



2025:DHC:11418



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

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*Reserved on: 02nd September, 2025
Pronounced on: 16th December, 2025*

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CRL.M.C. 1347/2021, CRL.M.A. 7877/2021

1. **FARHAD SURI**

S/o Late Wali Mohd. Babar,
R/o C – 33-A, Nizamuddin East,
New Delhi - 110013

2. **DHIREN NAVLAKHA**

S/o Late P. S. Navlakha,
R/o A - 5, Greater Kailash – 1,
New Delhi - 110048

.....Petitioners

Through: Through: Mr. Nalin Tripathi with
Mr. Shivansh Pandey, Advocates

versus

1. **PRAVEEN CHOUDHARY**

S/o Sh. Jagdish Pradhan,
R/o K-333, 334, Sardar Patel Road,
Karawal Nagar Village, Delhi – 110094.

2. **NIRAJ JHA**

S/o Sh. Anil Kmar Jha,
R/o JP-17, [1st Floor], Pritampra,
Near Rashmi Hospital,
Delhi - 110034

3. **M/S SUMERU PROCESSORS PVT. LTD.**

Through Official Liquidator – Mr. Rajiv Malik
G-2, Jeevan Apartments, 16-A, Jamia Nagar,
Okhla, New Delhi – 110025.

...Respondents

Through: Mr. Ankit Tandan, Advocate.



CRL.M.C. 1360/2021, CRL.M.A. 8253/2021

1. **DHIREN NAVLAKHA**
S/o Late P. S. Navlakha,
R/o A - 5, Greater Kailash – 1,
New Delhi - 110048
2. **FARHAD SURI**
S/o Late Wali Mohd. Babar,
R/o C – 33-A, Nizamuddin East,
New Delhi - 110013

.....Petitioners

Through: Mr. Nalin Tripathi with Mr. Shivansh
Pandey, Advocates

versus

1. **JITENDRA CHOUDHARY**
S/o Sh. Jagdish Pradhan,
R/o K-333, 334, Sardar Patel Road,
Karawal Nagar Village, Delhi – 110094.
2. **NIRAJ JHA**
S/o Sh. Anil Kmar Jha,
R/o JP-17, [1st Floor], Pritampura,
Near Rashmi Hospital,
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Through Official Liquidator – Mr. Rajiv Malik
G-2, Jeevan Apartments, 16-A, Jamia Nagar,
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...Respondents

Through: Mr. Ankit Tandan, Advocate.

CRL.M.C. 1624/2021, CRL.M.A. 11404/2021

DHIREN NAVLAKHA
S/o Late P. S. Navlakha,
R/o A - 5, Greater Kailash – 1,



New Delhi - 110048

.....Petitioner

Through: Mr. Nalin Tripathi with Mr. Shivansh
Pandey, Advocates.

versus

JITENDRA CHOUDHARY

S/o Sh. Jagdish Pradhan,
R/o K-333, 334, Sardar Patel Road,
Karawal Nagar Village, Delhi – 110094.

...Respondent

Through: Mr. Ankit Tandan, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. **CRL MC 1347/2021** has been filed under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) against the Order dated 21.01.2021 whereby the Ld. M.M. in **CC N.I. Act No. 113/2021** summoned the **Petitioner/Farhad Suri and Dhiren Navlakha** for offence under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as "NI Act"*).
2. **CRL MC 1360/2021** has been filed under Section 482 Cr.P.C. against the Order dated 19.01.2021 whereby the Ld. M.M. in **CC N.I. Act No. 90/2021** summoned the **Petitioner/Dhiren Navlakha and Farhad Suri** for offence under Section 138 NI Act.
3. **CRL MC 1624/2021** has been filed under Section 482 Cr.P.C. against the Order dated 22.01.2021 whereby the Ld. M.M. in **CC N.I. Act**



No. No. 117/2021 summoned the **Petitioner/Dhiren Navlakha** for offence under Section 138 NI Act.

