



2024:DHC:8947



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

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Reserved on : 14.08.2024

Pronounced on : 18.11.2024

+ CRL.M.C. 6062/2024 & CRL. MAs 23168-69/2024

M/S GLAZEBROOKE TRADING PRIVATE LIMITED

.....Petitioner

Through: Mr. Siddharth Aggarwal, Senior Advocate with Mr. Prateek K. Chadha, Mr. Vijay Wadhwa, Ms. Arshiya Ghose, Mr. Pareeksit Bishnoi, Mr. Sreekar Acchuri and Mr. Arjun Nayyar, Advocates

versus

M/S ORBIS TRUSTESHIP SERVICES PRIVATE LIMITED & ANR.

.....Respondents

Through: Mr. Pramod Kumar Dubey, Senior Advocate with Mr. Raghav Chhadha, Mr. Hemant Shah, Mr. Shashank Dewan, Mr. Saarthak Karol, Ms. Neelakshi Bhadauria, Ms. Amrita Vatsa, Mr. Ayush Sachan, Ms. Muskan Sharma, Mr. Prince and Ms. Anmol Bhaskar, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present petition has been instituted seeking quashing of the Criminal Complaint bearing Nos.4152/2022 pending before the learned JMFC, NI Act, Patiala House Courts, Delhi.
2. The subject proceedings arise out of the criminal complaint filed by the respondent No. 1/complainant wherein *M/s Glazebrooke Trading Private Limited*, a Company incorporated under the Companies Act, 1956 has been



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arrayed as accused/petitioner No. 1, while its Directors are arrayed as accused/petitioner Nos.2 and 3.

3. It is alleged in the complaint that the petitioner No.1 had approached one *Pettigo Comercio Intemacional Lda* ("Debenture Holders") seeking financing in the form of unlisted, collateralised, redeemable and non-convertible debentures each bearing face value of Rs 1 lakh of the aggregate nominal value of Rs 150 crores. At request of the petitioner No.1, the complainant company agreed to act as the debenture trustee with respect to the debentures, under a Debenture Trustee Agreement dated 22.10.2020, entered between petitioner No. 1 and the complainant. As per the same, petitioner No.1 drew 13 undated cheques in favour of the complainant company in discharge of its obligation with respect to the debentures. The same were handed over vide a covering letter ensuring that the said cheques would be honoured on presentment. Subsequently, the operations of the petitioner No.1 slowed down and consequently, it defaulted in paying the quarterly coupon amount of Rs.9,37,50,000/- for the quarter ending 22.01.2022, to the complainant, which constituted a violation of the Agreement. Subsequently, the complainant, in accordance with Clause 5.12 of the Debenture Trust Deed, deposited 2 (two) cheques, bearing cheque no. 680413 for an amount of INR 1,50,00,00,000/- (Rupees One Thousand Five Hundred Million only), and cheque no. 680401 for an amount of INR 93,750,000 (Rupees Ninety-Three Million Seven Hundred and Fifty Thousand only), ("Cheques"), both drawn on Punjab National Bank, Kilpauk, Chennai. The said cheques were returned dishonoured vide return memo dated 28.02.2022 with remarks "Funds insufficient". Demand Notice with regards to the same was issued on 11.03.2022. The dues remained



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outstanding led the complainant to institute the present proceedings against the petitioners.

