being one of the distributor of the complainant, a running account of the accused was maintained at the end of the complainant. The copy of the running account of the accused maintained at the end of the complainant is exhibited as Ex CW 1/4.*

viii. *I state that the accused was always very negligent and casual in clearing the payment in respect of the goods received by him from the complainant at various intervals of time, however, the complainant keeping in view the long association with the accused kept on supplying goods to the accused on credit on the assurances of the accused to clear the payment at a later stage.*

ix. *I state that, however, the accused in gross violation of trust, placed in him by the complainant, continuously* *defaulted in making the payment to the complainant resultantly an amount of Rs. 7,72,84,407.24/- (Rs. Seven crores seventy two lacs eighty four thousand four hundred seven rupees and twenty four paisa only) stood outstanding against the accused in the account books of the complainant, lastly on November, 2000.*

x. *I state that constrained by the above acts of the accused, the complainant were forced to discontinue the supply of its products to the accused and, thereafter, the complainant repeatedly wrote various letters to the accused to come forward and settle the accounts.*

xi. *I state that, however, despite the numerous letters of complainant, the accused kept on delaying the payment on one pretext or the other and after repeated consultations and meetings wherein the accused expressed his financial disability to clear the huge outstanding in one go and it was decided in Wy, 2004 that the accused will start making the payment of Rs.20 lacs per month w.e.f. January. 2005 by way of two fortnightly cheques of approximately Rs. 10 lacs each and in this manner, the accused will clear the payment of Rs. 70 lacs within three months and once the accused shows his bona fide in clearing the part payment further time to clear the balance payment of Rs. 7 crores would be decided mutually between complainant and the accused.*

xii. *I state that in accordance with the above understandings, the accused duly rendered to the complainant seven cheques of approximately Rs.10 lacs each duly filled up by the accused in October, 2004 itself.*

xiii. *I state that these cheques, so issued by the accused, were to be deposited for encashment w.e.f. 15.1.2005 and the complainant duly believing above understandings arrived at with the accused deposited the third cheque of Rs. 10,00,007/- bearing No. 365831 with its bankers Bank of India, Hamdard Dawakhana*

Branch, Hamdard Marg, Delhi-6 on 14.2.2005 for encashment. However, to the disappointment of the complainant, the said cheque was dishonoured by the Bankers of the accused i.e. Karnataka Bank Ltd., Connaught Place, New Delhi vide returning memo dated 3.0.4.2005 for the reasons of insufficient funds in the account No. 2813 of the accused. That the original dishonoured cheque bearing No. 365831 is exhibited as Ex. CW1/5 and the original cheque returning memo dated 30.4.2005 issued by the banker of the accused is Exhibited as Ex. CW 1/6.

xiv. *I state that believing the bonafide of the accused, the complainant duly presented the fourth cheuqe of Rs. 10,00,000/- dated 31.3.2005 with its bankers above named for encashment, however, the said cheque No. 129451 was also reported dishonoured for the reasons of insufficient funds in the account No 2813 of the accused vide returning memo dated 4.4.2005 That original dishonoured cheque bearing No. 12945lis exhibited as Ex. original cheque returning memo dated 4.4.2005 issued by the banker of the accused is Exhibited as Ex. CW 1/8.*

xx. *1 state that believing the bonaflde of the accused, the complainant duly presented the fifth cheque of Rs. 10,00,000/- dated 15,4.2005 with its bankers above named for encashment, however, the said cheque No. 129452 was also reported dishonoured for the reasons oflnsufficient funds in the account No. 2813 of the accused vide returning memo dated 18.4.2005 That the original dishonoured cheque bearing No. 129452 is exhibited as Ex. CW1/9 and the original cheque returning memo dated 18.4.2005 issued by the banker of the accused is Exhibited as Ex. CW 1/10.*

xxi. *I state that the complainant disillusioned and aggrieved by the above acts Of the accused, repeatedly tried to contact the accused, however, no response was forthcoming from the end of accused. The complainant even dispatched a legal notice of demand dated.*