4. The aforesaid three Petitions are being decided together as they arise out of similar facts and involve the same question of law.

Facts as per CC No. 113/2021 under Section 138 NI Act:

5. The Complaint has been filed by Respondent No.1/Praveen Choudhary (*Complainant*) against Respondent/M/s *Sumeru Processors Pvt. Ltd. (Accused No.1 Company)*; Petitioner No.2/Dhiren Navlakha (*Accused No.2*); Petitioner No.1/Farhad Suri (*Accused No.3*) and Niraj Jha (*Accused No.4*).

6. It is stated that Accused No.1 Company is Pvt. Ltd. Company incorporated under the Companies Act, 1956 and Accused Nos. 2-4 are its Directors and involved in day-to-day functioning and decisions of the Company.

7. The Complainant and Accused No.3/Farhad Suri have known each since a long time through the father of the Complainant. The Complainant got acquainted with the other accused persons through Accused No.3. Accused No.1 Company is involved in the consumer goods in Retail and Wholesale-Discretionary.

8. The Complainant and his brother, Jitender Choudhary, had taken a loan from the bank for starting a business which was transferred in their account on 10.06.2016. Accused No.3 Farhad Suri approached the Complainant and his brother through their father, knowing they had taken a loan. He asked them for financial help (a friendly loan) in the name of Accused No.1 Company and also personally for Accused Nos. 2 to 4. Since



the Complainant and his brother needed the money after 4-5 months for their own business and Accused No.3 was a Director of Accused No.1 and a reputed political leader in Delhi, they agreed. ***On 13.06.2016, they transferred the amount to his account via RTGS as a friendly loan.***

9. The accused initially paid interest on the borrowed amount, but from June 2020 they stopped making interest payments. Accused Nos. 1, 2, and 3 later settled the matter and issued ***Cheque No. 574506 dated 07.09.2020 from DCB Bank, New Delhi, for Rs. 75,00,000 in the Complainant's name***, assuring that it would be honoured. However, it was returned unpaid on ***05.10.2020 with the remark "ACCOUNT BLOCKED"***.

10. The Complainant contacted the accused persons and thereafter, Accused Nos. 2 to 4 responded by saying that they had intentionally blocked the account to harass the Complainant and stated they would not return the borrowed amount. The Complainant subsequently sent ***a Legal Notice dated 10.11.2020***. However, the Accused had no intention to return money, due to which the Respondents herein filed a Complaint under Section 138 NI Act.

Facts as per CC No. 90/2021 under Section 138 NI Act:

11. The Complaint has been filed by Respondent No.1/Jitender Choudhary (*Complainant*) against Proforma Respondent/M/s Sumeru Processors Pvt. Ltd. (*Accused No.1 Company*); Petitioner No.2/Dhiren Navlakha (*Accused No.2*); Petitioner/Farhad Suri (*Accused No.3*) and Niraj Jha (*Accused No.4*).

12. Accused No. 2/Dhiren Navlakha (as CEO) and Accused No. 3/Farhad Suri proposed renting the Complainant's premises at A-20A, Brijpuri Main Wazirabad Road, Delhi-44 for Rs. 30,000 per month,



excluding electricity, water and other charges, to use as storage for goods of Accused No. 1. A Rent Agreement was executed on 01.04.2010 between Accused No. 1 Company/M/s *Sumeru Processors Pvt. Ltd.* and the Complainant's brother, Ravi Choudhary, his wife Babita Choudhary and the Complainant's wife, Jyoti Choudhary. It was agreed that rent would increase every three years.

13. After the initial Agreement expired, the tenancy was orally extended from April 2014. However, all Accused intentionally stopped paying rent from April 2014 onwards.

14. The Accused also failed to pay electricity and water charges for the past six years, citing business losses. In August 2020, the parties settled and borrowed a lump sum amount of Rs. 24,00,000/- and the accused issued a cheque accordingly.

