



IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment reserved on: 07.02.2026*
Judgment pronounced on: 01.07.2026
+ **CRL.M.C. 1016/2020 & CRL.M.A. 4079/2020**

ANIL SAYALPetitioner

versus

APACE TRANSCO PVT. LTD. & ORS. Respondents
+ **CRL.M.C. 1019/2020**

M/S FLYWHEEL LOGISTICS PVT. LTD.Petitioner

versus

APACE TRANSCO PVT. LTD. & ORS. Respondents
+ **CRL.M.C. 5307/2022 & CRL.M.A. 21118/2022**

LUV BHARDWAJPetitioner

versus

**M/S APACE TRANSCO PVT. LTD.
& ORS.** Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Namit Suri and Ms. Tanya Sharma,
Adv. in CRL.M.C. 1016/2020 & CRL.M.C.
1019/2020
Mr. Sameer Rohtagi, Adv. in CRL.M.C.
5307/2022



For the Respondent : Mr. Kartik Vashisht, Adv. for R-1 and R-2

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. Through the present petitions, the petitioners essentially seek quashing of proceedings emanating from CC No. 2302/2017, which was filed by Respondent Nos. 1 and 2 against the petitioners for offence under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act'). Further, the following orders have also been challenged:

- i. order dated 29.11.2018 passed in the said proceedings, whereby notice under Section 251 of the Code of Criminal Procedure, 1973 ('CrPC') was framed;
- ii. order dated 30.11.2019 passed in the said proceedings, whereby the learned Trial Court closed the right of the petitioner M/s. Flywheel Logistics Pvt. Ltd. to cross examine the complainant witness;
- iii. order dated 31.01.2020 passed in the said proceedings, whereby the statement of the petitioner Anil Sayal was recorded under Section 281(1) read with Section 313 of the CrPC.



2. Shorn of unnecessary details, the brief facts of the case are as under:

2.1. The present dispute essentially relates to the subject complaint which was filed by Respondent Nos.1 and 2 against the petitioners for the offence under Section 138 of the NI Act. Respondent No.1/complainant company is involved in business of international freight forwarders, transporters and logistics solution providers, and Respondent No.2 is the director of Respondent No.1. The petitioner M/s. Flywheel Logistics Pvt. Ltd. is Accused No.1 in the complaint, which was availing the service of the complainant company, and the other two petitioners were the directors of the accused company.

Prior to filing of complaint

2.2. As certain payments were due from the accused persons on account of various services taken by them from the complainant company/ Respondent No.1, Respondent No.2 (director of complainant company) and another director of the complainant company called upon the petitioner Anil to arrange the required sum.

2.3. ***1st Settlement*** : After lot of discussion, a Memorandum of Understanding ('MOU') dated 25.02.2017 was entered into between the two companies. In terms of the said MOU, three post dated cheques were issued on behalf of the accused company.

2.4. ***2nd Settlement*** : On the alleged request of the accused Anil and Luv, another MOU dated 15.06.2017 in furtherance and continuation



of the previous MOU was entered into between the parties and the date of payment of previous due amount was extended from 15.06.2017 to 10.07.2017. Three fresh cheques were issued for balance on that date, that is, ₹2,97,49,240/-, in favour of the complainant company by the accused Anil on behalf of the accused company in purported consultation with the accused Luv, and the previous cheques were returned. The said MOU provided that if the accused company failed to procure or issue a Letter of Credit in favour of the complainant company for the outstanding amount, it would be entitled to present the cheques issued under the said MOU.

Dishonour of impugned cheques and filing of subject complaint

2.5. As the accused failed to act in accordance with MOU dated 15.06.2017, the impugned cheques were presented for encashment on 08.08.2017. The same were returned unpaid by the bank with the reason- '*Kindly Contact Drawer/ Drawee bank and please present again*'.

2.6. Some emails were exchanged between the complainant company and the petitioner Anil where he apparently apologised for dishonour of cheques and informed the complainant company that he was in the process of arranging funds and requested time till end of August, 2017 to clear the outstanding amount. There is no mention of the said emails in the complaint.



2.7. In the end of August, 2017, the petitioner Anil requested the complainant company to wait for some more time and to present the cheques in the first week of September. There is no mention of this call in the complaint either.

2.8. On 06.09.2017, the impugned cheques were presented again, however, they were again dishonoured on presentation. Thereafter, a statutory legal notice dated 29.09.2017 was sent under the provisions of the NI Act. Subsequently, on 08.11.2017, the subject complaint was filed.

After filing of complaint

2.9. **3rd Settlement** : On 01.05.2018, the complainant company and the accused company entered into consent terms wherein liability of the accused company was admitted to be ₹3,36,16,641.20 (including interest). It was agreed that the consent terms shall remain valid for a period of 53 days from the date of execution (that is, 01.05.2018) till 23.06.2018.

