HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CRM-M-54155-2021 (O&M)
Reserved on 05.08.2024
Pronounced on 04.11.2024
****

M/s Felix Infotech P.Ltd. & Ors. ... Petitioners

VS.

M/s Brightstar Telecommunications India Ltd. & Anr. ... Respondents
****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL
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Present: Mr. Gorav Kathuria, Advocate for the petitioners

Mr. KP Singh, Advocate for respondent No.1
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Sandeep Moudgil, J. (Oral)

(1). This is a petition under Section 482 Cr.P.C. for quashing of the complaint bearing NACT No.18510 of 2020 (Annexure P3) under Sections 138/142 of Negotiable Instruments Act, 1881 (in short, the 1881 Act) by respondent No.1/complainant which is pending before JMIC, Gurugram as well as for quashing the summoning order dated 29.01.2021 (Annexure P5) passed by JMIC, Gurugram.

(2). Learned counsel for the petitioners contends that the JMIC, Gurugram has proceeded to summon them without adverting to Section 202 CrPC as all the petitioners are residing outside the jurisdictional limit of Gurugram and as such, the summoning order dated 29.01.2021 issuing process without holding an enquiry in violation to the provisions under Section 202 CrPC.

(3). It is vehemently argued that the petitioner-Company, namely, M/s Felix Infotech P.Ltd. has already made all the payments to the respondent No.1 against the alleged dishonoured cheques and in fact, an excess amount of Rs.5,54,226/- has been paid by the petitioner-company to respondent No.1/complainant and therefore, the proceedings under Section 138/141 of the NI Act is bad and abuse of process of law.

(4). Another argument raised on behalf of the petitioners is that the respondent No.1 failed to comply with the mandatory requirements as provided under Section 138 of NI Act inasmuch as the legal notice ought to have been issued within one month from the date of receipt of cheque return memo which has not been done by respondent No.1 therefore, the entire complaint proceedings is barred by limitation and thus not maintainable.

(5). On the other hand, reply dated 05.03.2022 has been filed by Manish Kumar Sharma, Manager Legal of respondent No.1-company who has been duly authorized to file reply vide Board Resolution dated 01.03.2021 (Annexure R1). It is submitted in the reply that the present petition filed by the petitioners is not maintainable despite having an alternative remedy before the trial court. That apart, the petitioners have distorted and concealed the material facts as they have sought bail and have chosen not to participate in the trial proceedings.

(6). Learned counsel for the respondent No.1 submits that its company, namely, M/s Brightstar Telecommunications India Ltd. had supplied goods to the petitioner-company vide purchase orders dated 08.11.2019 and for that purpose, the petitioners had issued six cheques and at the time when these cheques were presented before the Bank and were returned dishonoured, the outstanding liability against the petitioners was Rs.4,30,17,826.74.

(7). It is averred in the reply that the petitioners have cooked up a story of fictitious payments against the five cheques in question and as on date of return memo i.e. 28.05.2021, the payments against Invoices No.RV1933810072, RV1933810173, RV1933810602 and RV1933810603 are outstanding and that no payment has been made by the petitioners after 18.11.2021 to respondent No.1. Reference has been made to an email dated 18.11.2021 (Annexure R3) addressed to david@felixinfotech.com giving details of the outstanding amount against the petitioner-company which fact also has been kept concealed from this Court.

(8). Learned counsel refuted the argument raised by the petitioners that the complaint filed by the respondent No.1 is time barred as statutory notice period of 30 days has been complied with. He submits that the Supreme Court in ***Re.Cognisance for extension of limitation bearing no Suo Motu (Civil) No.3 of 2020*** from time to time have issued directions to alleviate the difficulties being faced by the litigants and since the respondent No.1 was functioning in a limited manner virtually till 16.08.2020, as such, it had resumed limited physical functioning of head office in Gurugram from 17.08.2020 only. He further urged that it is settled law that the provisions of Section 202 CrPC is inapplicable to complaints under Section 138 of NI Act in respect of examination of witnesses on oath.

(9). Heard learned counsel for the parties and gone through the record.