4. Learned counsel for the petitioners first and foremost contended that the subject complaint is time barred and filed beyond the stipulated time period provided under Section 142 (b) of the NI Act. It is argued that the legal demand notice under Section 138 of the Act was duly sent to the petitioners via email on 11.03.2022 at their respective email addresses. The notice was successfully delivered to petitioners No. 1 and 3 on 11.03.2022; however, the notice to petitioner No. 2 bounced back, a fact not disputed by the complainant. The 15-day notice period that commenced on 12.03.2022 expired on 26.03.2022. Excluding the day of 27.03.2022, the limitation period for filing the complaint commenced on 28.03.2022 and expired on the corresponding day in the succeeding month, which was 27.04.2022. The complaint in this case was filed on 28.04.2022, which is one day after the expiry of the limitation period. It is also submitted that sending of notice through post or courier to the addressee subsequent to the date of first delivery of notice through electronic mode cannot be treated as the starting date for calculating the period of limitation and that the date on which the first notice has been delivered upon the addressee should be treated as the date for commencement of the period of limitation. Moreover, the criminal complaint was not even accompanied by any application seeking condonation of delay in filing the complaint. It was also contended that the complainant had initially filed a complaint qua the subject cheques before the Gurugram court that was later withdrawn, a fact which was suppressed from the trial court.



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5. *Per contra*, learned counsel of the complainant submitted that the respondent had sent a legal notice to the petitioners through email on 11.03.2022. While the email sent to petitioner Nos. 1 and 3 was successfully delivered, the email sent to petitioner No.2 bounced back with the error message "domain doesn't exist." As a result, since service of the legal notice was not effected upon all the accused, the complainant again sent the legal notice to all the accused by registered post on 14.03.2022. The legal notice sent by registered post was successfully delivered to petitioner Nos. 1, 2, and 3 on 16.03.2022, 16.03.2022 and 28.03.2022 respectively. It is urged that the date on which the legal notice was served by registered post shall be deemed to be the date on which service was effected upon all the accused and from the said date, the period of limitation would commence. It is submitted that the date for calculating the limitation period for filing the complaint was correctly determined based on the successful service of the legal notice by registered post to all the accused. In this manner, the limitation to file the complaint was available till 30.04.2022. Further, the complaint filed in Gurugram was registered as Case No. NCAT/17165/2022. Upon becoming aware that the jurisdiction to file the complaint would lie in Delhi, the said complaint was withdrawn on 27.04.2022. It is submitted that thus, the period of limitation of the complaint was stretched by the aforesaid order and the time period spent by the complainant in prosecuting the Gurugram Complaint (i.e. from 20.04.2022 to 27.04.2022) would be liable to be excluded during the time of calculation of period of limitation.

6. I have heard the counsels for the parties and perused the material on record.



7. The only issue germane in present proceedings is that when did the limitation commence for filing the complaint and whether the time spent in pursuing the first complaint filed before the court in Gurugram could be excluded.

8. To appreciate the issues at hand, it is deemed apposite first to extract the relevant provisions in the NI Act which are reproduced hereunder:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless— (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”



As the case pertains to a challenge strictly made on account of limitation, this Court also deems it appropriate to extract Section 142(1)(b) of the Act which reads as under:-

“142. Cognizance of offences.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

xxx.

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138.”

9. The first issue as to when would the limitation commence for filing the complaint would also encompass the issue as to whether the service of demand notice through email on 11.03.2022 on the accused company i.e. petitioner No.1 could be considered as effective service on its Director(s) i.e. petitioner No.2 herein, the service of demand notice on the other Director i.e. petitioner No.3 being not in dispute. The primary accused being the company on whose behalf the subject cheques were issued, concededly, was served with a demand notice through email on 11.03.2022 itself. There is no averment from either side that the said email bounced back. The other two accused are the Directors in the accused company. A plain reading of Section 141 NI Act reveals that there is no requirement of serving each Director separately. The notice envisaged under Section 138 NI Act is required to be given to the drawer of the cheque i.e. the accused company in the present case to make good the sum payable under the cheque. A company being a juristic entity is run by living persons who are in charge of its affairs and who guide the actions of that Company and that if such juristic entity is guilty, those



who were so responsible for its affairs and who guided actions of such juristic entity must be held responsible and ought to be proceeded against. The opportunity to the ‘drawer’ company is considered good enough for those who are in charge of the affairs of such Company¹. The Supreme Court in Krishna Texport (supra) further observed that:

“17. If the requirement that such individual notices to the directors must additionally be given is read into the concerned provisions, it will not only be against the plain meaning and construction of the provision but will make the remedy under Section 138 wholly cumbersome.....”

