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

Date of Order: February 07, 2019

\+ **CRL.M.C. 1480/2017 & Crl.M.A. 6091/2017**
\+ **CRL.M.C. 3244/2017 & Crl.M.A. 13338/2017**
\+ **CRL.M.C. 3246/2017 & Crl.M.A. 13342/2017**
\+ **CRL.M.C. 3247/2017 & Crl.M.As. 13344/2017 & 8326/2018**
\+ **CRL.M.C. 3248/2017 & Crl.M.A. 13346/2017**
\+ **CRL.M.C. 3645/2017 & Crl.M.A. 14833/2017**

SANT LAL AGGARWAL .....Petitioner

Through: Mr. D.C. Mathur, Senior Advocate with Mr. Shubendru Bhardwaj, Mr. Aroma S. Bhardwaj, Mr. Inayat Ahamad and Mr. Rehman Ahmad, Advocates

Versus

ANAND PRAKASH BANSAL
DHARAMVIR & CO. .....Respondents

Through: Mr. B.S. Mathur, Mr. Rajeev Aggarwal, Mr. Rajat Mathur, Ms. Aditee Mathur and Mr. Divyank Tyagi, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

In the above captioned petitions, quashing of six complaints under Section 138 of Negotiable Instruments Act, 1881 and summoning order of 21st March, 2017 is sought on merits.

Above captioned first petition pertains to dishonouring of two cheques of ₹90,00,000/- each and the above captioned second petition relates to dishonouring of six cheques of ₹95,00,000/- each, whereas the third petition pertains to dishonouring of three cheques of ₹95,00,000/- each, two cheques of ₹90,00,000/- each and one cheque of ₹ 85,00,000/-. The above captioned fourth petition relates to dishonouring of three cheques of ₹85,00,000/- each and the above captioned fifth petition relates to dishonouring of two cheques of ₹95,00,000/- each and one cheque of ₹85,00,000/- and the above captioned sixth petition relates to dishonouring of sixteen cheques totaling to ₹13,90,00,000/-

Since the grounds to seek quashing of the six complaints and the impugned order of 21st March, 2017 are identical, therefore, with the consent of learned counsel for the parties, the above captioned six petitions have been heard together and are being disposed of by this common order.

Learned senior counsel for petitioner submits that petitioner vide letter of 9th December, 2015 to his banker, directed *"stop payment"* in respect of the cheques in question as these cheques are undated and were given to the complainant with verbal instruction that these cheqeus are to be encashed once the paddy will be cleared by Quality Control Department. Learned senior counsel for petitioner submits that due to certain issues in quality, the said paddy has not been passed by the Quality Control Department and so, the payment in respect of the cheques was stopped. So, it is submitted that there is no existing debt or liability and thus, no case for proceeding with complaint under Section 138 of Negotiable Instruments Act, 1881 against petitioner is made out. It is pointed out that there is nothing on record to indicate that these cheques were issued in respect of liability of paddy and for how much quantity. It is also pointed out that return memo pertaining to cheques in question is of November, 2016, whereas the restraint order issued by the National Company Law Board is of 16th February, 2016.

It is further submitted by learned senior counsel for petitioner that vide order of 26th September, 2016, Hon'ble Mr. Justice S.K. Aggarwal, Retired Judge of this Court has been appointed as an Administrator to manage petitioner's company and since there is a restraint order on withdrawal or transfer of funds, therefore, the proceedings arising out of the complaints in question cannot be permitted to continue. Thus, it is submitted that petitioner could not have issued the cheques in question in September, 2016. Reliance is placed upon Supreme Court's decision in *'Kusum Ingots & Alloys Ltd. Vs. Pennar Peterson Securities Ltd. & Ors.'* (2000) 2 SCC 745 to submit that in view of the restraint order from National Company Law Board, the cheques in question could not have been issued by petitioner and so, no case under Section of 138 of Negotiable Instruments, Act 1881 is made out.

On the contrary, learned counsel for complainant submits that there is no restraint order by National Company Law Board or by the High Court of Bombay and that the interim orders have been passed only to regulate the business of the accused. It is pointed out that the accused-company vide communication of 24th January, 2016 has confirmed in writing that the outstanding amount is of ₹10,42,86,978/- and in the face of this admission, it cannot be said that there is no existing debt or liability.

Learned counsel for respondent submits that petitioner's case is based on disputed facts and so, petitioner ought to be relegated to the trial court for decision on merits. It is also pointed out that in the application under Section 145(2) of Negotiable Instruments Act, 1881 petitioner offered no defence.

Upon hearing and on perusal of impugned order, material on record and the decision cited, I find that the contents of communication of 9th December, 2015 regarding *"stop payment"* are disputed by respondent's counsel and the document confirming the outstanding amount of ₹10,42,86,978/- of 24th January, 2016 relied upon by respondent is disputed by petitioner.

In such a situation quashing of the complaint in question, in the face of above referred disputed documents, cannot be gone into by this Court, while invoking its extra ordinary inherent jurisdiction under Section 482 Cr.P.C. The embargo put by National Company Law Board vide its order of 16th February, 2016 and of the Appellate Tribunal is for the proper functioning of the accused-company and cannot be taken to be a bar to proceed under Section 138 of Negotiable Instruments Act, 1881 in these cases, as the restraint from making withdrawal or transfer of funds is conditional one. That is to say, prior permission of the National Company Law Board/Tribunal is to be obtained before the assets of the accused-company are to be diverted or transferred.

In the considered opinion of this Court, the aforesaid embargo cannot be considered to be a bar to proceed under Section 138 of Negotiable Instruments Act, 1881 against petitioner. The reliance placed by petitioner's counsel upon Supreme Court's decision in *'Kusum Ingots & Alloys Ltd. Vs. Pennar Peterson Securities Ltd. & Ors.'* is of no assistance as in the instant case, the grounds on which quashing of the complaints in question is sought are required to be tested at trial. It is a settled legal position that on disputed facts, the complaint or the proceedings emanating therefrom cannot be quashed.

In the light of the aforesaid, this Court is not inclined to quash the complaints or the impugned order in question.

Accordingly, these six petitions and the applications are disposed of, while relegating the parties to urge the pleas taken herein before the trial court during the course of trial. It is made clear that any observation made herein shall not be construed to be an opinion on merits of the case.

(SUNIL GAUR)
JUDGE

FEBRUARY 07, 2019
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