

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

**CRL.M.C. 2445/2021, CRL.M.A. 16082/2021 (Stay) and
CRL.M.A. 16083/2021 (exemption),
CRL.M.C. 2446/2021, CRL.M.A. 16084/2021 (Stay) and
CRL.M.A. 16085/2021 (exemption) and
CRL.M.C. 2438/2021 and CRL.M.A. 16048/2021 (Stay)**

Reserved on : 10.12.2021
Date of Decision : 31.01.2022

IN THE MATTER OF:

M/S RAYAPATI POWER GENERATION PVT. LTD. AND ANR
..... Petitioners
Through: Mr. Dhruv Dwivedi and Mr. Sheikh
Bakhtiyar, Advocates
Versus
INDIAN RENEWABLE ENERGY AGENCY LTD (IREDA)
..... Respondent
Through:

M/S RAYAPATI POWER GENERATION PVT. LTD. AND ANR
..... Petitioners
Through: Mr. Dhruv Dwivedi and Mr. Sheikh
Bakhtiyar, Advocates
Versus
INDIAN RENEWABLE ENERGY AGENCY LTD (IREDA)
..... Respondent
Through:

M/S RAYAPATI POWER GENERATION PVT. LTD. AND ANR
..... Petitioners
Through: Mr. Dhruv Dwivedi and Mr. Sheikh
Bakhtiyar, Advocates
Versus
INDIAN RENEWABLE ENERGY AGENCY LTD (IREDA)
..... Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

J U D G M E N T

MANOJ KUMAR OHRI, J.

1. The present petitions have been filed under Section 482 Cr.P.C. on behalf of the petitioners seeking quashing of Criminal Complaint Nos. 20581/2016, 15489/2016 and 941/2017 respectively, pending before the learned Metropolitan Magistrate, Patiala House Courts, Delhi, qua the petitioners. While petitioner No.1 is the accused Company, petitioner No.2 is its Managing Director/Authorized Signatory.

2. The above-noted petitions arise out of different complaints filed under Section 138 read with Sections 141/142 of the Negotiable Instruments Act, 1881 (hereinafter, referred to as '*the N.I. Act*') and involve the same parties. Accordingly, the petitions are taken up for hearing together and shall be disposed of by a common order.

3. Learned counsel for the petitioners submits that the impugned criminal complaints are not maintainable qua the petitioners, as the relevant legal demand notices were issued after the expiry of statutory period of 30 days set out under the N.I. Act. It is contended that the said notices being invalid, the necessary ingredients of Section 138(b) N.I. Act are not satisfied and thus, the impugned criminal complaints ought to be quashed.

4. I have heard the submissions made as well as perused the material placed on record.

5. A reading of the case records would show that the respondent/complainant is a Company engaged in the business of lending of

financial assistance for renewable energy projects. Pursuant to the petitioner Company approaching it for a loan facility, a transaction was entered into between the complainant Company and the petitioner Company, in due course whereof, three cheques dated 31.03.2015, 30.09.2015 and 30.06.2016 respectively were issued by the petitioner Company in favor of the complainant Company towards partial discharge of its liability. However, the cheques in question got dishonored upon presentation and were returned vide return memos dated 29.05.2015, 19.10.2015 and 21.07.2016 respectively with the remarks '*drawer sign differ*' and '*no funds*'.

The complainant Company is stated to have received return statements from its Bank on 19.06.2015, 29.10.2015 and 27.07.2016 in respect of the aforesaid cheques, indicating that the same had got dishonored. Consequently, it posted legal demand notices on 07.07.2015, 28.11.2015 and 26.08.2016 respectively calling upon the petitioner Company to repay the debt owed within 15 days of receipt of the notices. When the due amount was not repaid within the statutory period, the impugned criminal complaints came to be filed against the petitioners, who as noted above are the accused Company and its Managing Director/Authorized Signatory respectively.

The details of the aforesaid complaints are summarized in the table given below:-

Criminal Complaint No.	Date of Cheque	Date of Return Memo	Date of receipt of Return Statement	Date of posting of Legal Notice
20581/2016	31.03.2015	29.05.2015	19.06.2015	07.07.2015
15489/2016	30.09.2015	19.10.2015	29.10.2015	28.11.2015
941/2017	30.06.2016	21.07.2016	27.07.2016	26.08.2016

6. In the criminal complaints, it was alleged that the complainant Company had sanctioned and disbursed a loan facility of Rs.2014.00 lacs to

the petitioner Company, as per the loan agreement dated 07.12.2005. In order to discharge its liability, the petitioner Company had issued various cheques, of which 3 cheques, as mentioned in the complaints, got dishonored and the factum of dishonor of the cheques was notified to the complainant Company by its Bank vide the aforesaid return statements.

