



2025:DHC:7742



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 22nd August, 2025+ CRL.M.C. 4123/2017, CRL.M.A. 16536/2017 (stay)

M/S PEC LTD.

.....Petitioner

Through: Ms. Sangeeta Sondhi & Mr. Daksh
Jain, Advocates.

versus

1. M/S SABARI EXIM PVT LTDRespondent No.1
2. MR. SHASHI KUMAR NAIRRespondent No.2
3. MRS. LEENA SHASHIRespondent No.3

Through: Mr. Vikas Pahwa, Sr. Advocate with
Ms. Shalini Kaul, Ms. Riya Arora,
Ms. Nancy Shamim and Ms. Priyal
Jain, Advs.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C"*) has been filed by the Petitioner, M/s PEC Ltd. against **impugned Order dated 06.06.2017 passed by Ld. Special Judge**, New Delhi wherein the Order dated 18.04.2017 of Ld. MM dismissing the Complaint under Section 138 of Negotiable Instruments Act, 1881 (*hereinafter referred to as "N.I. Act"*) as not maintainable, *has been upheld by* Ld. Special Judge.



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2. The Petitioner/M/s *PEC Ltd.* is a Government of India enterprise in the Ministry of Commerce and Industries and is incorporated and registered under the provisions of Companies Act, 1956, having its registered office at Hansalaya, 15, Barakhamba Road, New Delhi 110001. The present Petition is being filed by Mr. S.F. Ahmed, Joint General Manager, who has been duly authorized *vide* General Power of Attorney (GPA) dated 30.08.2017.
3. Respondent No. 1/M/s *Sabari Exim Pvt. Ltd.* is a Company registered under the Companies Act, 1956. Respondent No.2/Mr. Shashi Kumar Nair and Respondent No.3/Mrs. Leena Shashi are Managing Director and Director of Respondent No. 1 Company, respectively looking after the day-to-day affairs of the Respondent No. 1 Company.
4. In the year 2012, the Respondent approached the Petitioner for availing financial facilities for import of shredded steel scrap ISRI 211 of USA, origin ("*the material*") from *M/s Schnitzer Steel Industries Inc.*, 3200 NW Yon Avenue, Portland Oregon, 97210 USA. The terms of import, quality and quantity of cargo, in terms of payment, delivery, schedule, etc. was settled by the Respondent with *M/s Schnitzer Steel Industries Inc.*
5. The Petitioner entered into an **Associateship Agreement dated 23.07.2012**, based on the warranties and representations of the Respondent. The Agreement was signed by the Authorized Signatory/K. Usha of the Respondent No. 1 Company. Pursuant to the said Agreement, the Petitioner opened Letter of Credit dated 27.07.2012 for US \$86,60,000.00/- in favour of *M/s Schnitzer* for the import of the material. The Letter of Credit was due for payment on 12.02.2013, in accordance with the Agreement.
6. The Respondent issued an **Undertaking** along with the Associateship Agreement *vide* which 10 un-dated Cheques were issued bearing no.



718158, 718159, 718160, 718161, 718162, 718163, 718164, 718165, 718166 and 718167 for a total sum of Rs. 49,68,28,530/-, all drawn on State Bank of India, Overseas Branch, Rajaji Salai, Chennai in favour of the Petitioner towards partial discharge of liability towards the Petitioner.

7. The material was thereafter, sold to the Respondent Company on high seas sale basis *vide four High Sea Sale Agreements*, all dated 17.09.2012 as per the terms of the Agreement. The Material was discharged by the Respondent and stored at *M/s Eskay Enterprises*, 88/2A, (T.S No.18) Ernavur highway, Ennore, Chennai-600057. As per the Deed of Pledge dated 24.09.2012, the material was pledged by the Respondent in favour of the Petitioner. According to the terms of the Deed of Pledge, the material had to be released to the Respondent No. 1 Company only on the basis of the Delivery Orders given by the Petitioner, which were to be issued subsequent to making full payment for the quantity desired to be lifted.