15. Accused Nos. 1, 2, 3 issued ***Cheque*** No. 5668870 dated 07.09.2020 for Rs.24,00,000/- during the process of storage of goods. However, the said ***cheque returned unpaid on 05.11.2020 with the remark "ACCOUNT BLOCKED"***.

16. The Complainant subsequently, sent ***a Legal Notice dated 03.11.2020***. However, the Accused had no intention to return the money, due to which the Respondents herein filed a Complaint under Section 138 NI Act.

Facts as per CC No. 117/2021 under Section 138 NI Act:

17. The Complaint has been filed by Respondent/Jitender Choudhary (*Complainant*) against Proforma Respondent/M/s *Sumeru Processors Pvt. Ltd.* (*Accused No.1 Company*); Petitioner No.2/Dhiren Navlakha (*Accused*



No.2); Petitioner No.1/Farhad Suri (*Accused No.3*) and Niraj Jha (*Accused No.4*).

18. The Complainant/Jitender Choudhary had taken a loan from the bank for starting a business and the same was transferred in his account on 10.06.2016. Accused No.3 approached the Complainant seeking financial help/a friendly loan in the name of Accused No.1 Company and also personally for Accused Nos. 2 to 4. Since the Complainant and his brother needed the money after 4-5 months for their own business and Accused No.3 was a director of Accused No.1 and a reputed political leader in Delhi, they agreed. ***On 13.06.2016, they transferred the amount to his account via RTGS as a friendly loan.***

19. The accused initially paid interest on the borrowed amount, but from June, 2020 they stopped making interest payments. Accused Nos. 1, 2, and 3 later settled the matter and issued ***Cheque No. 000094 dated 07.09.2020 from DCB Bank, New Delhi, for Rs. 1,10,00,000/- in the Complainant's name***, assuring that it would be honoured. However, it was returned unpaid on ***05.10.2020 with the remark "ACCOUNT BLOCKED"***.

20. The Complainant subsequently, sent ***a Legal Notice dated 03.11.2020***. However, the Accused had no intention to return money, due to which the Respondents herein filed a Complaint under Section 138 NI Act.

Contentions of the Petitioners/Accused Persons:

21. It is submitted that on 13.06.2016 the Respondent No.1/Complainant transferred money *vide* RTGS; however, from the statement of account filed by him, there is no entry for transfer of any funds in the account of the Proforma Respondent, *M/s Sumeru Processing*. In the



instant case, even as per the case of the Respondent No. 1/Complainant, there was no RTGS in favour of the Proforma Respondent.

22. Even otherwise, as per the Respondent No. 1/Complainant, since the loan was given in 2016, and no document of acknowledgement of debt by the Proforma Respondent/Petitioners has been filed by the Respondent No. 1/Complainant, hence admittedly the alleged RTGS (if any) became a time barred debt in 2020-2021.

23. Additionally, in the case of the Respondent/Jitender Choudhary, the Rent Agreement was until March 2014 and w.e.f. April 2014 tenancy is alleged to have been extended orally, but the pleadings are absolutely vague as no period of alleged tenancy has been mentioned.

24. The Complainant alleges receipt of *Cheque No. 574506 for Rs. 75,00,000/-* ; *Cheque No. 566870 for Rs. 24,00,000/-* ; *Cheque No. 000094 for Rs. 1,10,00,000/- all dated 07.09.2020.*

25. However, it is an admitted fact that, by virtue of the NCLT Order (Principal Bench), New Delhi dated 15.04.2019, all securities, cheque books, and the operation of the Bank Account of the Proforma Respondent had already been handed over to the Interim Resolution Professional (“IRP”).

26. Subsequently, on 03.12.2019, a Liquidator was appointed who took complete charge of the Proforma Respondent. Therefore, as of September 2020, the Petitioners had no control over the account and could not have issued the cheque in question.

27. The **Cheques were returned unpaid on 05.10.2020** with the remark “ACCOUNT BLOCKED”. In Reply to the Demand notice, the Petitioners clarified that due to pending insolvency proceedings and the



takeover by the Resolution Professional and later the Liquidator, issuance of the Cheque after 2019, was impossible.

