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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Judgment reserved on: 26.02.2026**Judgment Delivered on: 04.05.2026***+ CRL.M.C. 1665/2023 & CRL.M.A. 6359/2023****RAJ KUMAR JAIN**

.....Petitioner

Through: Ms. Sangeeta Jain, Advocate.

versus

M/S SHREE BALAJI ENTERPRISES**AND ANR**

.....Respondents

Through: Mr. Ram Ekbal Roy, Mr. Aman Nihal, Mr. Shekhar Jha and Mr. Sunil Kumar Jha, Advocates.

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J**

1. The present petition has been filed under Section 482 CrPC *inter alia* praying for quashing of the complaint bearing no. 2712/2012 dated 04.08.2012, under Section 138 of Negotiable Instruments Act, 1881 [in short 'N.I Act'].
2. The case set out in the present petition is that an order no. 166/PA/DNC/DEMS/2009-10 was passed by the Commissioner of MCD on 26.06.2009 regarding the deployment of Auto Tippers with Hydraulic Lifting arrangements in each ward of the Shahdara (North) and (South) Zones for a period of three years.
3. The respondent no. 2/company [M/S PRJ Enterprises Ltd.], who is



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authorized dealers of Bajaj Auto Vehicles, entered into an agreement dated 10.03.2010 with the deputy commissioner, MCD/Shahdara South Zone, Delhi, according to which the respondent no. 2/company had to arrange 31 Auto Tippers with Hydraulic Lifting facilities, along with one driver and two Beldars for each Auto Tipper, including T & P fuel lubricants, etc for deployment in various wards of Shahdara South Zone, Delhi. The petitioner was the director of respondent no.2/company.

4. On the basis of aforesaid agreement, respondent no. 2/company induced the complainant/respondent no. 1 to assist in the execution of said agreement. Pursuant thereto, complainant/respondent no. 1 entered into a Memorandum of Understanding [in short "MOU"] with the respondent no. 2/company. Under the terms of the MOU, it was agreed that complainant/respondent no. 1 would purchase 18 Auto Tippers from respondent no. 2/company. Pursuant thereto, the complainant/respondent no.1 paid a total sum of Rs. 45,00,000/- to respondent no. 2 as an advance, through various cheques and cash payments on different dates.

5. However, a dispute arose between the respondent no.2/company and the complainant/respondent no. 1, as a result of which, complainant/respondent no.1 had asked the petitioner and the respondent no.2 to return Rs. 45,00,000/- which had been given to them. It is in this backdrop that the respondent no. 2/company issued following two cheques to complainant/respondent no.1:

- (i) Cheque No.038098 dated 26.12.2011 for an amount of Rs.20,00,000.
- (ii) Cheque No.038099 dated 28.12.2011 for an amount of Rs.25,00,000.



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6. The aforesaid two cheques were presented for encashment by complainant/respondent no.1, but the same were returned unpaid with the return memo dated 09.01.2012 with the remarks “Funds Insufficient”.

7. Thereafter, respondent no.2/company again issued following two cheques to respondent no.1, in lieu of the above mentioned cheques:

- (i) Cheque No. 038126 dated 20.01.2012 for an amount of Rs. 25,00,000.
- (ii) Cheque No. 038127 dated 21.01.2012 for an amount of Rs. 20,00,000.

8. The complainant/respondent no.1, presented the two cheques mentioned in the foregoing paragraph for clearing, however, the cheques were again returned unpaid with a return memo dated 18.04.2012, containing the marks “Funds Insufficient”. Complainant/respondent no.1 again presented the above cheques on 15.06.2012, however, the same got dishonoured with the remarks “Funds Insufficient”.