8. The Respondent No. 1 Company (through its Director, Shashi Kumar) *vide* Letter dated 04.02.2013, informed the Petitioner that due to a bad economic scenario and significant fluctuations in Foreign Exchange rates, they were unable to sell the cargo. Consequently, the Respondent requested a 180-day extension for roll-over of the Letter of Credit (L/C) amount by 180 days. In response, the Petitioner extended the L/C for 179 days by increasing the Trading Margin from 1% to 1.5%, and collected the Usance Interest along with other applicable bank charges upfront. The revised due date for the L/C, after the roll-over, was set as 08.08.2013. L/C was rolled over on the buyer's credit basis by the Petitioner on the request made by the Respondent, who miserably failed to lift the quantity of the material despite extension of time.



9. The Respondent No. 1 Company through its Director, Shashi Kumar issued a **Second Undertaking dated 24.04.2015** whereby the Respondent replaced the *previously issued cheques with ten (10) new un-dated cheques bearing no. 161682, 161683, 161684, 161685, 161686, 161687, 161688, 161690, 161691 & 161693 for a total amount of Rs. 46,99,99,800/-*.

10. Under this Second Undertaking, the Respondent agreed to pay the remaining outstanding principal amount for which the aforementioned cheques were issued. In the event of non-payment, the Respondent committed to honour the cheques upon presentation and not to issue any stop payment instructions to the bank or close the Account. *Additionally, it was agreed that if the Respondent defaulted on the payment, the Petitioner would have full authority to fill in the inchoate cheques and present them for encashment.*

11. The Respondent No. 1 further issued **Third Undertaking dated 21.05.2015** whereby *three (03) new cheques bearing no. 169165, 169166 & 169167 for a total amount of Rs. 1,14,36,000/-* were issued in pursuance to the interest accrued on the outstanding payment. The Respondent further undertook to sell off the properties situated in Tamil Nadu in order to secure the interests of the Petitioner and reduce the outstanding liability.

12. A Petition for **Winding-up of Respondent No.1 Company**, was filed. *Madras High Court vide Order dated 30.04.2015, appointed an Official Liquidator (OL) as the Provisional Liquidator to take charge of Respondent No.1's assets.* Pertinently, the Petitioner was informed about this appointment of OL in August 2015.

13. The Respondent was repeatedly requested through various correspondences to clear the outstanding payments owed to the Petitioner.



However, despite multiple assurances, the Respondent failed to make the payments. Aggrieved, *the Petitioner proceeded to fill in the inchoate cheques and presented them for encashment, which were dishonoured on 27.01.2017*. A Legal Notice was then sent on 25.02.2017, followed by the filing of a Complaint on 28.03.2017.

14. **This Complaint was dismissed by Ld. MM vide Order dated 18.04.2017.**

15. A Criminal Revision Petition was filed for quashing of the Order passed by Ld. MM, but the same was also dismissed.

16. *Aggrieved with the Order of Ld. ASJ upholding the Order of Ld. MM, the Petitioner has filed the present Petition.*

17. The **grounds for challenging the impugned Order** are that the Learned ASJ dismissed the Revision Petition based on the misconceived notion that the Company had been absolved of its liability due to the winding-up Order dated 30.04.2025 of the Madras High Court. However, *the mere appointment of an Official Liquidator does not extinguish the liability of the Company* or its directors under the N.I. Act, especially for Cheques issued during the course of business.

18. Furthermore, it is submitted that the *undertaking/authorization* along with the Cheques that were dishonoured, given by the Directors of Respondent No.1 Company before 30.04.2015 *remain valid and binding on Respondent No.1*. The High Court's Order *appointing the Official Liquidator* as the Provisional Liquidator of the said Company *does not* in any way, *affect or negate the legal liabilities of Respondent No.1 Company*. The High Court Order cannot be interpreted so as to assume that all contractual and legal liabilities of Respondent No.1 Company and its



Directors have rescinded or have *ipse-dixit* become invalid in law merely by the said Order.