Insofar as petitioner No. 2 is concerned, it was specifically alleged that he is/was the Managing Director/Authorized Signatory of the petitioner Company, who had signed the cheques in question. It was further alleged that at the relevant time, petitioner No. 2 was not only in-charge and responsible for the day-to-day affairs and business of the petitioner Company, but he had also negotiated the loan transaction in question on the Company's behalf and guaranteed repayment of the loan.

7. The short issue involved in the present case is whether or not the legal demand notices issued by the complainant Company were sent within the limitation period of thirty days prescribed under Section 138(b) N.I. Act.

8. Considering the issues involved in the present case, it is deemed profitable to first extract Section 138(b) N.I. Act hereunder, which enunciates as follows:-

“138. ...Provided that nothing contained in this section shall apply unless—

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(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”

(emphasis added)

9. To recapitulate briefly, Section 138 N.I. Act provides punishment for commission of an offence relating to dishonor of cheques, subject to the conditions set out in the proviso thereto. Clause (b), in particular, of the

proviso prescribes that in order to establish commission of an offence under Section 138 N.I. Act, a legal demand notice ought to have been issued to the accused within 30 days of the receipt of information by the complainant that the cheque was returned as unpaid.

10. Needless to state, the N.I. Act, being a penal statute, warrants strict construction and as a result, before attributing criminal liability on an accused under the N.I. Act, the necessary ingredients of the offence alleged to have been committed are required to be satisfied.

11. In the present case, the primary issue raised by learned counsel for the petitioners during the course of submissions is that the legal demand notices were not issued by the complainant Company within 30 days of the receipt of information regarding dishonor of the cheques, i.e., from the date of the return memos, and thus the complaints are not maintainable. On the other hand, the complainant Company maintains that it was intimated of the dishonor of the cheques in question only when its Bank sent the aforesaid return statements, and the legal demand notices were issued within 30 days thereafter.

12. Under similar factual matrix, the Supreme Court in Munoth Investments Ltd. v. Pattukola Properties Ltd. and Another reported as **(2001) 6 SCC 582**, has interpreted the law contained in Section 138(b) N.I. Act, as it stood prior to the amendment in 2002, as follows:-

“5. In our view, the High Court committed material irregularity in not referring to the aforesaid evidence which was recorded by the Metropolitan Magistrate. Section 138(b) of the Act inter alia provides that the payee has to make demand for the payment of money by giving a notice “to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid”. So fifteen days are to be counted from the receipt of information regarding the return of the cheque as unpaid. In the present case, it is the say of the complainant that

the cheque was presented for encashment on 12th; it was returned to the Bank on 13th and information was given to the complainant only on 17th, as 14th, 15th and 16th were Pongal holidays. The learned counsel fairly pointed out that in the complaint it has been stated that the complainant had received intimation with regard to the return of the said cheque from his banker on 13-1-1994. However, he submitted that this is an apparent mistake and for explaining that mistake the appellant has led the evidence before the trial court. Undisputedly, he pointed out that in the State of Tamil Nadu, 14-1-1994 to 16-1-1994 there were Pongal holidays and, therefore, the appellant came to learn about the dishonour of his cheque on 17-1-1994.”

13. Note is also taken of the decision in N. Parameswaran Unni v. G. Kannan and Another reported as (2017) 5 SCC 737, where while commenting on Section 138(b) N.I. Act, as it stood prior to the amendment in 2002, the Supreme Court has opined thus:-

“11. A bare reading of Section 138 of the NI Act indicates that the purport of Section 138 is to prevent and punish the dishonest drawers of cheques who evade and avoid their liability. As explained in clause (b) of the proviso, the payee or the holder of the cheque in due course is necessarily required to serve a written notice on the drawer of the cheque within fifteen days from the date of intimation received from the bank about dishonour.”

(emphasis added)

14. To appreciate whether or not the day on which information regarding dishonor of cheque is received by the complainant is to be included in calculation of limitation period under Section 138(b) N.I. Act, it is deemed expedient to allude to the decision rendered in Econ Antri Limited v. Rom Industries Limited and Another reported as (2014) 11 SCC 769, where a three-Judge Bench of the Supreme Court, while answering a reference, rejected the contention that use of two different words in Section 138 N.I. Act, i.e. ‘from’ and ‘of’, is indicative of different meanings and resolved the conflict arising from discordant views taken in Saketh India Ltd. and Others v.

India Securities Ltd. reported as (1999) 3 SCC 1 and SIL Import, USA v. Exim Aides Silk Exporters, Bangalore reported as (1999) 4 SCC 567 in the following terms:-

“26. We have extensively referred to Saketh. The reasoning of this Court in Saketh based on the above English decisions and decision of this Court in Haru Das Gupta which aptly lay down and explain the principle that where a particular time is given from a certain date within which an act has to be done, the day of the date is to be excluded, commends itself to us as against the reasoning of this Court in SIL Import, USA where there is no reference to the said decisions.