9. This was followed by issuance of demand notice dated 02.07.2012 by complainant/respondent no.1, in terms of Section 138 of N.I. Act, to respondent no.2/company, as well as, to the petitioner, who is the director of respondent no.2/company, with regard to the cheques enumerated in paragraph no. 7 above. After the expiry of notice period, the complaint bearing no. 2712/2012 came to be filed under section 138 of N.I Act on 04.08.2012 by the complainant/respondent no.1 against the respondent no.2/company as well as the petitioner herein. Further *vide* order dated 23.02.2013, summons were issued in the abovementioned complaint case against the petitioner and respondent no. 2/company.

10. However, *vide* order dated 23.05.2012 of this court in Company



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Petition 262/2012 titled as ***Rani Leasing and Finance Pvt. Ltd vs. P.R.J Enterprises Ltd. and Ors.***, a winding up petition filed under Section 433(e) read with Sections 434 and 439 of the Companies Act, 1956, by Rani Leasing and Finance Pvt. Ltd, was admitted against the respondent no. 2/company and notice was also issued in the said petition. Further, *vide* same order a Provisional Liquidator was also appointed who was directed to forthwith take over the assets and records of the respondent no.2/company. Order dated 23.05.2012 is reproduced herein below *in extenso*:

***“O R D E R
23.05.2012***

Caveat 542/2012 in Co. Pet. 262/2012

Since the caveator has already put in appearance, the caveat petition stands disposed of.

Co. Pet. 262/2012 and Co. Appls. 1085-1086/2012

Present winding up petition has been filed under Section 433(e) read with Sections 434 and 439 of the Companies Act, 1956, stating that respondent is unable to pay its debts allegedly amounting to Rs.1.43 crores.

It is the petitioner's case that it had extended the loan of Rs.1 crore to the respondent on 13th July, 2010 and the same was to be repaid in nine months along with interest @ 2% per month.

In response to the statutory winding up notice, respondent has stated as under:-

“We admit and acknowledge our liability in a sum of Rs.1.43 crores as on 1.4.2012 which amount comprises of Rs.1 crore as



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principal loan amount and Rs. 43 lacs on account of interest till 31.3.2012 (calculated @ 2% per month).

We sincerely regret for the inconvenience caused to you all throughout, but reassert that it was on account of reasons and circumstances much beyond our control, otherwise we would not have afforded an opportunity to you to initiate any legal process against us.

We, however, feel it our abundant duty to appraise you that in the forthcoming period, we do not foresee any possibility of repaying any amount either on account of interest or towards principal. However, we are on our heels to realize our overdue payments from the Municipal Corporation of Delhi and as and when we are able to do so, we will definitely repay your debt with folded hands”

Issue notice.

Mr. J.C. Gupta, learned counsel accepts notice on behalf of the respondent. He candidly states that the respondent company is in heavy debt and there is no possibility of the respondent company being rehabilitated or revived.

In view of the aforesaid, present petition is admitted and the Official Liquidator attached to this Court is appointed as Provisional Liquidator of the respondent company and is directed to forthwith take over the assets and records of the respondent company. For this purpose, Provisional Liquidator would be entitled to obtain police aid and the local police is directed to render all assistance to the Provisional Liquidator.

In the meantime, respondent-company, its Directors, officers, employers, authorised representatives are restrained from selling, transferring, alienating, encumbering and parting with the possession of any movable and immovable assets and funds of the respondent company. They are also restrained from withdrawing any money from the accounts of the respondent



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company.

The Directors of the respondent company are directed to forthwith hand over all the records of the respondent company to the Provisional Liquidator including its books of account. The Directors of respondent company are also directed to provide the statement of affairs and file their statements under Rule 130 within a period of twenty one days as provided for in the Companies Act, 1956.

Let citations be published in the newspapers, namely, ?The Statesman (English edition) and ?Veer Arjun? (Hindi edition) as well as in ?Delhi Gazette?.

Petitioner is directed to deposit a sum of Rs. 50,000/- with the Official Liquidator for publication of the advertisements within a period of two weeks.

Accordingly, the Co.Appls. No.1085-1086/2012 stand disposed of.

