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

\+ CRL.M.C. 848/2025 & CRL.M.A. 3946/2025

SONIA BHANDARI AND ANOTHER .....Petitioners

Through: Mr. A. Mariarputham, Senior Advocate with Mr. Avneesh Arputham and Mr. Ankit Sharma, Advocates.

versus

KOTAK MAHINDRA PRIME LTD .....Respondent

Through: Mr. Sundeep Srivastava and Mr. Paran Kumar, Advocates.
Mr. Kushal Kumar and Mr. Akash Deep Gupta, Advocates.

\+ CRL.M.C. 851/2025 & CRL.M.A. 3953/2025

SONIA BHANDARI AND ANOTHER .....Petitioners

Through: Mr. A. Mariarputham, Senior Advocate with Mr. Avneesh Arputham and Mr. Ankit Sharma, Advocates.

versus

KOTAK MAHINDRA PRIME LTD .....Respondent

Through: Mr. Sundeep Srivastava and Mr. Paran Kumar, Advocates.
Mr. Kushal Kumar and Mr. Akash Deep Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% 21.07.2025

1. By the present petitions, the petitioners essentially seek

quashing of Criminal Complaints bearing CC No. 3052/2017 and CC No. 3049/2017 under Sections 138 and 141 of the Negotiable Instruments Act, 1881 (‘**NI Act**’) and all proceedings emanating therefrom. The petitioners have been arrayed as accused persons in the present case on account of them being the directors of the company - OIS Advanced Technology Private Limited (hereafter ‘**the accused company**’)

2. Briefly stated, it is the case of the respondent that the petitioners on behalf of the accused company availed a Car Finance Loan for a sum of ₹20,00,000/- and ₹30,00,000/- *vide* Loan Agreement Nos. CF-13498039 and CF-13498013 respectively, and undertook to pay interest and other charges as stipulated under the loan agreement. The accused company had hypothecated the vehicles bearing Nos. DL-3C-BM-0351 and DL-4C-NE-5400 as collateral for the loan amount. Further, while availing the said loans, it was agreed that the accused company would pay the loan amount in equated monthly instalments.

3. It is alleged that the petitioners, in part discharge of the debts, issued two cheques bearing no. 098577 dated 04.05.2017 for a sum of ₹17,94,048/- (in CC No. 3052/2017) and cheque bearing no. 098563 dated 04.05.2017 for a sum of ₹28,51,656/- (in CC No. 3049/2017). It is alleged that the said cheques, on presentation, got dishonoured and returned unpaid *vide* return memos dated 07.07.2017 for the reason “*Account blocked*”. Upon the non-payment of the cheque amount despite the receipt of statutory notice, the subject complaints were instituted under Section 138 read with Section 141 of the NI Act.

4. On the last date of hearing, that is, 11.07.2025, it was pointed out that Petitioner No. 2 had been declared as a Fugitive Economic Offender by order dated 05.07.2025. A preliminary

objection was raised by the learned counsel for the respondent in regard to the maintainability of the present petition by a fugitive.

5. On the aspect of maintainability, the learned Senior Counsel for the petitioners submits that the present petition is maintainable. He submits that the declaration of Petitioner No. 2 as a Fugitive Economic Offender does not render the present petition non-maintainable. He submits that in accordance with Section 14 of the Fugitive Economic Offenders Act, 2018, upon the declaration of an individual as a fugitive economic offender, any Court or tribunal in India, in any civil proceeding before it, possesses the discretion to disallow such individual from putting forward or defending any civil claim. He submits that the same does not prejudice such individual from pursuing appropriate remedies under the criminal law.

6. He submits that the present petition was filed prior to the declaration of Petitioner No. 2 as a Fugitive Economic Offender. He further submits that the antecedents of the accused do not come in the way of the exercise of power by this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (‘**BNSS**’). He consequently submits that the present petition is maintainable in nature.

7. On the aspect of the initiation and continuance of the proceedings against the petitioners under Section 138 read with Section 141 of the NI Act, the learned Senior Counsel for the petitioners submits that the proceedings are not maintainable against the petitioners and ought to be quashed. He submits that the cheques were issued as security and not as part payment of the loan amount. He submits that even otherwise, the proceedings in the present case cannot be allowed to continue in view of the fact that the bank account of the accused company from which

the cheques were issued was frozen by the Directorate of Enforcement (‘**ED**’) under the Prevention of Money Laundering Act, 2002 (‘**PMLA**’) *vide* letter dated 15.02.2017 and that the account was thereafter attached *vide* Provisional Attachment Order dated 01.06.2017. He submits that post the freezing of the bank account of the accused company, the account was rendered inoperable. He submits that consequently, when the cheques were presented before the bank on 06.07.2017, the same returned unpaid with the endorsement “*account blocked*” *vide* return memos dated 07.07.2017.

