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

\# **CNR No. DLHC010481422026**

\+ **CRL.M.C. 7488/2026 & CRL.M.A. 31322/2026, CRL.M.A. 31323/2026**

M/S PORWAL ENTERPRISES & ANR. .....Petitioners

Through: Mr. Bhagwan Jha, Adv. (through VC)

versus

M/S IP CLEANING INDIA PVT LTD .....Respondent

Through: Mr. Kesari Kumar and Mr. Jai Gupta, Advs.

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

O R D E R

% 06.10.2026

1. This hearing has been done through hybrid mode.

2. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, assailing the order dated 31.08.2026 passed by the learned JMFC (NI Act)-07, South-East District, Saket Courts, New Delhi in CC NI Act No. 7594/2021, titled ***M/s IP Cleaning India Pvt. Ltd. v. M/s Porwal Enterprises & Anr***., whereby the application filed by the petitioners under Section 311 Cr.P.C. seeking examination of the concerned official of HDFC Bank was dismissed.

3. The aforesaid complaint has been instituted by the respondent under Section 138 of the Negotiable Instruments Act, 1881 in respect of cheque bearing No. 000455 dated 15.07.2021 for an amount of ₹2,41,309/-. As per

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the case of the respondent, the transaction between the parties pertains to supply of cleaning equipment under Invoice No. IPCDEL1920T10339 dated 31.05.2019 for ₹17,41,278/-. It is alleged that after part payments, an amount of ₹5,41,309.12 remained outstanding and the cheque in question was issued towards partial discharge of the said liability. The cheque, upon presentation, was returned unpaid on 17.07.2021 with the remark "Payment Stopped by Drawer".

4. During the course of trial, the petitioners moved an application under Section 311 Cr.P.C. seeking examination of the Branch Manager/competent official of HDFC Bank, 31/31, M.G. Road, Hazratganj, Lucknow, along with the relevant banking record. The petitioners relied upon a certificate issued by HDFC Bank to contend that stop-payment instructions in respect of cheque No. 000455 had been recorded on 10.08.2019. The said application was dismissed by the learned Trial Court vide the impugned order dated 31.08.2026.

5. The learned Trial Court, while dismissing the application, *inter alia*, observed that the factum of stop-payment was undisputed, that the proposed witness had not been mentioned in the list of defence witnesses, that the application had been moved at the stage of final arguments and that the Bank official could not depose as to the date or purpose for which the cheque was handed over to the respondent. The learned Trial Court also noticed that an earlier application under Section 311 Cr.P.C. had been dismissed on 03.07.2023.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

6. Learned counsel appearing for the petitioners submits that the learned

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Trial Court has failed to appreciate the limited purpose for which examination of the concerned Bank official was sought. It is submitted that the petitioners do not seek to examine the Bank official merely to establish that payment of the cheque was stopped, since the same is already borne out from the return memo. The proposed witness is sought to be examined for proving the official banking record as regards the date on which the stop-payment instructions pertaining to cheque No. 000455 were recorded.

7. It is submitted that the aforesaid distinction is material to the defence of the petitioners. While the cheque relied upon by the respondent is stated to be dated 15.07.2021, the certificate relied upon by the petitioners records stop-payment instructions in respect of the same cheque number on 10.08.2019.

8. Learned counsel further submits that the case of the petitioners is that the cheque had been handed over in connection with the transaction for purchase of the equipment. It is submitted that upon the equipment being found defective and the grievance of the petitioners not being rectified, instructions were issued to the Bank for stopping payment. It is thus contended that the chronology reflected in the Bank record constitutes a material part of the defence sought to be raised by the petitioners.

9. It is contended that the Bank official is not sought to be examined for proving the underlying commercial transaction between the parties or the purpose for which the cheque was handed over. His examination is sought only for proving the official banking record maintained in the ordinary course pertaining to the stop-payment instructions.

10. Learned counsel further points out that the respondent itself, while instituting the complaint, had included “Banker of the Accused alongwith relevant records” at Serial No.3 of its list of witnesses. It is, therefore,

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submitted that the examination of the petitioners' banker along with the relevant record cannot now be termed wholly irrelevant to the controversy between the parties.

11. Insofar as the delay in moving the application is concerned, learned counsel submits that merely because the proceedings have reached the stage of final arguments, evidence which may have a bearing upon the defence of the accused ought not to be shut out.