3.5.2005 to the accused. The true t copy of the legal notice of demand dated 3.5.2005 is Exhibited as Ex. CW 1/11 and the original U.P.C receipt dated 3.5.2005 is Exhibited as Ex. CW 1/12 while the original Regd. A.D. receipts are Exhibited as Ex. CW 1/13 'Colly' while the Original. A.d. Card received back from one of the addresses of the accused is Exhibited as Ex. CW 1/14, Original. Regd. A.d. Envelope received back from one of the addresses of the accused is Exhibited as Ex. CW 1/15.

xxii. I state that the legal notice was dispatched within a stipulated time as per the provisions of law.

xxiii. I state that the accused has failed to discharge his liability despite receiving the notice of demand.

xxiv. I state that the said cheques were dishonoured vide returning memo dated 30.4.2005, 4.4.2005 and 18.4.2005 respectively and a collective demand notice dated 3.5.2005 was issued within .30 days of the knowledge of dishonour of cheques.

xxv. I state that the Hon'ble Court has the jurisdiction to entertain the present complaint as the complainant and its bankers are located within the jurisdiction of the Hon'ble Court.

I state that the accused may kindly be summoned and prosecuted in accordance with the law for the offence committed by him.

Verification:

Verified at Delhi on this 3rd day of September, 2005 that the contents of the above affidavit of mine are true and correct and based on the records available in the office of the complainant as also on the basis of the interaction between the complainant and the accused and nothing material has been concealed from the above affidavit of mine"

The same thus appear to prima facie fulfil the parameters of observations in para 8 of the said verdict in the circumstances put forth. ***However, the same does not suffice to bring forth the maintainability of the complaints as of date***.

14. This is so in as much as the complaints as instituted were on the basis of the submission that the complainant i.e. Hamdard (Wakf) Laboratories/ respondent was a wakf constituted under the wakf deed dated 28.08.1948 and registration as a Trust by a Declaration of Trust dated 06.09.1950 registered on 12.09.1950 with an amended Wakf Deed dated 1973.

15. Admittedly, as laid down by this Court in CS (OS) 116/1972 vide para 74 thereof that the respondent is not a Wakf with it having been held that it might be a Trust.

16. Vide the judgment of the Hon'ble Division Bench of this Court in ***Duli Chand vs. MahabirPershad Trilok Chand Charitable Trust AIR 1984 Delhi 145*** it has been laid down that the trustees are joint owners of the trust property and a Trust does not have a legal existence of its own and no single trustee can sue in the name of the Trust and all trustees must be impleaded in the suit and the trustees execute a power of attorney empowering one of them to represent all and cannot do so by passing a resolution and that all trustees should join the suit. In the instant case, apart from the factum that there is no Trust Deed that had been put forth by the respondent, taking into account the Wakf Deed of the Hamdard (Wakf) Laboratories vide paragraphs 2(a) to 2(i) which read to the effect:

"2-A. The full rights, powers and authority which have been conferred on the Wakif Mutawalli for exercise during his life time, in regard to the management of the business and property of the Wakf, excepting those powers on the exercise of which certain restrictions have been imposed by V this Wakf-Deed, shall mean and include all the powers which can be rightfully exercised by a fully authorised proprietor or managing director or general manager of a business concern for efficiently carrying out a business on modern commercial lines or for extending and developing the said business or for saving the same from loss, no matter whether the said powers have been n expressly mentioned in this Wakf-Deed or not. No person or persons or assembly of persons, whether connected or not connected with the Wakf, shall have any right to interfere, obstruct or restrict in any manner any of the rights, powers and authority conferred on the Wakif Mutawalli and Chief Mutawalli. They shall not be liable for any loss or damage suffered by or caused to the Wakf as a result of any act of commission or omission during the course of the reasonable exercise by them of any of the discretionary power in regard to the management of the affairs of the Wakf. Without prejudice to the generality of the powers and rights vested in them under clause 2 and 2-A, the following powers shall be deemed to be included in the full rights, powers and authority conferred;