19. It is submitted that *as per Section 450* of the Companies Act, it is clear that *appointment of Official Liquidator as Provisional Liquidator is only provisional*, which means that the *Company continues to function albeit under the supervision of Provisional Liquidator*, subject to terms of the supervision as stipulated by the Hon'ble High Court at the time of appointment of the Provisional Official Liquidator, but cannot deal with its assets, as the same are now subject to the charge of the Provisional Liquidator. *Thus, in the present case, the Respondents No. 2 and 3 continued to perform their function in accordance with the Companies Act.*

20. Reliance has been placed on the case of Pankaj Mehra and Anr. vs. State of Maharashtra and Ors., 2000 (1) ACR 692 (SC) wherein it has held that there is no provision in the Companies Act which prohibits enforcement of the debt due from a Company. When a Company goes into liquidation, enforcement of debt due from the Company is only made subject to the conditions prescribed therein. *However, that does not mean that the debt has become unenforceable altogether.* It has been further held that special provisions incorporated in the Companies Act regarding the debts and liabilities due from the company, cannot render the debt unenforceable.

21. Further, reliance has been placed on Vishwanath Namdeo Patil vs. Official Liquidator, (2014) 1 Comp. LJ 130 (Bom), whereby the difference between *provisional liquidation* and *final liquidation* has been elaborately elucidated. The High Court has held that til the official liquidator appointed as provisional liquidator, has not filed its Report of investigation and the final winding up Order has been passed, it does not absolve the Directors of



their liability and the Company continues to perform its functions prior to the final winding up order.

22. Similarly, in the case of Rajiv Gupta vs. State and Anr., [2000] 104 CompCas 26 (Delhi) and the case of M.L. Gupta & Anr. vs. Ceat Financial Services Ltd., 136 (2007) DLT 308, it has been held that if there is a winding up Petition pending against a Company in which no final winding up Order is passed, Complaint under Section 138 N.I. Act is maintainable against the Company as well as its directors, as mere filing of the winding up Petition would not be of any consequence.

23. *Thus, the impugned Order of Ld. Special Judge is liable to be set aside.*

24. **Ld. Counsel for the Respondents** has vehemently opposed the present Petition. It is submitted that the Petitioner filled up the dates and presented the cheques after the Provisional Liquidator was appointed by the Madras High Court *vide* Order dated 30.04.2015. All the property of the Respondent No.1 Company is deemed to be in the custody of the Provisional Liquidator from the date of Order.

25. Furthermore, the Authority the second Undertaking dated 24.04.2015 of Respondent No.1 Company authorizing the Petitioner to put dates on the cheques, ended after 30.04.2015.

26. Significantly, the cheques were presented only on 24.01.2017 which was evidently after the appointment of the Provisional Liquidator. The cheques were returned with the endorsement “*Account Blocked*”. *Once the Liquidator is appointed, the directors of the Company have no control as the management vests in the Liquidator.* In the present case, the Cause of Action



commenced after Liquidator was appointed and hence, the Respondents being erstwhile Directors, cannot be held responsible.

27. It is further submitted that the Petitioner had full knowledge of the *winding up proceedings* and even lodged a Claim with the Liquidator.

28. Reliance has been placed on the case of Ratan Lal Garera vs. State, (2007) 137 DLT 313; Vishnoo Mittal vs. Shakti Trading, 2025 SCC OnLine SC 558; Vijay Chaudhary vs. Gian Chand Jain, 2008 (104) DRJ 349; M.L. Gupta vs. Ceat Financial Services, 136 (2007) DLT 308; Shankar Lal Sharda vs. State of NCT, ILR 2007 (98) DRJ 148.

Submissions heard and record perused.