12. Learned counsel submits that no prejudice would be caused to the respondent if one opportunity is granted to the petitioners to examine the concerned Bank official, since the respondent would have the complete opportunity to cross-examine the said witness.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

13. *Per contra*, learned counsel appearing for the respondent opposes the present petition and supports the reasoning contained in the impugned order. It is submitted that the proceedings under Section 138 of the NI Act have remained pending for a considerable period and that the present application has been preferred only when the matter has reached the stage of final arguments.

14. Learned counsel submits that payments in respect of the commercial transaction were made by the petitioners from time to time and that the cheque in question was issued towards the subsisting liability. It is contended that there is no dispute regarding the identity of the cheque or that the same was returned unpaid with the remark "Payment Stopped by Drawer". According to the respondent, therefore, calling the Bank official merely to establish issuance of stop-payment instructions would serve no useful purpose.

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15. Learned counsel further submits that the petitioners were aware of their own banking transactions from the very inception of the proceedings and, despite the same, did not include the concerned Bank official in their list of defence witnesses. It is contended that no satisfactory explanation has been furnished as to why the witness was sought to be introduced only at the stage of final arguments.

16. Attention is also drawn to the observations of the learned Trial Court regarding the stand taken by petitioner No.2 at different stages of the proceedings. It is submitted that whereas the application describes the cheque as having been issued towards advance payment, petitioner No.2, while deposing as DW-1, described the cheque as a security cheque for the balance payment of the goods purchased from the respondent. It is further submitted that in his statement under Section 251 Cr.P.C., petitioner No.2 had stated that the cheque was handed over in a blank signed condition. The respondent, therefore, submits that the present application is an attempt to improve upon the defence after conclusion of the evidence.

17. It is further submitted that an earlier application under Section 311 Cr.P.C. had already been declined and repeated applications at an advanced stage of trial ought not to be permitted, particularly when they have the effect of delaying conclusion of proceedings. Learned counsel accordingly prays that the present petition be dismissed.

ANALYSIS AND FINDINGS

18. This Court has heard learned counsel for the parties and perused the material placed on record.

19. Section 311 Cr.P.C. empowers the Court to summon or examine a witness where his evidence appears to be essential for the just decision of the

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case. Though such power cannot be invoked merely to prolong the proceedings or to fill up lacunae, relevant evidence ought not to be excluded solely on account of the stage at which it is sought to be produced.

20. In the present case, the petitioners seek examination of the concerned HDFC Bank official for the limited purpose of proving the official record pertaining to the date on which stop-payment instructions in respect of cheque No. 000455 were recorded. While the cheque relied upon by the respondent bears the date 15.07.2021, the petitioners rely upon a Bank certificate reflecting stop-payment instructions dated 10.08.2019. Thus, the factum of stop-payment and the date on which such instructions were recorded are distinct aspects. Whether the said record ultimately supports the defence of the petitioners is a matter of appreciation of evidence and need not be determined at this stage.

21. This Court is conscious that the application was moved at the stage of final arguments and that an earlier application under Section 311 Cr.P.C. had also been declined. However, considering that the petitioners seek to examine only one independent Bank official for proving a specific official record, this Court is of the view that one final opportunity may be granted in the interest of justice. Any prejudice caused to the respondent on account of the delay can be adequately safeguarded by restricting the petitioners to one effective opportunity and permitting the respondent to cross-examine the said witness.

22. Accordingly, the present petition is allowed and the impugned order dated 31.08.2026 is set aside. The petitioners are granted one effective opportunity to examine the concerned Branch Manager/authorised official of HDFC Bank.

23. The petitioners shall take all necessary steps for summoning the

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aforesaid witness and production of the requisite record within the time granted by the learned Trial Court and shall not seek any adjournment for the said purpose. In case the opportunity is not availed for reasons attributable to the petitioners, their right to examine the said witness shall stand closed without any further opportunity.

24. The matter is stated to be listed before the learned Trial Court for final arguments on 07.10.2026. The parties shall appear before the learned Trial Court on the said date. The learned Trial Court shall fix a short date for examination of the aforesaid witness and thereafter proceed with the matter expeditiously.

25. It is clarified that this Court has not expressed any opinion on the authenticity or evidentiary value of the Bank record, the nature of the cheque, or the existence of any legally enforceable debt or liability. All such issues are left open for consideration by the learned Trial Court on their own merits.

26. The petition, along with pending application(s), if any, stands disposed of in the aforesaid terms.

27. A copy of this order be sent to the learned Trial court for necessary information and compliance.

28. The order be uploaded on the website forthwith.

MADHU JAIN, J

OCTOBER 6, 2026/b/*P*

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