Let a fresh status report be filed by the Official Liquidator before the next date of hearing.

List the matter on 16th July, 2012.

Order dasti under signatures of the Court Master.”

(emphasis supplied)

11. Subsequently, *vide* order dated 21.01.2020 passed in Company Petition 262/2012, respondent no. 2/company was dissolved.

12. Thereafter, *vide* impugned order dated 21.12.2022, the learned JMFC, upon hearing application of the petitioner seeking discharge, proceeded with framing of notice in the matter, holding that Magistrate has no power to drop proceedings in a summons case filed on the basis of a complaint and that under Chapter XX of the CrPC there is no provision for discharge of the



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accused person.

13. Ms. Sangeeta Jain, learned counsel appearing on behalf of the petitioner submits that respondent no.2/company went into liquidation and a Provisional Liquidator was appointed *vide* order dated 23.05.2012 in Company Petition no. 262/2012 and subsequently by order dated 21.01.2020 respondent no.2/company got dissolved.

14. She submits that by the time demand notice dated 02.07.2012 was issued to respondent no.2 against the cheques that got dishonoured on 15.06.2012, the Directors, officers, employers, authorized representatives including the petitioner, had already been restrained from selling, transferring, alienating, encumbering and parting with the possession of any moveable and immovable assets and funds of the respondent no.2/company by virtue of order dated 23.05.2012, *vide* which Provisional Liquidator was also appointed.

15. She further submits that the complaint was filed by the complainant/respondent no. 1 on 04.08.2012 i.e much after the winding up petition against respondent no. 2/company was admitted and the restraint order was passed on 23.05.2012. Therefore, the cause of action for filing the complaint under Section 138 NI Act arose after the Provisional Liquidator had been appointed.

16. Furthermore, she submits that as petitioner was not in a position to ensure honouring of the cheques in question when the same were presented, in view of the same, the complaint under Section 138 of the NI Act was not maintainable. To buttress her contention she has placed relied upon the following decisions: (i) ***R.K. Jain vs. Manju Bajad and Anr.*** [Criminal MC



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No. 2278/2021] dated 01.09.2023 (ii) ***R.K. Jain vs. Vinay Kumar Tyagi And Anr.*** [Criminal MC No. 2845/2021] dated 01.09.2023 and (iii) ***M.L Gupta and Anr. vs. Ceat Financial Services Ltd;2006 SCC Online Del 1448.***

17. Mr. Ram Ekbal Roy, learned counsel appearing on behalf of the respondent no.1/complainant has not controverted the submissions of Ms. Jain that the cheques in question were dishonoured *vide* memo dated 15.06.2012 and a demand notice regarding the same was issued on 02.07.2012, which was followed by the filing of complaint under Section 138 of the NI Act, against the petitioner and respondent no. 2/company. Incidentally, no reply to the petition was filed by the complainant/respondent no. 1, therefore, all the averments made in the petition have remained uncontroverted.

18. Further, it is also not in dispute that respondent no. 2/company went into liquidation and a Provisional Liquidator was appointed *vide* order dated 23.05.2012 in Company Petition no. 262/2012 and subsequently by order dated 21.01.2020 respondent no.2/company got dissolved.

19. I have heard the learned counsels appearing on behalf of both the parties.

20. In the present case, as noted above, the liquidation proceeding was triggered on 23.05.2012, when notice was issued in the Company Petition filed for the winding up of respondent no. 2/company, and the same was admitted and a Provisional Liquidator was appointed. Crucially, this event occurred prior to the dishonour of the cheques in question, which took place on 15.06.2012. Furthermore, the statutory demand notice was issued by



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complainant/respondent no. 1 only subsequently, on 02.07.2012.

21. To appreciate the controversy involved in the present case, it would be apposite to refer to relevant provisions 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



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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—



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- (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.***



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(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.”