28. Furthermore, under Section 138 NI Act, the essential requirement is that the cheque must be drawn on an account maintained by the drawer and issued towards a legally enforceable debt. In the present case, there was no legally payable debt, the alleged loan of 2016 was time-barred in 2020-21 absent any acknowledgment, and the cheque returned with “ACCOUNT BLOCKED” does not satisfy the statutory requirement of dishonour for insufficiency of funds.

29. Moreover, the Complainant has filed **two separate Complaints** (the present one/CC No. 113 and CC No. 126/2021) on the basis of the *same* RTGS transaction (KKBKR52016061300836729 dated 13.06.2016), indicating mala fides and an attempt to harass and extort money.

30. It is submitted that Cheque No. 000094 dated 07.09.2020 is not of *M/s Sumeru Processors (P) Ltd.*; rather the same is of Dhiren Navlakha and it is a matter of record that Account no. 04622900002561 stood closed in December, 2019. Hence, the question of issuance of the aforesaid cheque on 07.09.2020, does not arise.

31. Despite these glaring defects, the Ld. MM took cognizance and issued summons *vide* Order 21.01.2021, without examining the documents on record. Since the basic ingredients of Section 138 NI Act are not fulfilled, and there exists no contractual relationship or legally enforceable liability between the complainant and the petitioners, continuation of the proceedings is patently illegal. *The impugned summoning Order and the Criminal Complaints, therefore, deserves to be quashed.*



32. The **grounds taken by the Petitioners** are that the Ld. MM failed to note that the essential ingredients of Section 138 NI Act were not fulfilled; hence the Complaint and issuance of summons are legally unsustainable. Reliance is placed on the case of Dashrath Rupsingh Rathod vs. State of Maharashtra, (2014) 9 SCC 129.

33. It is submitted that no loan amount was ever actually advanced to the Proforma Respondent; and thus, in absence of a contractual relationship or a legally enforceable debt, a Complaint under Section 138 NI Act is not maintainable.

34. The Ld. MM did not appreciate that the alleged loan of 2016 was time-barred in 2020-21, with no acknowledgment of debt on record. A time-barred debt cannot form the basis of prosecution under Section 138 NI Act. In this regard, reliance is placed on Sasseriyl Joseph vs. Devassia, SLP (Crl.) No. 1785/2001; Girdhari Lal Rathi vs. P.T.V. Ramanujachari, 1997 (2) Crimes 658 (Andhra Pradesh High Court); Ashwini Satish Bhat vs. Jeevan Divakar Loliengar, 2000 (5) Bom CR 9 (Bombay High Court); Narendra vs. Kanekar, 2006 Cri.L.J. 3111 (Bombay High Court).

35. It is submitted that in absence of a legally payable debt, Cheque No. 574506 dated 07.09.2020 could not have been issued towards discharge of any liability.

36. The Return Memo reflects the remark “ACCOUNT BLOCKED,” which does not fall within the scope of Section 138 NI Act, as held in the case of Rajesh Meena vs. State of Haryana, Punjab and Haryana High Court.

37. Furthermore, it is submitted that the Ld. MM failed to examine the record, ignored the “ACCOUNT BLOCKED” return memo, and overlooked the Reply dated 11.12.2020 explaining that the Petitioners had no control



over the account due to NCLT proceedings; hence, Prosecution is not maintainable.

38. *Hence, a prayer is made to set aside the summoning Order dated 21.01.2021.*

Contentions of the Respondent No.1/Praveen Choudhary:

39. The **Reply has been filed by the Respondent No.1/Praveen Choudhary** whereby all the averments made in the Petition, are opposed.

40. It is submitted that the cheque in question were duly signed, filled and delivered by the Petitioners to the Respondent No. 1 and the Respondent No.1 presented the same under instruction and knowledge of the Petitioners.