29. Respondent No.1/ *M/s Sabari Exim Pvt. Ltd.* is Company of which Respondent No. 2/Mr. Shashi Kumar Nair and Respondent No.3/Mrs. Leena Shashi are Directors. The Petitioner/*M/s PEC Ltd.*, entered into an import financing arrangement with the Respondent No.1/*M/s Sabari* in 2012, for which the Respondent No.1 Company and its Directors issued multiple Undertakings and cheques totaling approximately Rs. 46,99,99,800/- to secure the outstanding dues.

30. After the Respondent No. 1 gave the Second Undertaking on 24.04.2015, the Madras High Court appointed an Official Liquidator (OL) as Provisional Liquidator for the Respondent No.1 Company *vide* Order dated 30.04.2015, in a winding up Petition under the Companies Act.

31. The Petitioner allegedly became aware of the said fact in August 2015. It is only thereafter, the Petitioner filled in the inchoate cheques given by Respondent No. 1 [*given on 24.04.2015 and (07 cheques) and 21.05.2015 (03 cheques)*] by filling in the details, which on presentation got dishonored on 27.01.2017, i.e. after about 18 months of appointment of the



Provisional Liquidation by the Madras High Court *vide* its Order dated 30.04.2015. Only thereafter, the Complaint under Section 138 N.I. Act came to be filed on 28.03.2017, which was dismissed by the Ld. MM *vide* Order dated 18.04.2017.

32. Thereafter, the Revision against such Order of dismissal was also filed, which again got dismissed *vide* Order dated 06.06.2017, owing to the same reason. It is in these circumstances that the Petitioner has sought relief before this Court.

33. Firstly, the Petitioner has argued that the liability of the Company and its Directors does not extinguish merely as the appointment of Official Liquidator under Section 450 of the Companies Act is only provisionsal and the erstwhile Directors continue to perform their functions in the Company except dealing with the assets of the Company which come under the exclusive domain of the Official Liquidator appointed for the said function.

34. Herein, it is pertinent to refer to **Sections 450, 456 and 457 of the Companies Act, 1956:-**

“450. APPOINTMENT AND POWERS OF PROVISIONAL LIQUIDATOR.—

(1) *At any time after the presentation of a winding up petition and before the making of a winding up order, the Tribunal may appoint the Official Liquidator to be liquidator provisionally.*

(2) *Before appointing a provisional liquidator, the Tribunal shall give notice to the company and give a reasonable opportunity to it to make its representations, if any, unless, for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice.*

(3) *Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or by a subsequent order; but*



otherwise he shall have the same powers as a liquidator.

(4) ***The Official Liquidator shall cease to hold office as provisional liquidator and shall become the liquidator, of the company, on a winding up order being made.***”

“456. CUSTODY OF COMPANY’S PROPERTY.—

(1) Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

(1A) For the purpose of enabling the liquidator or the provisional liquidator, as the case may be, to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the liquidator or the provisional liquidator, as the case may be, may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof, and the Chief Presidency Magistrate or the District Magistrate may thereupon after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the liquidator or the provisional liquidator.

(1B) For the purpose of securing compliance with the provisions of sub-section (1A), the Chief Presidency Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may in his opinion be necessary.

(2) All the property and effects of the company shall be deemed to be in the custody of the Tribunal as from the date of the order for the winding up of the company.”

“457. POWERS OF LIQUIDATOR.—



(1) The liquidator in a winding up by the Tribunal shall have power, with the sanction of the Tribunal —

- (a) to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;*
- (b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;*
- (c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels;*
- (ca) to sell whole of the undertaking of the company as a going concern;*
- (d) to raise on the security of the assets of the company any money requisite;*
- (e) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.*

(2) The liquidator in a winding up by the Tribunal shall have power—

- (i) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;*
- ...
- (iii) to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;***
- (iv) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for*



obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;

Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator-General;

(v) to appoint an agent to do any business which the liquidator is unable to do himself.

(2-A)

(2-B) ...

.....