22. A perusal of the above reproduced provisions makes it clear that the appointment of a Provisional Liquidator does not result in the legal dissolution of the company, but rather leads to suspension of the Directors’ authority, rendering them *functus officio*. While the company maintains its corporate existence, its internal management is effectively displaced, transitioning its executive power to the Provisional Liquidator. Under this judicial arrangement, the company’s business operations, the administration of its assets, and the validity of its contractual engagements are contingent upon the oversight and formal authorization of the liquidator, who serves as the custodian of the corporate estate.

23. Reference in this regard may be had to a recent decision of the coordinate bench of this court in CRL.M.C. 4123/2017 titled as *M/S Pec Ltd. vs. M/S Sabari Exim Pvt Ltd & Ors.*, dated 22.08.2025, wherein an identical issue with regard to maintainability of complaint under Section 138 of NI Act against the directors and the company *qua* which the Provisional Liquidator had been appointed prior to dishonouring of a cheque, was involved. Paragraph 33 of the said decision encapsulates the primary contention raised by the petitioner/complainant therein which reads as under:

“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 provisional 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.”

(emphasis supplied)

24. The court while dealing with above contention, examined the relevant provisions of the companies Act, 1956, and held as under:

“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 457, who is empowered under Section 457(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.”

(emphasis supplied)

25. In *M/S PEC Ltd.* (Supra), reliance was placed upon the decisions rendered by other Coordinate Benches of this Court in *M.L. Gupta* (Supra) and *Ratan Lal Garera & Ors. v. State (NCT of Delhi) & Anr., 2006 SCC OnLine Del 1442*. The said decisions also discusses the legal position regarding the maintainability of a complaint under Section 138 of the



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Negotiable Instruments Act, 1881, particularly when filed after the initiation of liquidation proceedings against a corporate entity and the appointment of a liquidator, specifically in circumstances where such appointment preceded both, the dishonour of the cheques as well as the issuance of the statutory demand notice. The relevant paragraphs from *M/s PEC Ltd.* (supra) where said decisions have been referred read as follows:

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.*

(emphasis supplied)

26. Likewise, in *Manju Bajad* (Supra) and *Vinay Kumar Tyagi* (Supra) both rendered on 01.09.2023, one of the party i.e the present petitioner was same. Even the facts involved were identical. In the said two cases, the court allowed the petition of the petitioner, thereby quashing the complaint filed under Sections 138/141/142 of the N.I Act against the director i.e. the



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present petitioner. The relevant paragraphs from **Manju Bajad** (supra) are reproduced herein:

“8. In the present case, admittedly, the respondent no.2 was in liquidation vide order dated 23.05.2012 passed in Co. Pet. 262/2012 titled Rani Leasing and Finance Pvt. Ltd vs. P.R.J. Enterprises Ltd. and Ors. seeking winding up of the respondent no.2, wherein a Provisional Liquidator was appointed and the respondent no.2, its Directors, officers, employers, authorised representatives including the petitioner herein were restrained from selling, transferring, alienating, encumbering and parting with the possession of any movable and immovable assets and funds of respondent no.2 and were also restrained from withdrawing any money from the accounts of respondent no.2. As on date, vide a subsequent order dated 21.01.2020 the respondent no.2 i.e., P.R.J. Enterprises Ltd. has already been dissolved.

9. It is also the admitted position that the cheques in question in the present case were dishonoured on 21.05.2012 and the Legal Notice dated 04.06.2012 was subsequently sent by speed post dated 06.06.2012, meaning thereby that the 15 days for making payment after receipt of the Legal Notice expired on 21.06.2012. Thus as evident from the aforesaid, the cause of action for filing the complaint under Section 138 of NI Act arose after the respondent no.2 company went into liquidation.

