

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 04.03.2020

Date of decision : 19.11.2022

+ CRL.M.C. 5213/2019 & CRL.M.A. 38050/2019

MS. SHEELA ABHAY LODHA

..... Petitioner

Through: Mr. Kailash Vasdev, Sr.
Advocate with Mr. S.K. Nanda,
Mr. B.S. Tiwari, Ms.
Nayantara, Ms. Limamlya,
Advocates.

Versus

STATE & ANR.

..... Respondent

Through: Mr. Ashok Kumar Garg, APP
for State.
Mr. Madhu Sudan Bhayana &
Mr. Madhav Shah, Advocates.

+ CRL.M.C. 5219/2019 & CRL.M.A. 38072/2019

MS. SHEELA ABHAY LODHA

..... Petitioner

Through: Mr. Kailash Vasdev, Sr.
Advocate with Mr. S.K. Nanda,
Mr. B.S. Tiwari, Ms.
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..... Respondent

Through: Mr. Ashok Kumar Garg, APP
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CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The petitioner of both CRL.M.C. 5213/2019 and CRL.M.C. 5219/2019 is Ms. Sheela Abhay Lodha, the former Managing Director of Akshata Mercantile Pvt. Ltd., who resigned therefrom on 24.11.2010.

2. In as much as, vide the petitions CRL.M.C. 5213/2019 and CRL.M.C. 5219/2019, the petitioner herein has assailed the very same impugned order dated 07.06.2017 of the Court of the learned MM-01, Patiala House Courts, New Delhi in CC No.3453/1/11 renumbered as CC No.1498/1/15 with new No.54000/16 and CC No.3452/1/11 renumbered as CC No.1501/1/15 with new No.54082-16, vide which common order, she was summoned having been arrayed as respondent No.2 to the complaints filed under Section 138 of the Negotiable Instruments Act, 1881 read with Sections 141 and 142 thereof, and having challenged the said common summoning order dated 07.06.2017 of the Court of the learned MM-01, Patiala House Courts, New Delhi vide CR. Revision 597/2018 and CR. Revision 598/2018, the said revision petitions having been dismissed, the two petitions CRL.M.C. 5213/2019 and CRL.M.C. 5219/2019 are hereby being taken up together.

3. The averments in the complaints, which are identical, before the learned Trial Court, (i.e., in Complaint Case No.3453/1/11

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renumbered as CC No.1498/1/15 with new No.54000/16 forming part of subject matter of CRL.M.C. 5213/2019 and Complaint Case No.3452/1/11 renumbered as CC No.1501/1/15 with new No.54082-16 forming part of subject matter of CRL.M.C. 5219/2019) in which the petitioner herein was arrayed as respondent No.2, state to the effect:-

“4. That accused/ respondents No.2 and 3 on behalf of accused/ respondent no.1 approached complainant company and requested to grant financial assistance so that it can purchase and import HR coil/HMS1 and 2 etc. (hereinafter called "raw material") from domestic market as well as from overseas countries.

5. That after various negotiations/deliberations and discussions, complainant company consented to grant financial assistance to accused/ respondent no.1 for purchasing and importing the raw material from domestic market as well as overseas countries.

6. That memorandum of agreement (hereinafter called "MOA") and the addendum thereto were executed and signed by and between complainant company and accused respondent no.1 on 26.11.2007 and 23.4.2009, respectively, at complainant company's registered office in New Delhi which elaborately contained all the terms and conditions so agreed between accused respondent no.1 and complainant company.

7. That as per clause 1.0 of MOA it was duty of accused/ respondent no.1 to identify and finalize procurement of raw materials with foreign/Indian suppliers and inform to complainant company, indicating details of quantities, specification, price, shipment/ delivery schedule etc. on receipt of details complainant company was to sign contract with foreign/Indian suppliers and open foreign/Indian Letter of Credit (hereinafter called "L/C") in favour of supplier. It is pertinent to mention herein that complainant company has to open L/C for each indent/transaction.

As per the MOA, accused/ respondent no was under the contractual duty to discharge the amount of L/C on its respective due date. It was also categorically told to accused/ respondents by complainant company that overdue payment will attract interest @ 15% per annum.

8. That complainant company from time to time granted financial assistance to accused/ respondent No.1 to meet its business requirements by way of opening L/Cs in favour of suppliers

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9. That complainant company on the instructions and request of accused respondent No.1 opened in favour of suppliers, 69 L/Cs in all, out of which the below mentioned 7 L/C's became overdue much beyond their respective due dates:

S.No.	L/C No. & Date	Amount (Rs.in.er.) (Excluding Interest payable as per MOA dt. 26.11.2007)	Due Date
1	580-31.12.2009	20.00	01.07.2010
2	581-31.12.2009	20.00	29.06.2010
3	582-31.12.2009	20.00	30.06.2010
4	583-31.12.2009	20.00	28.06.2010
5	35-7.1.2010	15.00	07.07.2010
6	55-13.1.2010	9.00	13.07.2010
7	23-30.1.2010	20.00	01.06.2010
		Total 124.00	

The material in respect of aforesaid 7 L/C has duly reached the accused/respondent no.1.