41. It is submitted that the Complaint under Section 138 was filed within limitation, and the Trial Court, after examining the record, summoned the Petitioners on 21.01.2021. The Petitioners concealed the ongoing NCLT proceedings from the Respondent, which amounts to cheating. By not submitting this cheque and other cheques before the NCLT, they misled the Tribunal and acted dishonestly towards the Respondent.

42. The Respondent has further submitted that as directors of *M/s Sumeru Processors Pvt. Ltd.* (Respondent No.3), the Petitioners issued cheques, both on behalf of the Company and in their personal capacity, but used the money their own benefit.

43. It is submitted that the Petitioners have a history of fraud actions, including selling mortgaged properties of the Company illegally and in collusion with bank officials during the pendency of NCLT proceedings. These facts came to the knowledge of Respondent No.1 during the ongoing Section 138 NI Act case. Since the cheque was issued by the Petitioners as



Directors and signatories of Respondent No.3, both them and the Company are liable.

44. The Petitioners themselves admit that they were Directors of Respondent No.3 and that the cheque belonged to the Company. Their failure to hand over the impugned cheque and other cheques to the NCLT, shows misuse and amounts to cheating both the Tribunal and respondent No.1. They have also concealed true and relevant facts from this Court and presented a distorted version of events to obtain a favourable order, which amounts to criminal contempt.

45. Regarding the grounds raised by the Petitioners, it is submitted that the Petitioners must face trial and produce their documents and evidence before the Trial Court.

46. *Therefore, a prayer is made that the Petition be dismissed with heavy costs in favour of the Respondent.*

Contentions of the Respondent No.2/Niraj Jha (Director of M/s Sumeru Processors Pvt. Ltd.):

47. It is submitted that the Respondent was never served the mandatory demand Notice before the filing of CC No. 90/2021 (*Parveen Choudhary vs. Sumeru Processors Pvt. Ltd. & Others*). Without such Notice, the Respondent should not have been made a party, yet the Complainant listed them as Respondent No. 4. Additionally, no summons has ever been served on the Respondent.

48. It is submitted that the Respondent is not the signatory of the impugned cheque nor any particular role was assigned to him in the Complaint. In fact, he was a dummy Director of the Respondent No.3



Company. The summoning Order thus, seems to be passed in a mechanical manner without appreciating the true facts of the case.

49. It is submitted that there were three other Directors of the Company, namely, *Amita Navlakha (wife of Dhiren Navlakha)*, *Shantanu Navlakha (son of Dhiren Navlakha)* and *Mahinder Kumar Verma*, who were made Director because the Petitioners wanted to raise loan against the immovable property owned by him. In the same manner, Respondent was also made a Director only on 14.10.2014, solely to facilitate the petitioners in raising a loan from an NBFC, using the respondent's self-owned properties.

50. Loans exceeding Rs. 500 lakhs were raised by mortgaging the respondent's properties. To secure the loan, the Petitioners issued cheques on behalf of the Respondent and Sh. Mahender Kumar. Although the Petitioners promised to pay regular instalments, they deliberately defaulted, resulting in the auction of the mortgaged properties in 2017-18 under the Securitisation and Reconstruction of Financial Assets and Enforcement Of Security Interest Act, 2002.

51. Mahender Kumar filed a Criminal Complaint under Section 138 NI Act, which is pending. The Respondent could not file under Section 138 as his cheques were missing, but filed a Complaint under Sections 420, 406, 409, 34, and 120B IPC.

52. Similarly, the Petitioners raised loans from Respondent No.1 under false pretences, without Respondent No.3's knowledge or permission, issuing cheques that came to light only after the Company (M/s Sumeru Processors Pvt. Ltd.) went into liquidation.

53. The Petitioners, in collusion with DCB Bank officials, sold mortgaged properties without clearing dues, misappropriating funds, despite



the Company having substantial cash reserves of Rs. 35 crores. They also got one Director's property released without paying dues, leading to DCB Bank filing an O.A. for recovery of Rs. 11.98 crores.