10. Curiously in the present case, while the accused persons are claiming that the service of demand notice on the accused company be considered as service on its Directors as well, the complainant is contending otherwise. For this reason, the complainant’s reliance on the decision in Ashok Shewakramani and Ors reported as **2023 INSC 692** is also misplaced as in the said case, it was the admitted case of both the parties that demand notice was not served on the Directors. It is also apposite to take note of the two decisions rendered by the Co-ordinate Benches in Harpreet Sahni & Anr v. Shrichand Hemnani & Ors **2024 SCC OnLine Del 3588** and Prabha Shankar Singh v. Sangita Kumari reported as **2023 SCC OnLine Del 8059** wherein it has been held that the service of demand notice on the drawer is service of notice on Trustees/ Directors.

In light of above discussion, this Court has no hesitation to hold that the service of demand notice to the accused company on 11.03.2022 is effective service on petitioner No.2 as well. As noted above, there is no

¹ Kirshna Texport and Capital Markets Ltd v. Ila. A. Agarwal, (2015) 8 SCC 28



dispute that petitioner No.3 was also served on 11.03.2022 itself through email.

11. Once it is held that service of demand notice on the company would be considered as a service on the other petitioners, the next issue as to what would be the starting period of limitation for filing complaint is simple calculation. Before answering this, the other contention that time spent in pursuing the complaint in Gurugram court is to be excluded in terms of Section 14 Limitation Act stands resolved by the decision of Supreme Court in Subodh S. Salaskar v. Jayprakash M. Shah reported as **(2008) 13 SCC 689** where it has been categorically held that Limitation Act does not apply to proceedings initiated under NI Act. Thus the contention raised by complainant for exclusion of the time period is meritless and rejected.

12. Left with only the issue as to the commencement of limitation for filing of complaint, it is observed that the 15 day period for the accused company to make good the payment under the cheques in question came to end on 26.03.2022. The cause of action arose on 27.03.2022 and excluding that in terms of the decision of Supreme Court in Saketh India Ltd. V. India Securities reported as **(1999) 3 SCC 1**, the period of one month (30 days) came to an end on 27.04.2022. The subject complaint was filed on 28.04.2022. The relevant observation in this regard in Saketh (supra) is extracted hereunder:

“7. The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12 (1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be



reckoned, shall be excluded. Similar provision is made in sub-section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of General Clauses Act, 1897 which, inter-alia, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any other period of time, to use the word 'to'.

8. *Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act. Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last.. Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer, expires. Period of 15 days, in the present case, expired on 14th October, 1995. So cause of action for filing complaint would arise from 15th October, 1995. That day (15th October) is to be excluded for counting the period of one month. Complaint is filed on 15th November, 1995. The result would be that the complaint filed on 15th November is within time.”*

13. Gainful reference is also made to the decision of the three-Judge Bench of Supreme Court in Econ Antri Ltd. v. Rom Industries Ltd., reported as **(2014) 11 SCC 769**, where while deciding the issue of commencement of limitation period with regard to proviso (c) to Section 138 and Section 142(b) of the Negotiable Instruments Act, 1881, it was held as under:-

“Having considered the question of law involved in this case in proper perspective, in the light of relevant judgments, we are of the opinion that Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329] lays down the correct proposition of law. We hold that for the purpose of



calculating the period of one month, which is prescribed under Section 142(b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that SIL Import, USA [SIL Import, USA v. Exim Aides Silk Exporters, (1999) 4 SCC 567] does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to the view taken in Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1] by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly.”

14. At this juncture, notice is also taken of the decision of Co-ordinate Bench of this court in Simranpal Singh Suri v. State & Anr reported as **2021 SCC OnLine Del 236** wherein it was held that:-

“12. In terms of dictum of Full Bench of Hon'ble Supreme Court in Econ Antri Ltd. (Supra), the ratio of decision in M/S Saketh India Ltd. (Supra), has to be applied to the case in hand.