10.....

11. That the board resolutions dt. 20.10.2010 of the board of directors of accused respondent no.1 authorized accused/ respondent No.3 to sign and issue cheques on behalf of accused/ respondent no.1 in order to liquidate the amount of 7 L/CS as mentioned above, whereupon the accused/ respondent no. 3 signed and issued I six cheques delivered to complainant Company at its registered office in New Delhi as per details mentioned below:

S.No.	Cheque No.	Amount (Rs. In Crores)	Date of Cheque	Name of Bank
1	993040	21.00	25.11.2010	Lakshmi Vilas
2	993041	21.00	02.12.2010	Lakshmi Vilas
3	993042	21.00	09.12.2010	Lakshmi Vilas
4	993043	21.00	16.12.2010	Lakshmi Vilas
5	993044	21.00	25.12.2010	Lakshmi Vilas
6	993045	2.00	30.12.2010	Lakshmi Vilas
	Total	107.00		

All the accused/ respondents also assured complainant company that all the six cheques on presentation will be honoured by the banker of accused respondent No.1 and further undertook to

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liquidate the balance amount alongwith interest shortly after the encashment of all the aforesaid cheques.

It is also pertinent to mention herein that the aforementioned board resolution dated 20.10.2010 acknowledged therein the liability which the accused respondent no. 1 owes to complainant company in respect of 7 LCs and further resolved that the cheques are being issued to complainant company towards discharge of the part payment of 7 L/Cs. It is also pertinent to mention herein that payments in respect of 62 L/Cs were received in Delhi by complainant company.

12. That complainant company after informing accused/ respondent No.1 presented the cheques bearing No.993041 dated 02.12.2010 for Rs. 21 crores. No. 993042 dated 9.12.2010 for Rs.21 Crores and No. 993043 dated 16.12.2010 for Rs.21 crores all drawn on The Lakshmi Vilas Bank Ltd., 64, Dr. V.V. Gandhi Marg, Kala Godha, Fort, Mumbai - 400023 to its bankers i.e. State Bank of India, Delhi for collection but to the utter dismay of complainant company all the abovesaid cheques on presentation were dishonoured by the bankers of accused respondent no.1 with the remarks "Funds Insufficient."

13. That complainant company on receiving intimation from its bankers sent legal notice dated 01.01.2011 to the accused respondents calling upon them to liquidate the cheques amount to complainant company. The accused respondents on receiving the legal notice requested complainant company to grant some more time to them as they are undergoing financial crunch and undertook to replace all the dishonoured cheques with new cheques.

14. That in lieu of the accused respondent's repeated pleadings and assurances, complainant company under the bonafide impression and without apprehending any dishonest and/or malafide intentions on the part of accused respondents did not proceed to file criminal complaint against the accused/ respondents for the dishonour of the aforesaid cheques.

15. That meanwhile, the accused respondent no. 1 vide internet banking made various payment on different occasions amounting to a total of Rs. Nineteen Crores approximately (Rs 19.00 crores approx)

It is pertinent to emphasize herein that consequently the accused respondent no. 1 had now to liquidate amount pertaining

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to six (6) LC's worth Rs One Hundred and Four Crore (Rs. 104.00 crores approximately detailed hereunder-

S.No.	L/C No. & Date	Amount (Rs.in.cr.) (Excluding Interest payable as per MOA dt. 26.11.2007)	Due Date
1	580-31.12.2009	20.00	01.07.2010
2	581-31.12.2009	20.00	29.06.2010
3	582-31.12.2009	20.00	30.06.2010
4	583-31.12.2009	20.00	28.06.2010
5	35-7.1.2010	15.00	07.07.2010
6	55-13.1.2010	9.00	13.07.2010
	Total	104.00	

16. That the senior officials of complainant company repeatedly contacted accused respondents No.2 and 3 to know the reason as to why accused/ respondent no.1 has failed to liquidate the amount of L/Cs despite enjoying extension of time for the past eight months much beyond the respective due dates of these LCs