(10). Admittedly, the petitioners had business and financial transactions with respondent No.1 in pursuance to the purchase order No.41 dated 15.11.2019 and Purchase Order No.42 dated 08.11.2019 and the payment against such orders was required to be made by the petitioners within 90 days from the date of invoice. There is no dispute as to delivery and receipt of products inter se parties.

(11). The petitioners have placed on record bank account ledger of the company dated 01.04.2018 to 31.10.2021 (Annexure P6) and bank statement (Annexure P7) showing the payments made by the petitioners to respondent No.1. The petitioners have also, in para 12 of the petition, have tabulated the details in the form of statement of payment made against cheques given to respondent No.1 but were dishonoured by the Bank and in terms thereof, the total value of dishonored cheques is Rs.2,73,52,7708/- and the total payment made by the petitioners against such dishonoured cheques is shown to be Rs.2,79,06,996/- and that being so, the petitioners have in fact made excess payment of Rs.5,54,226/- to respondent No.1.

(12). On the contrary, the respondent No.1 have their own story to counter the assertion made by the petitioners. It is their case that the payments depicted by the petitioners are fictitious payments and are not related to the complaint lodged by respondent No.1 and in fact, the respondent No.1 has adjusted the payments and has also duly informed the petitioners. The account credits in lieu of payments and credit note in respect of the petitioners issued to the tune of Rs.2,84,18,680/- is stated to have been adjusted against the invoices and the total amount credited in lieu of payment and credit note after issuance of balance confirmation is Rs.2,29,06,996/- as on 31.03.2020. He further urged that the principal outstanding as on 18.11.2021 was Rs.2,01,22,783 and the outstanding with interest was Rs.2,99,17,745/- against which no payment has been made by the petitioners after 18.11.2021 to respondent No.1. The respondent No.1 has also, in para 5 of the reply, given the details of the outstanding liability against 6 invoices issued against purchase orders No.41 & 42 which is reproduced as under:-

S.No.	Invoice Number & Due date (A)	Invoice Amount (B)	Cheque No. (C)	Cheque Amount (D)	Reason for dishonor (E)
1	RV19278115 having due date 16.11.2019	2,12,54,718	773192	2,12,54,718	Stale
2	RV1933810072 having due date 27.11.2019	79,67,436	265812	79,67,436	Payment stopped by Drawer
3	RV1933810173 having due date 28.11.2019	3380124	265828	33,80,124	Payment stopped by Drawer
4	RV1933810412 having due date 30.11.2019	4008293	265826	40,08,293	Payment stopped by Drawer
5	RV1933810603 having due date 04.12.2019	8037774	265841	30,37,774	Payment stopped by Drawer
6	RV1933810602 having due date 04.12.2019	3887143	265840	38,87,143	Payment stopped by Drawer

(13). It is also the case of respondent No.1 that period of limitation, as has been urged on behalf of the petitioner, was extended during lockdown by the Supreme Court. Respondent No.1 is stated to have been functioning in a limited virtual manner till 16th August, 2020 in compliance to Government of India advisories issued from time to time and as such, prior to its operation in 'work from home', the respondent No.1 resumed limited physical functioning of its head office at Gurugram w.e.f. 17.08.2020 and therefore, the statutory demand notice dated 12.08.2020 as well as the complaint was well timeline prescribed by the Government.

(14). From the facts adumbrated above, it appears that the petitioners, as claimed, issued only post-dated cheques to the respondent No.1 and therefore, no liability on the part of the petitioners under Sections 138, 141/142 of NI Act was attracted towards them. Moreover, the petitioner-company has made all the payments to respondent No.1 against the alleged dishonoured cheques as per the statement of payment relied upon by the petitioners which shows that the petitioners have in fact made excess payment of Rs.5,54,226/- to respondent No.1. On the other hand, it is the counter-assertion of the respondent No.1 that as on date, the payments against the dishonoured cheques are still outstanding and as such there is legally recoverable debt to the tune of Rs.4,30,17,827/- to be discharged by the petitioners. In nutshell, the contention of the petitioners is that even though the debt of the respondent No.1-complainant has been paid/adjusted still the respondent No.1-complainant has used the post-dated cheques issued by the petitioners to their disadvantage. The relevant extract of payment made by the petitioners in the shape of RTGS against the dishonoured cheques to the respondent No.1 is reproduced hereunder:-

