IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CRM-M-20648-2023 (O&M),
CRM-M-20678-2023 (O&M),
CRM-M-20726-2023 (O&M) &
CRM-M-20746-2023
Date of Decision: 02.08.2024

AKASH BHARAT BHAI SHAH

…..PETITIONER

VERSUS

REINHART INDIA PVT LTD

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vaneet Mittal, Advocate
for the petitioner.

****

SANDEEP MOUDGIL, J

CRM-25052-2024 IN/AND CRM-M-20648-2023
CRM-25054-2024 IN/AND CRM-M-20678-2023
CRM-25051-2024 IN/AND CRM-M-20726-2023
CRM-25033-2024 IN/AND CRM-M-20746-2023

In view of the submissions made in the above applications, the same are allowed and Annexure P-4 (MOU) are taken on record.

Applications stand disposed off.

CRM-M-20648-2023 and other connected cases

1. This order shall dispose off the above mentioned four petition by this common order as the similar facts and point is involved therein. However, the facts are derived from the main petition being CRM-M-20648-2023.

2. This petition filed under Section 482 Cr.P.C. seeks quashing of Complaint under Section 138 of the Negotiable Instruments Act, 1881, bearing Registration Noi. NACT/13198/2022 dated 08.04.2022, titled 'REINHART INDIA PVT. LTD. VS. P.D. COMMODITIES', Annexure P-1, and subsequent proceedings viz. orders dated 22.08.2022 and dated 17.01.2023, Annexures P-2 and P-3, respectively, passed by the learned Judicial Magistrate Ist Class, Gurugram.

3. The brief facts leading to filing of the present petition are that the respondent Company named REINHART INDIA PRIVATE LIMITED having its registered office at S-353, Panchsheel Park, New Delhi, filed complaint under Section 138 of the Negotiable Instruments Act, 1881 (as amended till date) read with Section 142 of the Negotiable Instruments Act, 1881 (for short 'Act'), alleging therein that accused No.1 – P.D. Commodities is a partnership firm having its office and place of business at 30, Adarsh Society, New Swastik Char Rasta, Navrangpura, Ahmedabad, Gujarat, and is engaged in trading of commodities including cotton. Accused Nos. 2 & 3 are the partners in the Accused No.1 – partnership firm. The complainant and accused No.1 were having long time business relationship. In fact, complainant also has business relationship with sister concern of accused No.1 namely AB & Co. which also operates and has its palace of business as that of accused No.1 and that both, i.e., accused No.1 and its sister concern – AB & Co. are being managed/controlled by the same persons/management. In continuation of the business relationship between complainant and accused No.1, complainant entered into two contracts of sale with accused No.1 namely:

i. Contract No. RIPL/2019-20/LS-0031 dated 09.01.2020 whereby complainant was sell/deliver 5000 cotton bales to the accused No.1 @ Rs.43350/- per candy weight and delivery scheduled was during April, 2020.

ii. Contract No. RIPL/2019-20/LS-0032 dated 10.01.2020 whereby complainant was sell/deliver 2000 cotton bales to the accused No.1 @ Rs.43850/- per candy weight and delivery was scheduled during April, 2020.

It is further alleged that complainant further entered into one contract with its sister concern i.e. A.B. & Co. with following detail:

i. Contract No. RIPL/2019-20/LS-0031A dated 09.01.2020 whereby complainant was sell/deliver 2000 cotton bales to A.B. & Co. @ Rs.43350/- per candy weight and delivery was scheduled during April, 2020.

4. Subsequent to the above mentioned sale contracts and prior to the delivery period complete lockdown was declared in India by the Government of India in the month of March, 2020 invoking the provisions of Disaster Management Act due to which the supply of the cotton bales was badly affected. However, due to these changed circumstances both the partis had detailed discussion about the execution of above-mentioned contracts and keeping in view of the long termed business relationship, both the parties voluntarily agreed and accepted to settle the matter amicably regarding the contracts referred above. Resultantly, a Settlement was arrived at during the month of April, 2020, between complainant and accused No.1 and also with its sister concern i.e. A.B. & Co. whereby complainant agreed

to settle the contracts at price difference of the cotton bales and accordingly, four different Settlement Notes were executed, and in accordance with Settlement terms, the complainant was no longer required to supply goods to the accused No.1 and only price difference of the cotton bales was to be paid by the accused No.1 and A.B. & Co. to the complainant. The details of the settlement stands incorporated in para 8 of the complaint and the said arrangement was discussed telephonically and subsequently was confirmed by exchange of emails dated 27.03.2020; 30.03.2020; 30.04.2020 and 31.03.2020. In accordance with the Settlement, accused No.1 was to pay Rs.1,77,05,700/- (Rupees One Crore Seventy Seven Lacs Five Thousand and Seven Hundred only) to the complainant, including GST @ 18%. While acting upon the Settlement Notes, accused No.1 made two payments of Rs.20,00,000/- (Rs.Twenty lacs only) on 08.05.2020 and Rs.10,00,000/- (Rs.Ten lacs only) on 30.06.2020 against contract No. RIPL/2019-20/LS-0031 and Settlement No. 2020-2021/1, to the complainant. Accordingly, A.B. & Co. also started making payments in instalments, in compliance of the terms of the Settlement Notes, on made payments on 08.05.2020; 30.06.2020; 29.07.2020; 29.08.2020; 16.09.2020; 02.11.2020; 01.12.2020; 07.01.2021 and 03.02.2021 and thus made a total of Rs. 57.00 lacs. After making payment of Rs.57.00 lacs, the total outstanding amount remained Rs.10,42,501/- (as the total payable amount was Rs.67,42,501/-).