10. It is trite law that a complaint under Section 138 of the NI Act is not maintainable if filed after the Company has already been directed to be wound up. The said position of law has been explained in M.L. Gupta(supra) wherein it has been observed as under :-

8. We are, however, concerned with the position where cheque presented is dishonoured and complaint is filed under Section 138 of the Negotiable Instruments Act against the company and the Directors after the company has already been ordered to be wound up. Whether such a complaint would be maintainable is the question and the legal position on this aspect is what needs to be determined.



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9. To answer this question, we may have first to take note of the necessary legal consequences of the winding up of a company and orders of appointment of Official Liquidator/Liquidator. By operation of law, i.e. by virtue of the Companies Act, it would result in discharge of all the employees and the Officers from the service of the company including Board of Directors. Affairs of such a company are taken over by the Official Liquidator and the Official Liquidator has to disburse the payment in accordance with the Companies Act. Section 536 of the Companies Act now comes into play fully and disbursement of any amount would be void. If the cheque is presented at this stage, payment thereof is legally barred. Bank, on which cheque is issued is precluded from honouring the cheque. In the instant case itself, account was closed by the Official Liquidator and that was the reason for dishonour of cheque. It is also to be borne in kind that after the winding up orders and the taking of over the affairs of the company by the Official Liquidator since erstwhile Directors cease to be the Directors as on the date of presentation of the cheque, they are not incharge of day to day affairs of the company. Offence is committed under Section 138 of the Act only on the dishonour of the cheque and issuance of notice for demand to pay the amount. As on that date, no such notice could be issued to the company which was in liquidation and the creditors are now to be paid as per the scheme of the Companies Act. Therefore, liability on them also cannot be fastened under Section 141 of the Negotiable Instruments Act.

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xxx

xxx

16. Thus, what is emphasized is that actual offence has to be committed by the company and then alone the Directors can become liable for the offence. 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



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its control, the Directors (who are in fact ex-Directors) can also not be held liable. Sustenance for this proposition can be drawn from another judgment of the Supreme Court in the case of Kusum Ingots & Alloys Ltd., etc. v. Pennar Peterson Securities Ltd., [2000] 100 Company Cases 755 (SC). That was a case where reference in respect of the company was pending before the Board of Industrial and Financial Reconstruction (for short 'BIFR') under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The Court held that mere registering the reference would not be sufficient to bar the proceedings under Section 138 of the N.I. Act even by virtue of Section 22 of SICA as Section 22 which provided that no proceedings would be instituted against the company related to only to civil proceedings and does not include criminal proceedings. However, the Court further held that position would be different if order is passed by the BIFR under Section 22A of SICA restraining the company or its Directors from disposing of the assets of the company.....”

The said position of law has also been reiterated and followed by this Court in Vijay Steel Tubes & Fittings Pvt. Ltd.(supra).

11. The facts of the present case clearly reveal that pursuant to order dated 23.05.2012 directing the respondent no.2 to be wound up, the directors and all other persons attached to the company including the petitioner herein were restrained from utilizing the assets of respondent no.2 and hence no payment could be made by the petitioner herein as he ceased to be in control of the day to day affairs of respondent no.2 which stood transferred to the Provisional Liquidator.

12. In light of the settled legal position and the factual matrix involved, as discussed hereinabove, the complaint as well as summoning orders passed by the learned MM are bad in law and are liable to be set aside.

13. In view of the aforesaid, the petition is allowed and the Complaint Case Misc. Crl. 1419/2016 titled Manju Bajad vs. M/s P.R.J. Enterprises Ltd. and Anr. filed under Sections 138/141/142 of the Negotiable Instruments Act, 1881 and all proceedings



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emanating therefrom, including the order dated 09.01.2020 passed by the learned Metropolitan Magistrate-2, Shahdara, Karkardooma Court, New Delhi, qua the petitioner, are quashed.