17. That pursuant only to complainant company's continuous and persistent efforts to realize the afore-mentioned dues, the accused respondents vide their letter dt 18.06.2011 issued 5 cheques bearing No.013056 dated 30.06.2011 for Rs 10.00 crores, cheque bearing No.013057 dated 20.07.2011 for Rs.15.00 crores, cheque bearing No.013058 dated 31.07.2011 for Rs.20.00 crores, cheque bearing No.013059 dated 20.08.2011 for Rs.20.00 crores and cheque bearing No 013060 dated 31.08.2011 for Rs.20.00 crores all drawn on The Laxmi Vilas Bank Ltd., 64 Dr.V.V. Gandhi Marg, Kala Godha, Fort, Mumbai-400023 to complainant company towards discharge of their part legal debt liability amounting to Rupees Eighty Five Crore Only (Rs. 85,00,00,000.00). All the said cheques were signed and issued by accused/ respondent No. 3 for and on behalf of accused/ respondent No.1. The accused respondents further assured complainant company that cheques are good for payment and same will be honoured by their bankers on presentation.

18. the cheques bearing No.013056 dated 30.06.2011 for Rs.10.00 crores, cheque bearing No.013057 dated 20.07.2011 for Rs.18.00 crores and cheque bearing No.013058 dated 31.07.2011 for Rs.2000 crores all drawn on The Laxmi Vilas Bank Ltd., 64 Dr. V.V. Gandhi Marg, Kala Godha, Fort, Mumbai-400023, to its bankers ie. State Bank of India. Delhi for collection, but to the

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utter surprise and dismay to complainant company, all the three cheques on presentation were dishonoured by the bankers of accused/ respondents with the remarks "Funds Insufficient" Complainant company received memo of return regarding dishonour of aforesaid three cheques bearing No.013056, 013057 and 013058 from its banker on 12.08.2011.

19. That officials of complainant company after receipt of information of dishonour of aforesaid three cheques immediately contacted accused respondents and apprised them of the fact of dishonour of the cheques bearing No.013056 dated 30.06.2011 for Rs.10.00 crores, cheque bearing No.013057 dated 20.07.2011 for Rs.15.00 crores and cheque bearing No.013058 dated 31.07.2011 for Rs 20.00 crores all drawn on The Laxmi Vilas Bank Ltd., 64 Dr. V.V. Gandhi Marg, Kala Godha, Fort, Mumbai-400023. The accused/ respondents promised to discharge the amount of dishonoured cheques within 15 days.

20. That the aforesaid cheques bearing No.013056, 013057 and 016058 were issued by accused/ respondent No.3 on behalf of accused/ respondent no.1 towards the discharge of part legal debt liability of accused/ respondent No. which accused respondent No.1 owes to complainant company for availing financial assistance from complainant company. The accused respondents No.2 is the managing director and accused/ respondent No.3 is the whole time director of accused respondent No. and is the authorized signatory of the afore-mentioned cheques and is also in-charge and responsible for day to day affairs of accused respondent No.1 at the time of issuance and dishonour of cheques in question is at the time of commission of offence Us. 138 NI. Act as such, accused/ respondents No 2 and 3 are jointly, severally and collectively liable for the acts and omissions of accused/ respondent No. 1. The cheques in question have been dishonoured due to neglect omission, acts and misconduct and willful act of accused respondents No.2 and 3."

4. Apparently, all cheques forming subject matter of the two complaints which were dishonoured were signed by Mr. Ashwin Narendra Lodha, Whole Time Director of Akshata Mercantile Pvt. Ltd. arrayed as accused/respondent No.3 to the complaint. Furthermore, all the cheques which were dishonoured were issued as under:-

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- “1. Cheque bearing No.013056 dated 30.06.2011,*
- 2. Cheque bearing No.013057 dated 20.07.2011,*
- 3. Cheque bearing No.013058 dated 31.07.2011,*
- 4. Cheque bearing No.013059 dated 20.08.2011 and*
- 5. Cheque bearing No 013060 dated 31.08.2011.”,*

thus having been issued much after the date of resignation of the petitioner from Akshata Mercantile Pvt. Ltd, which date of resignation is 24.11.2010, as also indicated by Form 32 submitted in terms of the Companies Act, 1956 placed on record at page 100 of both the petitions as Annexure E.