5. Accused No.1, after making initial payment of Rs.30,00,000/- (Rs. Thirty lacs only) sought time to pay the balance settlement amount of Rs.1,47,05,700/- (Rs.One Crore Forty Seven Lacs Five Thousand and Seven Hundred only) but after several follow ups, accused No.1 agreed to pay

balance payment of Rs.1,47,05,700/- (Rs.One Crore Forty Seven Lacs Five Thousand and Seven Hundred only) through Post Dates cheques and accordingly, issued 12 separate post dated cheques valuing Rs.1,25,00,000/- (Rs.One Crore Twenty Five Lacs only) bearing Nos.003002 to 003013, all dated 31.03.2021, amounting to Rs.15.00 lacs (cheque No.003002) and rest amounting to Rs.10.00 lacs each of Kotak Mohindra Bank. The cheques were handed over by accused No.1 to the representative of complainant on 29.07.2020. On presentation of above post dated cheques for encashment, cheques No.003005 to 003007 dated 31.03.2021 amounting to Rs.10.00 lacs each, drawn on Kotak Mohindra Bank were returned with the remarks "Payment stopped by Drawer" vide memos dated 06.04.2021. The complainant informed about the dishonouring of cheques to the accused persons but to no avail. Thereafter, a legal notice, through counsel, was served upon the accused persons by the complainant on 26.04.2021, as required by the provisions of Section 138 of the Act, by email and AD Post and speed post on 29.04.2021. Accused responded to the legal notices by giving a frivolous reply. However, the notice period expired on 12.05.2021 but no payment was made by that date or even thereafter. Hence the complaint under Section 138 of the Act was filed.

6. It is contended by the learned counsel for the petitioner that the petitioner was never indulged in the Company's business affairs as the same was being looked after by petitioner's brother named Abhay Shah and he is solely responsible for day-to-day functioning of the company and is authorized to take all the decisions in the accused company matters i.e. P.D. Commodities as is evident from the fact that all the correspondence and

communications had been done between the respondent and accused No.2. As such, the impugned complaint has been filed against the present petitioner on false and fabricated grounds as the petitioner is not a necessary party. It is further contended that all the business transactions, execution of agreements and issuance of cheques and moreover the cheques in question were also issued only by the accused No.2 – Akash Kumar Shah and the petitioner was not even aware about any transaction between the parties or the issuance of cheques. As such, the allegations against the petitioner are false, frivolous and baseless and therefore, the impugned complaint, Annexure P-1, is liable to be quashed.

7. Heard learned counsel for the petitioner at length and Case file in hand also perused.

8. The case file in hand i.e. CRM-M-20648-2023, relates to three post dated cheques No.003005 to 003007 dated 31.03.2021 amounting to Rs.10.00 lacs each, drawn on Kotak Mohindra Bank, which were dishonoured.

9. The case file CRM-M-20678-2023 relates to three post dated cheques No.003002 to 003004 dated 31.03.2021 amounting to Rs.15.00 lacs (cheque No.003002) and other two cheques amounting to Rs.10.00 lacs each, drawn on Kotak Mohindra Bank, which were dishonoured.

10. The case file CRM-M-20726-2023 relates to three post dated cheques No.003008 to 003010 dated 31.03.2021 amounting to Rs.10.00 lacs each, drawn on Kotak Mohindra Bank, which were dishonoured.

11. The case file CRM-M-20746-2023 relates to three post dated cheques No.003011 to 003013 dated 31.03.2021 amounting to Rs.10.00 lacs each, drawn on Kotak Mohindra Bank, which were dishonoured.

12. From the above, it can be seen that all the twelve cheques issued by the petitioner Company were dishonoured by their Banker – Kotak Mohindra Bank and not even a single cheque was cleared. This makes the intentions of the petitioner and petitioner Company clear that they did not have the intentions to make payment.

13. In this situation, this Court is of the considered view that the documents relied upon by the petitioner are subject to scrutiny by the competent court of law and this Court cannot sit as Trial Court to scrutinize those documents, which cannot be done without leading evidence by the parties. Even otherwise, the petitioner has already stated in his petition that soon after the orders were placed, there was lock down in the country as such it will be important to ascertain as to how the orders and settlement could be arrived at between the parties when the people in the country were facing lock down.

14. In ***Digvijaysinh Himmatsinh Jadeja v. State of Gujarat & Ors. 2023(INSC)1045*** *The Supreme Court observed that a High Court cannot examine and record conclusion on a disputed fact to quash the FIR by invoking its inherent powers under Section 482 CrPC.*

15. In view of the above, this Court does not find any substance and merit in the present petition and as such the present petition and other connected petitions fail and are hereby ordered to be dismissed.

16. However, it is made clear that the observations made hereinabove shall have no bearing in the mind of the trial Court while adjudicating the trial.

17. Ordered accordingly.

(SANDEEP MOUDGIL)

02.08.2024
anuradha **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable :Yes/No