54. The Petitioners took loans from various NBFCs and individuals and issued cheques from Respondent No.3's account without Board approval. Financial documents and cheques were always controlled by Petitioner No.2. Before filing the petition with NCLT, Petitioner No.2 removed his family members from the Board and sold or released properties owned by Respondent No.1 and other Directors.

55. It is submitted that the CIRP/Liquidator during the relevant period issued a mail to all the Directors, raising the question for issuance of the cheque which the subject matter of the present case. The Respondent being unaware of the same, replied that he was neither in possession of the cheque nor had the information about the issuance of the cheque.

56. Furthermore, the Respondent has nothing to do with the present case. It is the Petitioners who played fraud with the creditors and other directors of the Company. An Application, CA No. 2548/2019 stated how the Petitioner took advantage of their position and mortgaged immovable properties owned by the Respondent No.3 Company and got released the immovable properties owned by family members of Petitioner No.2, mortgaged against Loan with the DCB Bank in connivance with the Bank officials.

57. The Petitioners herein have taken loans from multiple people including Sh. Mahender Verma, Axis Bank and TATA Capital. Another Company, namely, M/s Ennkay Rubbers Co. Pvt. Ltd. have also filed the case seeking recovery of money, but the Petitioner did not pay the money. It



is the *modus operandi* of the Petitioners that they raised loans from different individuals and appropriated the same for their own use and benefit and thereafter, issues the cheques from the account of the Respondent No.3 Company and with the deliberate intention, they put the Company to liquidation so that no recovery can be made effective against them.

58. The Petitioners had taken the friendly loan on their own account and the Respondent is not involved in the same.

59. It is submitted that the Petitioners misused their possession over the assets and documents of the Respondent No.3 and in an illegal manner, had issued the cheques in question, without the consent, knowledge, permission of the Respondent No.2/Niraj Jha. The Petitioners fraudulently issued the cheques to avoid their personal liability.

60. **Written Submissions** have been filed on behalf of Respondent No.2/Niraj Jha and a Compilation of judgments have been submitted by the Petitioners.

Submissions heard and record perused.

61. The present Petitions arise from three criminal Complaints filed under Section 138 NI Act against Petitioners No. 1 and 2/Farhad Suri and Dhiren Navlakha, in regard to the dishonour of cheques issued by *M/s Sumeru Processors Pvt. Ltd.* and its directors.

62. The Complainants, *Praveen and Jitender Choudhary*, claim that they had provided loans/allowed use of their premises for business purposes, and in settlement of these transactions, the accused issued Cheques on 07.09.2020 which were dishonoured with the remark “*ACCOUNT BLOCKED*” on 05.10.2020.



63. Ld. MM took cognizance and *vide* Orders on 19.01.2021, 21.01.2021, 22.01.2021, summoned the Petitioners in all the three Complaints. ***The Petitioners seek quashing of the three summoning Orders and consequently, the respective Criminal Complaints.***

64. Before examining specific issues, it is necessary to briefly outline the relevant statutory provisions. Section 138 NI Act creates an offence when a cheque is drawn on an account maintained by a person, issued for discharge of a legally enforceable debt, and is dishonoured for insufficiency of funds. Section 141 NI Act extends vicarious liability to persons in charge of the company's business. However, this vicarious liability is contingent upon the primary offence under Section 138 being established against the Company.

65. Under the Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as "IBC"*), Section 14 imposes a moratorium prohibiting legal proceedings against the Corporate Debtor, while Sections 17 and 18 vest complete management and control of the Company, in the IRP/Liquidator.

Whether the Complaint survives in view the Insolvency proceedings being admitted by the NCLT?

66. To appreciate this aspect as to the Complaint under Section 138 NI Act survives on initiation of proceedings before NCLT, reference be made to the case of P. Mohanraj & Ors. vs. Shah Brothers Ispat Pvt. Ltd., (2021) 6 SCC 258 wherein while considering the impact of proceedings under IBC on a Corporate Debtor (Company and its Directors), the Apex Court observed that in view of the legal impediment contained under Section 14 IBC, it would be impossible to continue the proceedings under Section 138



NI Act or be instituted against the Corporate Debtor. However, it was further noted that such statutory bar would apply only to the Corporate Debtor while the natural persons mentioned in Section 141 NI Act, continue to be statutorily liable under Section 138 NI Act.