8. He submits that the respondent had knowledge of the attachment of the bank account of the accused company as the respondent themselves had moved an application for release of the hypothecated vehicles on *superdari* in May, 2017. He submits that despite having knowledge of the fact that the bank account of the accused company was frozen, the respondent maliciously filed the complaint under Section 138 read with Section 141 of the NI Act.

9. He submits that in order to attract the offence under Section 138 of the NI Act, it is imperative for the cheque to have been returned unpaid either because 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. He further submits that the grundnorm to attract Section 138 of the NI Act is that the cheque ought to be drawn on an account ‘maintained’ by the drawer with the banker. He submits that for an account to be maintained by an account holder – it is crucial that the account holder is in a position to operate such account either by depositing or withdrawing funds or issuing directions to the bank.

10. He submits that assuming but not admitting that the cheques were issued as part payment of the loan amount, yet since the cheques got dishonoured for ostensible reasons which cannot be attributed to the petitioners, the proceedings under Section 138 read with Section 141 of the NI Act are not maintainable and are liable to be quashed.

11. *Per contra*, the learned counsel for the respondent submits that the present petition is liable to be dismissed since the grounds raised by the petitioners are subject matter of trial, and any interference at this stage is unwarranted. He further points out that Petitioner No. 2 has been declared as a Fugitive Economic Offender and this Court ought not exercise discretionary remedy under Section 528 of the BNSS *qua* Petitioner No. 2.

<u>Analysis</u>

12. The petitioners essentially seek quashing of the proceedings emanating from the Criminal Complaints bearing CC No. 3052/2017 and CC No. 3049/2017 under Sections 138 and 141 of the NI Act. It is contended that the provisions under Sections 138 read with Section 141 of the NI Act are not attracted against the petitioners considering the fact that the dishonour of the cheques occurred due to the account of the accused company being frozen by ED.

13. Before resorting to delve into the question of the correctness of the continuance of the proceedings against the petitioners under Sections 138 read with Section 141 of the NI Act, this Court first deems it apposite to consider the question of the maintainability of the present petition in the light that Petitioner No. 2 has been declared as a Fugitive Economic Offender *vide* order dated 05.07.2025.

14. The learned Senior Counsel for the petitioners has contended that in terms of Section 14 of the Fugitive Economic Offenders Act, 2018 upon the declaration of an individual as a fugitive economic offender, any Court or tribunal in India, in any civil proceeding before it, possesses the discretion to disallow such individual from putting forward or defending any civil claim. It has been urged that the same does not prejudice such individual from pursuing appropriate remedies under the criminal law.

15. In that light it is pertinent to examine the contours of Section 14 of the Fugitive Economic Offenders Act, 2018. The same reads as under:

> *"14. Power to disallow civil claims.—Notwithstanding anything contained in any other law for the time being in force—*
> *(a) on a declaration of an individual as a fugitive economic offender, any Court or tribunal in India, in any civil proceeding before it, may, disallow such individual from putting forward or defending any civil claim; and*
> *(b) any Court or tribunal in India in any civil proceeding before it, may, disallow any company or limited liability partnership from putting forward or defending any civil claim, if an individual filing the claim on behalf of the company or the limited liability partnership, or any promoter or key managerial personnel or majority shareholder of the company or an individual having a controlling interest in the limited liability partnership has been declared as a fugitive economic offender.*
> *Explanation.—For the purposes of this section, the expressions—*
> *(a) "company" means anybody corporate and includes a firm, or other association of persons; and*
> *(b) "limited liability partnership" shall have the same meaning as assigned to it in clause (n) of sub-section (1) of Section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009)."*

16. In accordance with Section 14 of the Fugitive Economic Offenders Act, 2018, it is apparent that upon a declaration of an individual as a fugitive economic offender, any Court or tribunal in India possesses the discretion to disallow such individual from

putting forward or defending any civil claim. The same is silent upon the maintainability of the criminal remedies sought to be pursued by such an individual.

17. At the same time, it is relevant to note that this Court has time and again noted that the Court while exercising the inherent jurisdiction under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 or the discretionary jurisdiction under Article 226 of the Constitution of India, can decline to exercise jurisdiction in favour of such persons who evade the process of law. For this reason, this Court in the case of ***Wave Hospitality (P) Ltd. v. Union of India*** **: 2019 SCC OnLine Del 8855** with regard to the exercise of discretionary or inherent jurisdiction had observed that the matter of issuing a writ or granting equitable relief is a remedy in equity, and that Courts can refuse to exercise jurisdiction where the possibility of misusing or evading the process of law cannot be ruled out. It was held that Courts exercising discretionary jurisdiction ought not to come in aid of the litigant who is evading the process of law. This Court therefore does not find itself in agreement with the argument raised by the learned Senior Counsel for the petitioners that the antecedents of Petitioner No. 2 do not blemish the relief sought to be pursued by Petitioner No. 2 at this stage.