(2-G) The liquidator appointed shall—

(a) maintain a separate bank account for each company under his charge for depositing the sale proceeds of the assets and recovery of debts of each company;

(b) maintain proper books of account in respect of all receipts and payments made by him in respect of each company and submit half yearly return of receipts and payments to the Tribunal.

(3) The exercise by the liquidator in a winding up by the Tribunal of the powers conferred by this section shall be subject to the control of the Tribunal; and any creditor or contributory may apply to the Tribunal with respect to the exercise or proposed exercise of any of the powers conferred by this section.”

35. Thus, it is evident that when a Court appoints an Official Liquidator as Provisional Liquidator under Section 450, the Company does not cease to exist; rather the said Company's Board of Directors become *functus officio*.



All the business operations, asset management, and contractual dealings are conducted under the supervision and with the authorization of the Provisional Liquidator.

36. The contention of Petitioner that the erstwhile Directors continue to perform their functions in the Company, even after the Official Liquidator has been appointed, is misfounded and is not tenable in law. It is only the Provisional Liquidator, as per Section 450, who is empowered under Section 450(2)(iii) ***“to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business”***.

37. In the case of M.L. Gupta vs. Ceat Financial Services Ltd., 2006 SCC OnLine 1448 while holding that a Complaint would not be maintainable when the cheque is presented after the Company has already been ordered to be wound up, observed that *when the company goes into liquidation and the cheque is presented thereafter, it cannot be said that the company has committed the offence as it is because of legal bar that it is precluded from making the payment. Once dishonour of the cheque by the Bank and failure to make payment of amount by the company is beyond its control, the Directors (who are in fact ex-Directors) can also not be held liable.*

38. Similarly, in the case of Ratan Lal Garera & Ors. vs. State (NCT of Delhi) & Anr., 2006 SCC OnLine Del 1442 the Apex Court relied on the case of M.L. Gupta, (supra) and held that as the winding-up orders have been passed and the Official Liquidator was appointed as on the date when the cheque was presented and dishonoured, the case would not fall within



the parameters of Section 138 N.I. Act.

39. Furthermore, in the case of Re- M/S Catmoss Retail Pvt. Ltd. vs., 2024 SCC OnLine Del 776, Co-ordinate bench of this Court while deciding an Application moved by the ex-Management/Director under Sections 446 and 447 of the Companies Act, 1956 seeking stay of proceedings under Section 138 N.I. Act, held as under:-

“11. All said and done, what needs to be emphasized is that it has been a consistent legal proposition that if the demand notice and the cognizance of complaint under Section 138 of the NI Act is taken after initiation of winding up proceedings and/or IBC proceedings, the proceedings under Section 138 of the NI Act cannot continue not only against the corporate debtor but also its directors. It is pertinent to mention that this Court in an earlier case titled Govind Prasad Todi v. Govt. of NCT of Delhi, 2023 SCC OnLine Del 3717 rightly distinguished the aspect in the case P. Mohanraj (supra), wherein 51 cheques were issued by the company in favour of the respondent towards the amounts payable from 21.09.2015 to 11.11.2016 and it was a case where statutory notice of demand under Section 138 read with Section 141 of the NI Act was issued on 21.03.2017 while the commencement of Corporate Insolvency Resolution Process (CIRP) under Section 14 of the IBC came to be enforced on 06.06.2017. It was a case where the cheques had got dishonoured and even demand notices were issued prior to the moratorium kicking in. In other words, if the statutory demand notice is issued before the moratorium sets in or winding up proceedings are initiated and cognizance of the offence is taken subsequent to the moratorium or winding up proceedings kicking in, the prosecution against the corporate debtor and its directors cannot be allowed to be continued. Incidentally, the same view had been taken in the decisions of ML Gupta (supra); Ratan Lal Garera (supra);



and Vijay Steel Tubes & Fittings (supra) decided by this Court.”

...