(a) For carrying out the multifarious affairs of the Wakf, to appoint servants, assistants, agents, brokers, factors, bankers and auditors on such terms as to salary, commission or remuneration or otherwise as the Wakif Mutawalli. shall deem fit and proper or to dismiss or remove from office any person so employed or any person who may have been so employed before the creation of the Wakf, to add to or deduct from the salary, commission, remuneration or consideration payable to any such person or to reward or

remunerate any person for the services rendered to the Wakf or to compensate and indemnify anyone for the loss or damage that he has suffered or which he might suffer in relation to the services rendered by him to Hamdard Wakf or to give him any pecuniary aid from the Wakf funds on the occasion of some necessity calling for such aid or to give him any money on loan or by way of advance payment on such occasion; to contribute money towards the Provident Fund of such persons on behalf of the Wakf according to the laws of Provident Fund, in force from time to time, to award any pay pension on completion of service, to forfeit wholly or in part the amount payable as Provident Fund or pension to any person or employee on account of his any harmful misconduct as permissible under the law; to render or discontinue pecuniary aid to any cooperative society or recreational club etc. which may be organised by any of the workmen and staff employed by the Wakf business or adopt suitable ways and means for helping and encouraging the employees and others connected with the Wakf-business.

(b) To give moneys in advance or by way of loan or to give goods on credit to or to obtain goods on credit from merchants, customers, brokers and agents and others engaged in supplying or preparing goods for the Wakf-business or those engaged in carrying out publicity work on behalf of the Wakf-business.

(c) To receive moneys in advance or by way of security or on mist from agents, stockists, customers, employees or others having business dealings with the Wakf-business or to receive security or property from such persons and to pay off or return the amounts thus collected or the amounts of Provident Fund etc., in accordance with the conditions settled with the persons depositing the same.

(d) To open accounts of all kinds in Post Office or Banks in one or several different names, to deposit money in

such accounts and to withdraw the same or to transfer money from one account to another in the same Bank or from one Bank to another; or to suspend temporarily the payment of money lying in any account or to close any such account; to sign and execute negotiable instruments of all kinds; e.g., to draw hundies on others and to receive, accept, refuse or endorse hundies received in the name of the Wakf-business; to discount hundies and other negotiable instruments made or drawn in favour of the Wakf; or to borrow money with or without security or on over-draft from Banks or others or to receive payments of any / refund vouchers received from Government or an other Department, person or body on the strength of his signatures or to delegate all or some of the powers given herein to anyone trusted by him so that he may exercise the same for and on his behalf.

(e) To pledge or mortgage any of the movable or immovable properties belonging to the Wakf as security against any loans required for the purposes of the Wakf or to give on lease or hire any of the immovable or movable property or any part of it for such period and on such terms as he may deem fit and proper.

(f) To transfer, sell, pledge, hypothecate or incumber in any manner according to need and for purposes of the Wakf, any of the valuable securities or shares of limited companies acquired with the Wakf-funds and to sign and execute the papers necessary for such purposes.

(g) To acquire by purchase, hire-purchase, exchange, gift, bequest, mortgage or otherwise any movable and immovable property for the purposes of the Wakf-business from the Wekf funds.

(h) To present for registration all kinds of documents, to admit execution for purposes of registration and to receive consideration for such deeds and to give receipts for the same.

(i) To file in courts all suits, prosecutions, appeals and other proceedings in relation to the Wakf or to oppose and defend all such proceedings as may be filed against the Wakf or its workers in discharge of their duties, to appoint pleaders, solicitors attorneys for the said purpose, to sign, swear and make all statements and affidavits, etc., in all courts and Governmental or Semi Governmental offices in connection with all legal and court affairs, to adjust, settle, compromise, or withdraw any suit or legal proceedings or to refer any dispute or case to arbitration or to sign and verify any agreement of reference or to file or withdraw any document or obtain copies from any court or office."