14. The petition, alongwith the pending application, stands disposed of.”

(emphasis supplied)

27. In view of the aforesaid statutory mandate, factual chronology and decisions referred above, it is clear that once the powers vested in the petitioner (in his capacity as a director) stood transferred to the Provisional Liquidator by operation of law, the petitioner was legally and practically rendered incapable of controlling the bank accounts of respondent no. 2/company. Ergo, it cannot be said that the petitioner was in a position to ensure the encashment of the cheque or to honour the demand notice, as the authority to operate the said accounts rested solely with the liquidator.

28. The use of expression “an account maintained by him” in section 138 NI Act also suggests one of the prerequisite ingredient for constituting an offence thereunder is that accused must have control over the account. At this juncture, it would be apposite to refer to Section 138 of the NI Act, which is reproduced below in extenso:

“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



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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 provisions 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.*

Explanation.—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.]”

(emphasis supplied)

29. It thus, appears that to legally maintain a bank account, the holder must exercise continuous authority, keeping the account in an active, operational, and functional state while actively preserving it from lapse or cessation. This continuous preservation serves as the bedrock of the drawer-banker relationship, placing the legal emphasis not merely on the opening of an account, but on the ongoing affirmative act of keeping it in proper



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condition. This expression cannot be construed so narrowly as to mean that the mere ownership of an account by the accused satisfies the necessary legal ingredients. Rather, the requirement that an account be “maintained” necessarily implies that it is alive and operative, ensuring the account holder remains capable of executing commands to govern financial transactions, such as the clearance of cheques. Ultimately, the authority and control of the account holder must exist on the effective date when the cheque becomes valid for presentation at the bank.

30. This position is supported by the observations of a coordinate bench of this court in ***Best Buildwell Pvt. Ltd. and Others vs. R.D. Sales (2025 SCC OnLine Del 4267)***, wherein it was noted that -

*“14. Under Section 138 of the NI Act, an offence is committed when a cheque is drawn from an account maintained by the drawer and it is returned unpaid due to insufficient funds. Even though the cheque return memo may mention its reason for dishonor as “insufficient funds”, the fact remains that, the petitioners' account was frozen by the CGST Department, and thus, it could not be said to be “maintained” by them at the relevant time. Since the petitioners were unable to operate the account or issue valid instructions to the bank due to the attachment, the essential ingredients of Section 138 are not fulfilled. Even if the funds in the account were insufficient at the time of presentation of the cheques, the account having been frozen by the CGST, it would not have been possible for the petitioner to maintain sufficiency of funds in his account for the cheques to be honoured. This position finds support in *Vijay Chaudhary v. Gyan Chand Jain, 2008 SCC OnLine Del 554*, where it was inter alia held as under;*

“xxx



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23. ... *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 issued 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.*”

(emphasis supplied)

31. In view of the settled legal position as rendered in *M/S PEC LTD* (Supra) and *M.L Gupta* (Supra) the appointment of a Provisional Liquidator, occurring prior to the dishonour of the cheques and the issuance of the demand notice, effectively divested the petitioner of his managerial authority and control over the company’s bank accounts. Since the statutory mandate of Section 138 of the N.I. Act requires the account to be “maintained” by the accused at the time of the offence, the transition of executive power to the Provisional Liquidator created a legal and practical impossibility for the petitioner to satisfy the demand or operate the accounts. Concomitantly, as the petitioner was neither in charge of the company’s affairs nor capable of ensuring the encashment of the cheques on the date the cause of action crystallized, therefore, the essential ingredients of the offence are not met, and the complaint against the petitioner is held to be legally non-maintainable.

32. Therefore, as per the above discussion, the present petition is allowed. Consequently, the complaint case bearing no.2712/2022 titled as, *M/s Shree*



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Balaji Enterprises v. M/s PRJ Enterprises Ltd. & Anr. which is stated to be pending before the Court of Judicial Magistrate First Class (JMFC), Shahdara, KKD, Delhi and all proceedings emanating therefrom in respect of the petitioner herein, are quashed.

33. Consequently, the pending application also stands disposed of.

VIKAS MAHAJAN, J

MAY 04, 2026
N.S. ASWAL