18. Having noted so, it is also pertinent to note that the Criminal Complaints bearing CC No. 3052/2017 and CC No. 3049/2017 have been initiated against the petitioners on account of them being the directors of the accused company. Petitioner No. 1 is the wife of Petitioner No. 2. While Petitioner No. 2 has been declared as a fugitive economic offender, no such proceedings have been initiated against Petitioner No. 1. It is relevant to note that the decision in the present petitions *qua*

Petitioner No. 2 would have direct bearing on Petitioner No. 1. Consequently, considering the proposition of law sought to be agitated, as well as the impact of the determination of the present petitions on Petitioner No.1/wife of Petitioner No. 2, this Court deems it apposite to venture into deciding the present case on its own merits.

19. In that light, it is relevant to note that in accordance with Section 138 of the NI Act, not every dishonour of cheque *ipso facto* leads to prosecution under the NI Act. In order for the prosecution to be initiated, it is imperative that the dishonoured cheque returns unpaid either due to insufficient funds in the account or because the cheque exceeds the amount arranged to be paid from the account by an agreement between the account holder and the bank.

20. From a perusal of the material on record, it is borne out that the cheques had admittedly been dishonoured for the reason that the account of the accused company had been blocked. Undisputedly, the account of the accused company from which the cheques were issued was frozen by the ED under the PMLA *vide* letter dated 15.02.2017. The cheques were dishonoured *vide* return memos dated 07.07.2017.

21. This Court in the case of ***Deepinder Singh Bedi & Anr v. State & Anr.* : 2024:DHC: 7611** while quashing the criminal complaint against the accused where the cheque had been dishonoured for the reason that the bank account of the accused had been attached by an order of the IT Department had noted as under:

> *"16. As stated above, a person commits an offence under Section 138 of the NI Act when he draws a cheque on an account maintained by him for discharge of any debt or liability and the said cheque is returned unpaid for the reason of insufficient funds. In the present case, the account*

of the drawer company was blocked / frozen by the order of the IT department thus, the said account at the time of dishonour of cheque cannot be held to be maintained in the bank. Drawing a cheque for discharge of any debt or liability from an account which is not maintained by a person for the reason of it being frozen may amount to an offence under other statutes but cannot be termed as an offence under Section 138 of the NI Act. A Coordinate Bench of this Court, in similar circumstance, in the case of ***Vijay Chaudhary v. Gyan Chand Jain : 2008 SCC OnLine Del 554*** *held as under:*

> *"….It also cannot be said that after the attachment of the bank account, the same was being maintained by the petitioner. For an account to be maintained by an account holder, it is essential that he is in a position to operate the said account by either depositing monies therein or by withdrawing money therefrom. He should be in a position to give effective instructions to his banker with whom the account is maintained. However, in the present case, once the account has been attached by an order of the Court, the said account could not be operated by the petitioner. He could not have issue any binding instructions to his banker, and the banker was not obliged to honour any of his instructions in relation to the said account, so long as the attachment under the court orders continued."*

17. Thus, for an account to be called as maintained by the drawer, it is essential that the he is in a position to operate the said bank account by either depositing the money or withdrawing the money therefrom. The account holder should be in a position to give effective instructions to his banker with whom the account is being maintained."

22. It is pertinent to note that the attachment of the bank account of the accused company had the effect of disabling the petitioners from operating or maintaining the said account. The petitioners could not exercise the right to either make a deposit or withdraw any money from the said account. Further, the attachment of the bank account of the accused company cannot be said to be a voluntary act for the petitioners to ward off the liability under Section 138 of the NI Act. Thus, once the bank account had been attached by an order of the ED, the same could not have been operated by the petitioners or be called to have been maintained by them.

23. At this stage, at the cost of repetition this Court deems it apposite to mention that while this Court is conscious of the fact that this Court ought to be circumspect in exercising discretionary jurisdiction against such persons who evade the process of law, however, considering the fact that no such proceedings have been initiated against Petitioner No. 1, no purpose would be served by continuing the proceedings against Petitioner No. 2. It is also pertinent to note that Petitioner No. 2 was declared as a fugitive economic offender after the filing of the present petitions.

24. In view of the above, and considering the peculiar circumstances of the present case, the present petitions are allowed and the complaints being CC No. 3052/2017 and CC No. 3049/2017 filed by the respondent before the learned Trial Court for the offence under Section 138 read with Section 141 of the NI Act along with the consequential proceedings arising therefrom are quashed.

25. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

JULY 21, 2025