S. No.	**Cheque No.**	**Cheque Date**	**Amount**		**S. No.**	**Paid on**	**Bank Ref.**	**Amount**
1	265828	29.02.2020	33,80,124		a.	19.03.20	RTGS-HDFCR52020031975014220	15,00,000
2	265826	29.02.2020	40,80,293				NEFT-HDFC-NO86201103254539	20,00,000
			74,60,417				NEFT-HDFC-NO87201103825425	15,00,000
							NEFT-HDFC-NO209201196671494	24,60,417
								74,60,417

S.No.	**Cheque No.**	**Cheque Date**	**Amount**		**S.No.**	**Paid on**	**Bank Ref.**	**Amount**
1	265840	05.03.2020	38,87,143		a.	25.08.20	RTGS-HDFCR52020082594168970	38,87,143
			38,87,143					**38,87,143**

S.No.	**Cheque No.**	**Cheque Date**	**Amount**		**S.No.**	**Paid on**	**Bank Ref.**	**Amount**
1	265812	28.02.2020	79,67,436		a.	24.09.20	RTGS-HDFCR52020092499051291	50,00,000
					b.	06.10.20	RTGS-HDFCR52020100650817163	29,67,436
			79,67,436					
								79,67,436

S.No.	Cheque No.	Cheque Date	Amount		S.No.	Paid on	Bank Ref.	Amount
1	265841	05.03.2020	80,37,774		a.	09.10.20	NEFT-HDFC-N283201270304351	20,00,000
					b.		NEFT-HDFC-N297201284996018	15,00,000
			80,37,774		c.		Credit Note dated 30/10/20 100033358	10,92,000
					d.		NEFT-HDFC-N31220130661725	15,00,000
					e.		DD No. 018999-HDFC	25,00,000
								85,92,000

(15). A perusal of the above tabulated chart of payments made by the petitioners through RTGS/NEFT/Credit Note etc. would show that the total value of cheque which is said to have been dishonoured was Rs.2,73,52,770/- whereas a sum of Rs.2,79,06,996/- were transferred in the account of the respondent No.1 and instead a sum of Rs.5,54,226/- were transferred in excess to the debt liability as alleged by respondent No.1. It also culls out that the six cheques issued are of dated 19.02.2020 to 05.03.2020 and the payments made by the petitioners to respondent No.1 are during the period from March, 2020 to October, 2021. The demand notice was got issued by respondent No.1 on 12.08.2020 meaning thereby that there existed financial transaction *inter se* parties during the period demand notice was raised by respondent No.1.

(16). In fact, it is the case of the petitioners that it was on the insistence of the respondent No.1, that post-dated cheques were issued and that apart, the respondent No.1 failed to discharge their part of the contract in delivering goods within the specified time-frame. Vide letter dated 17.02.2020, the petitioners requested respondent No.1 not to deposit the unfilled post-dated cheques but the same was filled by respondent No.1 and presented in the Bank intentionally despite having received the amount in toto.

(17). The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated.

(18). To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. This view of mine is supported from the judgment of the Apex Court rendered in ***Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513*****.**

(19). In the present case, the petitioner-accused has made averments that the payments stood paid in the account of the respondent No.1 and in support thereof, he appended bank account ledger dated 01.04.2018 to 31.10.2021 (Annexure P6) showing the payments made to respondent No.1 and the bank statement (Annexure P7) to aver that the debt liability against the dishonoured cheques were duly discharged by the petitioner.

(20). In such circumstances, no sufficient grounds are made out to proceed against the petitioners under Section 138 and Section 141 of the NI Act and therefore, the observation made by the trial court are bad and erroneous in law.

(21). Accordingly, this petition is allowed and the complaint bearing NACT No.18510 of 2020 (Annexure P3) under Sections 138/142 of the NI Act by respondent No.1/complainant which is pending before JMIC, Gurugram as well as the summoning order dated 29.01.2021 (Annexure P5) passed by JMIC, Gurugram are hereby quashed.

04.11.2024 **(Sandeep Moudgil)**
V.Vishal **Judge**

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*