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

\+ CRL.M.C. 5709/2022 & CRL.M.A. 22517/2022

SUSAN ELECTRICALS INDIA PRIVATE LIMITED .....Petitioner

Through: Mr. Anuj Gupta, Ms. Saguna Gupta, Mr. Anmol, Ms. Aditi Sharma and Mr. Naveen Kumar, Advocates.

versus

GRANDLAY ELECTRICALS INDIA .....Respondent

Through: Ms. Kirti Mewar, Advocate.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

O R D E R

% **20.09.2024**

1. Petitioner has approached this Court seeking quashing of the Complaint Case No.1788/2019, pending in the Court of learned Metropolitan Magistrate (NI Act) – 01, Rouse Avenue Courts.

2. The facts of the case reveals that the Petitioner herein issued a cheque bearing No.793653 dated 06.11.2018 amounting to Rs.32,11,324/- drawn on Punjab National Bank, Chander Nagar, Ghaziabad, to the Respondent herein for repayment of a liability. It is stated that prior to the presentation of the cheque in question, in view of the email dated 17.11.2018 exchanged between the parties, a debit note for a sum of Rs.2,00,000/- was issued and Rs.30,11,324/- was paid by the Petitioner to the Respondent by way of RTGS on 17.11.2018 and the Petitioner also demanded the cheque in question from the Respondent in view of the RTGS payment. This fact has been acknowledged in the proceedings before the Trial Court. It is stated

that after receiving a sum of Rs.30,11,324/-, the Respondent deposited the cheque in question in the bank on 20.11.2018 and the same was returned with endorsement "Payment stopped". It is stated that the Respondent, thereafter, filed a complaint against the Petitioner under Section 138 of the NI Act. However, the complaint does not disclose anything about the payment of Rs.30,11,324/- by the Petitioner through RTGS.

3. Petitioner has filed the present Petition seeking quashing of the Complaint.

4. Learned Counsel for the Petitioner has drawn the attention of this Court to e-mail dated 17.11.2018, sent by the Petitioner at 3:27 PM to the Respondent herein, which reads as under:

> "*Dear Sir,*
> *As discussed with you, Kindly find attached Debit note of Rs.-2, 00, 000/ Accept the same and reply Ok.*
> *We are doing RTGS of Rs. 30, 11,3241- to your HDFC Bank A/c, So kindly return back our Cheque no.- 793653 dt. - 06.11.2018 which we stop for payment in Bank also with this RTGS*."

5. He has also taken this Court to the email sent by the Respondent herein on the very same date at 03:55 PM agreeing to the proposal of the Petitioner of issuing a debit note in the sum of Rs.2,00,000/- and making RTGS payment of Rs.30,11,324/- to the Respondent in lieu of total liability of Rs.32,11,324/-. It is stated by the learned Counsel for the Petitioner that the Petitioner issued a debit note on the very same date, i.e. 17.11.2018 and sent a mail to the Respondent attaching the debit note at 04:08 PM and sent Rs.30,11,324/- to the Respondent through RTGS on the very same date, i.e. 17.11.2018. Learned Counsel for the Petitioner, therefore, states that in view

of the fact that the Petitioner has paid Rs.30,11,324/- to the Respondent, the cheque in question ought not have been presented by the Respondent in the Bank as it was specifically mentioned by the Petitioner in its e-mail dated 17.11.2018 that the Petitioner has stopped the payment of the said cheque. He, therefore, states that in view of the above the present complaint is not maintainable.

6. It is stated by the learned Counsel for the Respondent that the Respondent had agreed for payment of Rs.30,11,324/- and not for debit note of Rs.2,00,00/- and, therefore, the cheque in question was presented for the balance amount of Rs.2,00,000/-.

7. Heard the Counsels and perused the material on record.

8. The admitted facts of the case are that Petitioner herein issued a cheque bearing No.793653 dated 06.11.2018 amounting to Rs.32,11,324/- drawn on Punjab National Bank, Chander Nagar, Ghaziabad, to the Respondent herein for repayment of a liability. Material on record also discloses that out of the said amount, Petitioner paid Rs.30,11,324/- to the respondent herein through RTGS on 17.11.2018. This fact has also been acknowledged by the AR of the Respondent before the Trial Court and the same has been recorded in the Order dated 16.08.2022. The said Order reads as under:

> "*AR is submitted that the complainant company is received Rs. 30 Lacks 11 thousands from the accused against the cheque in question prior to the institution of the present complaint. He further submits that since the entire amount has not been paid by the accused, the case be proceed on merits.*
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> *Adjournment is sought on ground on the unavailability*

of the main counsel of the complainant due to his personal difficulty. IN the interest of justice the adjournment is granted today NDOH 30.09.2022 at 2:30 PM."