67. *In the present case*, the impugned cheques relied are all dated 07.09.2020, whereas the NCLT had *vide* Order dated 15.04.2019, admitted the Corporate Debtor into CIRP and directed that all securities, cheque books and bank operations be handed over to the Interim Resolution Professional (IRP). Furthermore, Moratorium was declared in terms of Section 14 IBC. Subsequently, *vide* Order of NCLT dated 03.12.2019, M/s Sumeru Processors Pvt. Ltd. went into liquidation, a Liquidator was appointed and a fresh moratorium was declared to be commenced. *Thus, from April 2019 onwards, the Petitioners ceased to have any authority, control or right to operate the said Account.* Any cheque purportedly issued in September 2020, after divesting of powers, could not have been validly issued by the Petitioners.

68. The facts under consideration, are *para materia* with the facts in *Ganesh Chandra Bamrana & Ors. vs. Rukmani Gupta, CRL.M.C. 6170/2022, decided on 17.12.2024 (2024:DHC:9923)*, wherein the cheques in question were dated 15.01.2020 and 15.03.2020. However, the IRP was appointed in 2019 i.e. prior to the dates of cheques. Consequently, ***the account was blocked due to the order issued by the NCLT, and the authority and control of the account holder over the account ceased to exist. The Co-ordinate Bench held*** held that once CIRP commences and moratorium under Section 14 IBC is imposed, the directors lose control over the company's bank accounts, and therefore cannot be prosecuted for dishonour



of cheques presented thereafter. Thus, it was held that “post-moratorium”, the accused “cannot be held vicariously responsible for the dishonour of the cheques”. The summoning orders were therefore, quashed.

69. *Applying the above ratio to the present case*, it is evident that the alleged dishonour of cheques on 05.10.2020 occurred nearly 18 months after CIRP had commenced on 15.04.2019 and nearly 11 months after the Liquidator had taken charge on 03.12.2019. The remark “ACCOUNT BLOCKED” is a direct consequence of the moratorium and liquidation process and not attributable to the Petitioners.

70. Thus, there was no “valid issuance of cheque by the drawer”, and no “dishonour due to insufficiency of funds”, as required under Section 138 NI Act.

71. Furthermore, in Govind Prasad Todi vs. State of NCT of Delhi, 2023 SCC OnLine Del 3717, it was held that *since from the date of the admission of the corporate insolvency resolution process proceedings, it was the IRP who was in-charge of and responsible for the conducting the business of the company at the time when the cheques were presented for encashment, it is thus, clear that the role of the natural persons had ceased.*

72. Therefore, in light of the above analysis, the Petitioners/Farhad Suri and Dhiren Navlkakha had no control over the Company’s accounts after April 2019, the impugned summoning Orders dated 19.01.2021, 21.01.2021, 22.01.2021, are unsustainable and liable to be quashed.

73. *In arguendo*, even assuming liability of directors despite loss of control, the Complaints would nonetheless fail on the second ground relating to the nature of dishonour of the three cheques.



**Whether Dishonour of Cheques due to “ACCOUNT BLOCKED”, would
Constitute an Offence Under Section 138 NI Act?:**

74. The next aspect which needs to be considered is *whether the cheque dishonoured for the reason Account Blocked would be covered in the term insufficiency of funds, as mandated in Section 138 NI Act.*

75. To constitute an offence under Section 138 NI Act, mere issuance of a cheque is not sufficient; it becomes punishable only when the cheque is dishonoured for the reason insufficiency of funds. Likewise, merely showing that the holder of an account with the particular bank would also not sufficient to show that it is being maintained by the account holder, unless he has the authority and control over the said account. ***If the holder is deprived of his authority and control over the bank account, it cannot be said that the account was being maintained by him.***