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28. The counsel, however, submitted that using two different words “from” and “of” in Section 138 at different places clarifies the intention of the legislature to convey different meanings by the said words. He submitted that the word “of” occurring in Sections 138(c) and 142(b) of the NI Act is to be interpreted differently as against the word “from” occurring in Section 138(a) of the NI Act. The word “from” may be taken as implying exclusion of the date in question and that may well be governed by the General Clauses Act, 1897. However, the word “of” is different and needs to be interpreted to include the starting day of the commencement of the prescribed period. It is not governed by Section 9 of the General Clauses Act, 1897. Thus, according to the learned counsel, for the purposes of Section 142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting date on which the cause of action arises should be included for computing the period of 30 days.

29. We are not impressed by his submission...

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34. As the Limitation Act is held to be not applicable to NI Act, drawing parallel from Tarun Prasad Chatterjee where the Limitation Act was held not applicable, we are of the opinion that with the aid of Section 9 of the General Clauses Act, 1897 it can be safely concluded in the present case that while calculating the period of one month which is prescribed under Section 142(b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. It is not possible to agree with the counsel for the respondents that the use of the two different words “from” and “of” in Section 138

at different places indicates the intention of the legislature to convey different meanings by the said words.

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39. In view of the above, it is not possible to hold that the word “of” occurring in Section 138(c) and 142(b) of the NI Act is to be interpreted differently as against the word “from” occurring in Section 138(a) of the NI Act; and that for the purposes of Section 142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting day on which the cause of action arises should be included for computing the period of 30 days. As held in Fallon, ex p the words “of”, “from” and “after” may, in a given case, mean really the same thing. As stated in Stroud’s Judicial Dictionary, Vol. 3, 1953 Edn., Note (5), the word “of” is sometimes equivalent of “after”.

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42. Having considered the question of law involved in this case in proper perspective, in the light of relevant judgments, we are of the opinion that Saketh lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is prescribed under Section 142(b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that SIL Import, USA does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to the view taken in Saketh by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly.”

(emphasis added)

15. The view taken in Econ Antri (Supra) has been reiterated and applied by the Supreme Court in Rameshchandra Ambalal Joshi v. State of Gujarat and Another reported as **(2014) 11 SCC 759**.

16. Recently, a Co-ordinate Bench of this Court in Simranpal Singh Suri v. State and Another reported as **2021 SCC OnLine Del 236** also discussed the issue of limitation at length and relied upon the decision in Econ Antri (Supra) to decide the issues arising under Sections 138/142 N.I. Act.

17. In view of Econ Antri (Supra), a decision albeit rendered in relation to Section 138(c) and Section 142(b) N.I. Act, it is discernible that the words ‘of’

and 'from' used under Section 138 N.I. Act do not imply different meanings. It is safe to infer that the use of the word 'of' in Section 138(b) N.I. Act does not imply either that the day on which information regarding dishonor of cheque is received by the complainant from the bank is to be included while computing the limitation period for issuance of a valid legal notice.

The legal position, as culled out from the judicial dicta referred to hereinabove, is that while computing the limitation period of 30 days prescribed under Section 138(b) N.I. Act for issuance of a valid legal notice, the day on which intimation is received by the complainant from the bank that the cheque in question has been returned unpaid has to be excluded.

18. Applying the law to the facts of the present case, it is noted that the petitioner relies on the dates of return memos, i.e., dates of return of cheques in question, to compute the period of 30 days prescribed in the statute and contends that the legal demands notices were not issued in time. To the contrary, the complainant relies on the dates of receipt of return statements from its Bank, i.e., the dates on which intimation was received regarding dishonor of the cheques in question, to submit that the legal demand notices were issued within the statutory period.

19. Considering the decision in Munoth Investments (Supra) where the Supreme Court took into account the date of receipt of debt advice by the complainant to decide the issue of limitation instead of the date of return of the cheques in question, the ratio of the decision in Econ Antri (Supra) and the material placed on record in the present case to indicate that the information regarding dishonor of the cheques in question came to the notice of the complainant Company vide the return statements, this Court is of the *prima facie* opinion that the legal notices were posted by the complainant Company within 30 days of the receipt of information from its Bank regarding dishonor

of the cheques in question and were not time-barred. The contentions raised on behalf of the petitioner do not weigh with this Court and are accordingly rejected. However, at the same time, the defence that the complainant Company obtained knowledge of the dishonor of the cheques in question prior to the receipt of return statements from its Bank remains available to the petitioners but the same being a question of fact shall be a matter of trial.

20. Accordingly, the petitions are dismissed. Miscellaneous applications are disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 31, 2022/na