“12. Hence, the present application is disposed of with the directions that *all complaints under Section 138 of the NI Act instituted against the corporate debtor and its directors after the company has been ordered to be wound up vide order dated 28.02.2013, shall not be continued and shall remain in abeyance.* The reasons are not far to seek since in such matters when the IRP or for that matter *the Official Liquidator has taken over the entire records of the case, it would be impossible for the directors of the corporate debtor or company (in liquidation) to defend themselves in such criminal matters.*”

40. In the present case, the Provisional Liquidation Order was passed by the Madras High Court on 30.04.2015. The ignorance of this Order is pleaded by the Petitioner till August, 2015; however, the cheques were signed and presented only in 2017 when the same were returned on 27.01.2017 as dishonoured with remarks “*Account Blocked*”, which is nearly 18 months after gaining knowledge of the changed legal status of the Respondent No.1 Company.

41. Essentially, the impugned cheques were drawn and presented on behalf of Respondent No. 1 Company. However, at the relevant time, the day-to-day affairs of the Company were not under the control of its Directors. Instead, the Provisional Liquidator was overseeing the affairs of the Company and was the sole competent authority to issue any instruments, including cheques. Since the cheques were neither issued at the instance of the Provisional Liquidator nor by him, they cannot be held to be valid for presentment as well.



42. *This contention of the Petitioner is not supported by the law and is thus, not tenable.*

43. Furthermore, the Petitioner has sought to argue that the Undertakings through which the Respondent No. 1 Company had provided blank cheques to the Petitioner, were executed before the Provisional Liquidation Order dated 30.04.2015. These Undertakings contained authorizations for the Petitioner to fill and present the cheques in case of default. *However, such authorizations cannot be treated as continuing indefinitely, particularly when the legal status of the authorizing entity itself underwent fundamental change due to Court ordered liquidation proceedings.* The Appointment of Provisional renders all actions of the erstwhile Management invalid and the control of the affairs of the Company shifts from its Management to the Liquidator, who is the only competent authority thereafter to deal with the assets of the Company in Liquidation. *Thus, this contention of the Petitioner is also not tenable.*

Whether Dishonour of Cheques due to Account Closed, would Constitute an Offence Under Section 138 N.I. Act:

44. The last 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 N.I. Act.*

45. To constitute an offence under Section 138 N.I. 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. 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 N.I. Act.

46. 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.*

47. 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 N.I. Act. The cheque returned must be 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 the bank. It was held that an accused cannot be faulted if the dishonour is caused due to the *account*



being blocked for reasons beyond their control. 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 N.I. 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 of N. I. Act would not be made out.*

48. Similar facts as in present case, were considered 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 Interim Resolution Professional as per Section 17 of the Insolvency and Bankruptcy Code, 2016 (*Management of Affairs of Corporate Debtor by Interim Resolution Professional*). When the notice was issued to the Appellant in said case, 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.***

49. **In the present case as well**, the cheques were filled up on 24.01.2017 and were dishonoured on 27.01.2017 with remarks of “Account Blocked”. The ***dishonour clearly occurred not due to insufficiency of funds but due to statutory prohibition on payments during winding-up proceedings and appointment of OL. This circumstance falls squarely outside the ambit of***



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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 N.I. has not been proved.

50. To conclude, the dishonour of the cheques on the ground of “*Account Blocked*”, constitutes a fundamental defect that precludes liability under Section 138 N.I. Act. When a cheque is dishonoured due to “*Account Blocked*” rather than insufficiency of funds, it falls outside the statutory framework of Section 138. An account blocked by the Bank due to winding up/liquidation proceedings represents a handicap beyond the drawer’s control and it cannot be said that he is maintaining the Account. Therefore, the offence under Section 138 N.I. Act, would not be made out.

Conclusion:

51. In view of the aforesaid discussion, it is held that the Ld. MM and Ld. ASJ have rightly dismissed the Complaint and the Revision Petition, respectively.

52. The present Petition is without merit and is hereby, dismissed.

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

**(NEENA BANSAL KRISHNA)
JUDGE**

AUGUST 22, 2025/RS