76. In the case of Ceasefire Industries Ltd. vs. State, 2017 SCC OnLine Del 8280, Co-ordinate Bench of this Court observed that it is not every return of a cheque unpaid which leads to prosecution of an offence under Section 138 NI Act. It has to be taken into account that even if the reason given for dishonour of the cheque is “Account Closed” or “Payment Stopped” it can fall under Section 138 NI Act, if it is shown that there was insufficiency of funds in the account of the holder at the time of presentation of the cheque. ***The reason for dishonour of the cheque in the present case is “Account blocked”. Where the dishonour of cheque was for the reason that the account had been frozen in terms of some statutory authority, the offence as envisaged in Section 138 NI Act, would not be made out.***



77. This aspect was specifically discussed in Rajesh Meena vs. State of Haryana & others, CRM-M-14537-2018 decided on 01.07.2019 by Punjab & Haryana High Court, wherein it was noted that the expression “*account maintained by him*” as appearing in Section 138 N.I. Act, carries great significance. The *Oxford dictionary* meaning of “*maintain*” is an act of making the state or situation continue. Therefore, the expression “*account maintained by him*” cannot be construed narrowly to mean that if the account belongs to the accused, the necessary ingredient would be complete. *This expression “account maintained by him” must necessarily include that the said account is not only alive and operative, but the account holder is capable of executing a command to govern the financial transactions which include the clearance of cheques etc.* The authority and control of the account holder upon the account must exist on the effective date i.e. when the cheque becomes valid for presentation in the bank. ***It was thus, held that the term “account blocked” for the reasons not attributable to the account holder would not bring the case under Section 138 NI Act.***

78. The impact of NCLT proceedings in the context of Section 138 NI Act, was examined by the Apex Court in the case of Vishnoo Mittal vs. Shakti Trading, 2025 SCC OnLine SC 558, in 2018, wherein the moratorium was imposed and management of the Corporate Debtor was taken over by the IRP as per Section 17 IBC (*Management of Affairs of Corporate Debtor by Interim Resolution Professional*). When the Notice was issued to the Appellant in the Complaint under Section 138 NI Act, he was not in charge of the Corporate Debtor as he was suspended from his position as the Director of the Corporate Debtor as soon as IRP was appointed in 2018. ***It was thus, held that all the bank accounts of the***



Corporate Debtor were operating under the instructions of the IRP, hence, it was not possible for the Appellant to repay the amount in light of Section 17.

79. *In the present case as well, the cheques presented in 2020, were dishonoured with remarks of “ACCOUNT BLOCKED”. The **dishonour occurred not due to insufficiency of funds, but due to statutory prohibition on payments during winding-up proceedings and appointment of IRP.** This circumstance falls squarely outside the ambit of Section 138, as the essential ingredient of dishonour due to inadequate funds, remains unestablished.* Thus, the necessary ingredient to bring home the offence under Section 138 NI has not been proved.

80. It is also relevant to note that *vide* Reply dated 11.12.2020 to the demand notice, the fact regarding liquidation of the Company had been specifically brought to the notice of the Complainant. Despite this, the Complaints were filed and the Ld. MM took cognizance without examining these crucial aspect.

81. **To conclude**, the dishonour of the cheques on the ground of “ACCOUNT BLOCKED” *due to proceedings under NCLT and Accounts being taken over by IRP/Liquidator*, precludes liability under Section 138 NI Act as it cannot be said that he is maintaining the Account. Therefore, the offence under Section 138 NI Act, would not be made out.

Conclusion:

82. In view of the aforesaid discussion, all the three Complaints along with the summoning Orders dated 19.01.2021 (in CC No. 90/2021);



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21.01.2021 (in CC No. 113/2021); 22.01.2021 (in CC No. 117/2021), and all the proceedings emanating therefrom, are **quashed**.

83. Pending Applications(s), if any, are accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 16, 2025
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