9. After receipt of Rs.30,11,324/- the only course available to the Respondent was to take an indorsement on the cheque under Section 56 of the NI Act that out of the total cheque amount of Rs.32,11,324/- Rs.30,11,324/- have been received and Rs.2,00,000/- are still due and payable by the Respondent. It was not open for the Respondent to deposit the cheque in question in the bank for payment of entire amount.

10. The issue involved in the present Petition is no longer res integra and is covered in the Judgment of the Apex Court in Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel, **(2023) 1 SCC 578,** wherein the Apex Court has observed as under:

> "***30***. *The appellant contends that the purpose of Section 138 of the Act would be defeated if the dishonour of the cheque issued for security is not included within the purview of Section 138 where the payment of a part of the cheque amount is made. It was contended that it would lead to a possibility where the drawer of the cheque could evade prosecution under Section 138 by paying a small amount of the debt while defaulting on the remaining payment. Section 56 stipulates that if there is an endorsement on a negotiable instrument that a part of the sum mentioned in the cheque has been paid, then the instrument may be negotiated for the balance. Section 56 reads as follows:*
>
> > *"56. Indorsement for part of sum due.—No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be*

due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance."

***31**. Section 15 defines the phrase "indorsement" as follows:*

"15. Indorsement.—When a maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser"."

***32**. A Division Bench of the Kerala High Court has held in Joseph Sartho v. G Gopinathan [Joseph Sartho v. G. Gopinathan, 2008 SCC OnLine Ker 254 : (2008) 3 KLJ 784] that since the representation in the cheque was for a sum higher than the amount that was due on the date that it was presented for encashment, the drawer of the cheque cannot be convicted for the offence under Section 138 of the Act. The High Court of Delhi addressed the same issue in Alliance Infrastructure Project (P) Ltd. v. Vinay Mittal [Alliance Infrastructure Project (P) Ltd. v. Vinay Mittal, 2010 SCC OnLine Del 182 : ILR (2010) 3 Del 459] . The High Court observed that when part-payment is made after the cheque is drawn, the payee has the option of either taking a new cheque for the reduced amount or by making an endorsement on the cheque acknowledging that a part-payment was made according to the provisions of Section 56 of the Act. It was also held that the notice of demand which requires the drawer of the cheque to make payment of the whole* *amount represented in the cheque despite receiving part repayment against the sum, before the issue of notice, cannot be valid under Section 138(b) of the Act. A similar view was taken by the High Court of Gujarat in Shree Corpn. v. Anilbhai Puranbhai Bansal [Shree Corpn. v. Anilbhai Puranbhai Bansal, (2018) 2 GLH 105] .*

***33**. Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part-payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part-payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment.*

***34.** In view of the discussion above, we summarise our findings below:*

***34.1**. For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation.*

***34.2**. If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the* *legally enforceable debt on the date of maturity would not be the sum represented on the cheque.*

***34.3**. When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted.*

***34.4**. The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the "legally enforceable debt" on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds.*

***34.5**. The notice demanding the payment of the "said amount of money" has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided."*

11. In view of the said Judgment, the complaint filed by the Respondent against the Petitioner herein under Section 138 NI Act is not maintainable in view of the admission of the Respondent of having received Rs.30,11,324/- from the Petitioner through RTGS on 17.11.2018.

12. Accordingly, the Complaint Case No.1788/2019 and the proceedings

emanating therefrom are quashed.

13. The Petition is disposed of, along with the pending applications, if any.

14. It is open for the Respondent to take recourse to such remedies as may be available to them under law for getting the balance amount of Rs.2,00,000/- from the Petitioner herein.

SUBRAMONIUM PRASAD, J

SEPTEMBER 20, 2024
Rahul