5. The impugned common order of the learned Special Judge/NDPS dated 27.08.2019 in CR. Revision 597/2018 and CR. Revision 598/2018 observes to the effect:-

“7. The main plea of the revisionist/accused no. 2 is that she has already been resigned before the commission of the offence. Furthermore she is neither signatory nor signed the agreement. It is also submitted by Ld. counsel for accused that complainant has knowledge of the same before passing of the impugned order as stated by the accused in writing in the contempt proceedings before Hon'ble High Court of Delhi however this fact is vehemently disputed by the complainant. Complainant submits that present complaint is previously filed in 2011 and accused has attended the entire proceedings and not raised any plea during proceedings however due to Dashrath Rupsingh Rathod Vs State of Maharashtra & Anr (supra). the said complaint was returned and re-filed later on in 2015. He submits that during the said proceedings which were lodged in 2011, it is not pleaded by the accused no. 2 that she has resigned. He submits that this resignation is false and fabricated and made to avoid the liability

8. The factum of resignation has to be uncontrovertible and unimpeachable to act upon, at this stage however the record suggest the revisionist has not raised this plea at the first instance however raising the plea after summons were issued again. The factum of resignation appears to be disputed question of fact thus subject matter of trial. Therefore, this stage, proceedings against at accused/revisionist cannot be dropped who is also alleged to be the Managing Director of accused company: Accordingly, both the revision petitions are dismissed. This order in duplicate duly

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signed be kept in both the revision petitions. TCR be sent back to court concerned alongwith copy of Order. Copy of this order be also given dasti to parties.”

6. After issuance of the notice of the present petitions to the respondents, of whom the respondent No.1 arrayed in each petition, the State was a proforma party, submissions were addressed on behalf of the petitioner and the respondent No.2, i.e., the complainant of the complaint cases i.e., The State Trading Corporation of India Ltd.

7. It is essential to observe that the observations of the learned Revisional Court to the effect that the factum of resignation has to be incontrovertible and unimpeachable to act upon on the grounds that the petitioner had not raised the plea at the first instance after the summons were issued and did not agitate this aspect in previous litigation cannot detract from the factum of resignation of the petitioner from Akshata Mercantile Pvt. Ltd on 24.11.2010, merely because the petitioner has resigned on 24.11.2010 with the first lot of cheques having been issued, of which one of them was dated 25.11.2010, does not make Form No.32 submitted by the petitioner, in terms of the Companies Act, 1956, as it was then submitted, antedated.

8. In terms of Section 114 Illustration (e) of the Indian Evidence Act, 1872, which reads to the effect:-

“Section 114. Court may presume existence of certain facts.

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume –

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- (a).....
- (b).....
- (c).....
- (d).....
- (e) *that judicial and official acts have been regularly performed;*”

(emphasis supplied)

the presumption of all official acts having been done correctly, appropriately and regularly in accordance with law has to be presumed.

9. The petitioner having resigned on 24.11.2010 from Akshata Mercantile Pvt. Ltd cannot be made culpable for cheques issued in the year 2011, i.e., cheque bearing No.013056 dated 30.06.2011, cheque bearing No.013057 dated 20.07.2011, cheque bearing No.013058 dated 31.07.2011, cheque bearing No.013059 dated 20.08.2011 and cheque bearing No 013060 dated 31.08.2011.

10. Significantly, even the proviso to sub-clause (2) of Section 168 of the Companies Act, 2013 (as it now stands) provides as follows:-

“Section 168. Resignation of director.

(1)

(2) *The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:*

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(3)

11. The Companies Act, 1956, as it existed at the relevant time of the alleged commission of the offence in terms of Section 303(1) thereof prescribes a register to be maintained for the date of cessation of a Director, Form No.32 having been submitted by the petitioner

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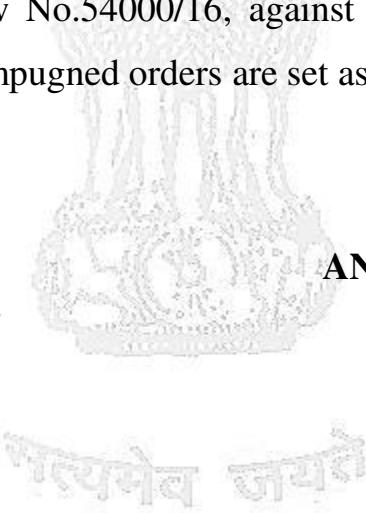
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with the date of cessation from Akshata Mercantile Pvt. Ltd. being as 24.11.2010, the offence alleged in the instant case relates to offences qua cheques dishonoured of the dates 30.06.2011, 20.07.2011, 31.07.2011, 20.08.2011 and 31.08.2011, which are after the resignation of the petitioner on 24.11.2010, and thus merely because it was the second round of litigation, the petitioner cannot be held liable for cheques issued in 2011 having resigned on 24.11.2010.

12. The petitions CRL.M.C. 5213/2019 and CRL.M.C. 5219/2019 are thus allowed and the complaints bearing old Complaint Case No.3452/1/11 renumbered as CC No.1501/1/15 with new No.54082-16 and old Complaint Case No.3453/1/11 renumbered as CC No.1498/1/15 with new No.54000/16, against the present petitioner are dismissed and the impugned orders are set aside.

ANU MALHOTRA, J.

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