17. Taking into account the factum that the said Wakf Deed dated 28.08.1948 is executed by Hakim Hafiz Abdul Majid, Hakim Hafiz Mohammad Said and Rabea Begum coupled with the factum that as per the note in Wakf Deed dated 26.06.1973, which read to the effect:

> *"Note : Mst. Rabea Begum, Wakifa Executant No. 3 died on 5th October, 1949 and her share devolved on Executants No. 1 and 2 equally under a bequest. Hakim Mohammad Said, Executant No. 2, was declared an evacuee and his share was taken possession of by the Custodian of Evacuee Property. This share was purchased by the Wakf Qaumi Income (Charity) on 22.06.1950 and it stood dedicated to and merged with and owned by the Qaumi Income (Charity) since then. Thus Hakim Abdul Hameed, Executant No. 1 became the sole surviving Wakif-Mutawalli and all rights, powers and duties of Wakif-Mutawalli conferred by the Deed now vest in him and all references in the Wakf Deed to Wakif Mutawallis No. 1 and 2 would be construed to mean the sole surviving Wakif- Mutawalli Hakim Abdul Hameed who would exercise all rights, powers and duties provided for the Wakif Mutawallis in the Wakf Deed.*

.....
....
As long as Wakif Mutawalli Hakim Abdul Hameed holds office, he shall have full rights, powers and authority to perform, carry out and manage all the affairs relating to the administration of the Wakf property and the conduct of its business and shall have also the right to appoint Mutawalli or Mutawallis of the Wakf and other Mutawallis shall have only those rights and duties which are assigned or delegated to them by the Wakif Mutawalli and after the Wakif Mutawalli ceases to be Mutawalli, by the chief Mutawalli. The Wakif Mutawalli shall also have a right to appoint or nominate someone else to be a Mutawalli of this Wakf after his death notwithstanding the conditions to the contrary of Mutawalliship contained herein."

18. It is thus indicated that Rabea Begum, Executant No.3 died on 5th October, 1949 and Hakim Mohammad Said, Executant No.2 was declared an evacuee and his share was taken possession of by the Custodian of Evacuee Property and thus Mr. Hakim Abdul Hameed, Executant No.1 became the sole surviving Wakif-Mutawalli and all rights, powers and duties of Wakif Mutawalli conferred by the Deed thus vested in him and it was mentioned thereby that he would be construed to mean the sole surviving Wakif-Mutawalli in relation to the all rights, powers and duties provided for the Wakif Mutawallis in the Wakf Deed as it has been submitted through the submissions made on behalf of the petitioner and which have not been refuted on behalf of the respondent that even the said Shri Hakim Abdul Hameed who executed the Power of Attorney in favour of Javed Akhtar has since expired, there is nothing that has been put forth on the record by the

respondent to indicate that there is any other Chief Mutawalli that has been appointed apart from the factum that it has already been laid down by this Court that the respondent is not a Wakf.

19. In the circumstances, the CC No.2174/2001, CC No.2175/2001 & CC No.2176/2001 in the present form are not thus maintainable and the summoning orders are thus quashed. It would be, however, open for the respondent to seek redressal in accordance with law in relation to the stated dishonoured cheque bearing no.365829 for a sum of Rs.10,00,005/-, cheque bearing no.365830 for a sum of Rs.10,00,006/-, cheque bearing no.365831 for a sum of Rs.10,00,007/-, cheque bearing no.129451 for a sum of Rs.10,00,000/-, cheque bearing no.129452 for a sum of Rs.10,00,000/-, cheque bearing no.365832 for a sum of Rs.10,00,008/- and cheque bearing no.365833.

20. The TCR be returned.

ANU MALHOTRA, J.

4th JUNE, 2019/vm