13. The crux of the present case is that legal demand notice dated 31.05.2019 was sent on 01.06.2019, which was duly served upon the petitioner on 03.06.2019. The 15 days notice period in this case commenced on 04.06.2019 and lapsed on 18.06.2019. It is not in dispute that in terms of Hon'ble Supreme Court's decision in M/S Saketh India Ltd. (Supra), one day has to be excluded for counting the one month limitation period and, therefore, excluding the day of 19.06.2019, the limitation period started from 20.06.2019 and the limitation period expired with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period started. Consequently, the limitation period in this case, which commenced on 20.06.2019, expired in the succeeding month on a day preceding the date of commencement i.e. 19.07.2019. Admittedly, the complaint in this case was instituted on 20.07.2019 i.e. 01 day after the limitation period had expired. Hence, both the courts below have fallen in error while computing the period of limitation. Moreover, at the time of



filing, the complaint was not even accompanied by an application under Section 142 (b) NI Act for condoning the delay.”

15. Though it was sought to be contended on behalf of the complainant that the complaint bears the date of 27.04.2022, but on seeing the meta data of the complaint filed in the Registry of the trial court and placed on record in the proceedings, it is evident that the same was filed only on 28.04.2022 which was the 31st day and was thus beyond the period of limitation.

16. Another contention was raised on behalf of the complainant that the issue of limitation being a mixed question of law and fact should be tested in trial and in this regard, reference was made to the decision of Co-ordinate Bench in Pawan Kumar Ralli v. Maninder Singh Narula reported as **(2014) 15 SCC 245**. On a perusal of the said decision, it is apparent that in said case, the issue of limitation was urged for the first time before High Court whereas in the present case, the issue was urged before the trial court in as much as an application was preferred by the accused seeking discharge contending that the complaint was barred by time. The said application was rejected. A perusal of the material on record would show that the complainant has always maintained that its complaint was filed in time and offered no explanation for the delay or sought its condonation. The timelines stipulated in the Act being strict, though delay in filing the complaint being condonable under proviso to Section 142 (b), the same is subject to complainant seeking its condonation and providing sufficient cause to the satisfaction of court.

17. Indisputably, the said complaint was not accompanied with any application for condonation of delay. In reply of the petitioners’



application seeking discharge, the complainant for the first time mentioned the factum of filing of complaint in court at Gurugram and its withdrawal. The said reply was filed on 31.03.2023. However, on date of taking cognizance on 02.08.2022, no such material was available before the trial court. The complaint being filed on 28.04.2022 without offering any explanation of delay or seeking its condonation was filed beyond the period of limitation and not maintainable. In coming to the said conclusion, this Court also draws support from the decision of a Coordinate Bench in D.Babu v. M/s Bhartia Industries Ltd. reported as **2009 SCC OnLine Del 496** wherein it is stated :-

“ 20.....Besides this petitioner has not filed any application before the concerned court to seek condonation of delay and thus not having taken recourse to the provisions of section 141(b), no benefit can be derived by respondent therefrom.

Xxx

21. However, there is nothing on record to show that any application was made for condonation of delay or any attempt was made to satisfy the Court that there was sufficient cause for not making the complaint within the stipulated time period.

22. In view of the aforesaid, I find that the criminal complaint titled as "M/s Bhartia Industries Limited Vs. D. Babu" filed by the respondent under Section 138 of the Negotiable Instruments Act in the Court of learned Metropolitan Magistrate, Patiala House, has been filed beyond the period of limitation. The same is accordingly quashed.”

18. To the similar extent is another decision in the case of Simranpal Singh Suri (supra) wherein on unexplained delay of one day, the order taking cognizance was set aside.

19. As a result, the petition succeeds. Consequently, the criminal complaint is quashed and the order taking cognizance is set aside.



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20. The present petition is disposed of in the aforesaid terms alongwith the pending applications.

**MANOJ KUMAR OHRI
(JUDGE)**

NOVEMBER 18, 2024

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