The terms indicate that the parties agreed that the proceedings under NI Act were to be put on hold after briefing the Court about the settlement and ensuing negotiations. The liability of the accused company to the tune of the consent admitted liability (that is, ₹3,36,16,641.20) stood transferred to the books of M/s. Flywheel Logistics Solutions Private Limited ('FLSPL'), which is a sister concern of the accused company. It was agreed that the right of the



complainant company against the accused company was not extinguished and in the event of default, the complainant company would have all the legal rights to claim the aforesaid amount from the accused company.

It was also agreed that the complainant company shall have all rights to initiate proceedings against FLSPL for the claim in the event of default. Seven security cheques aggregating to a sum of ₹3,36,16,641.20 were handed over under the said consent terms, and it was agreed that the same will be payable on 23.06.2018.

2.10. The complainant company withdrew its claim against the accused company in the proceedings before NCLT on 10.05.2018, and on 30.05.2018, the learned Trial Court was informed of the settlement between the parties for the first time.

2.11. On 27.06.2018, the complainant company issued a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 against FLSPL, however, by way of notice of dispute dated 06.07.2018, the claim was contested on the ground that the complainant company was not an operational creditor as it had never provided any services to FLSPL. Association with the accused company was also denied and it was contested that the consent terms had been executed under duress and coercion.

2.12. In the intervening period, the matter was adjourned on a number of occasions for the purpose of verification of settlement.



2.13. **4th Settlement** : The complainant company and FLSPL entered into *another* consent terms dated 03.08.2018. Thereunder, it was agreed that the terms shall remain valid till 10.09.2018, that is, the date of execution.

The liability of ₹3,36,16,641.20 was admitted in the said consent terms by FLSPL and it was agreed that all the legal rights of the complainant company were “*temporarily suspended*” during subsistence of the said terms subject to action already taken under Section 138 of the NI Act by the complainant company.

Seven new security cheques were also issued under the consent terms and it was agreed that in the event of default, the complainant company was to have absolute discretion and right to pursue all remedies available to them.

2.14. Admittedly, the cheques handed under the consent terms dated 03.08.2018 were never presented for encashment.

2.15. On 04.08.2018, the learned Trial Court was informed about the settlement. Statement of the accused Anil was recorded where he asserted that the settlement amount would be paid by FLSPL. The matter was adjourned for verification of payment, and thereafter, multiple adjournments were granted as more time was sought to make payment.

2.16. In the order dated 29.11.2018, in the presence of the accused Luv and Anil, their counsel submitted before Court that payment



could not be made and the matter may be proceeded further. Notice under Section 251 of the CrPC was directed to be served upon the accused. The said order is impugned by the accused Luv and Anil.

2.17. Order dated 30.11.2019 is impugned by the accused company as its right to cross-examine the complainant witness was closed therein.

2.18. Essentially aggrieved by the continuation of the proceedings emanating from the subject complaint and the aforesaid orders respectively, the petitioner accused preferred their separate petitions.

Submissions

3. The learned counsel for the petitioners submitted that the dispute between the petitioners as well as Respondent No. 1 has amicably been settled, and consequently the complaint stood compounded. They submitted that on 03.08.2018, Respondent No. 1 and FLSPL entered into consent terms *vide* which FLSPL agreed to settle Respondent No. 1's claim from the accused company thereby acquiring liability on itself.

4. They submitted that the Consent terms settlement agreement was duly filed by Respondent No. 1 with the learned Trial Court on 04.08.2018 and consequently there was no occasion to continue the complaint case bearing CC No. 2302/2017 (renumbered as CT. No. 7269/2019) against the petitioners. They relied upon the judgment passed by the Hon'ble Apex Court in the case of ***Gimpex Pvt. Ltd. v. Manoj Goel*** : 2021 SCC OnLine SC 925 and argued that once the



compromise deed is agreed upon, the original complaint is liable to be quashed and the parties must proceed with the remedies available in law under the settlement agreement. They consequently submitted that after recording the settlement and compounding the same *vide* order dated 04.08.2018, the learned Trial Court became *functus officio* to continue with the original complaint filed by Respondent No. 1 prior to entering into the Settlement Agreement and unequivocally agreeing to transfer the debts of the accused company as the said original complaint could not have been sustained pursuant to the settlement between the parties. Reliance is also placed on the judgment in ***Vinod Bansal v. Intec Capital Ltd.* :2024 SCC OnLine Del 3245.**

5. They submitted that on 01.05.2018, settlement consent terms were executed between both the parties and the acquiring party which issued cheque to settle the claim of Respondent No.1. They submitted that the same was further recorded in a subsequent consent term signed bilaterally by FLSPL on 03.08.2018 and the same was also backed by cheques from FLSPL. They submitted that despite the same Respondent No. 1 chose not to present the above cheques. They further submitted that the Settlement consent terms signed between the FLSPL and Respondent No.1 specifically provides for remedies available to Respondent No. 1, however, the same has never been pursued.

6. They submitted that none of the settlement agreements – dated 01.05.2018 and 03.08.2018 have been revoked till date by any of the



parties. They submitted that Respondent No. 1 even categorically accepted the settlement and even withdrew its claim against the accused company filed before NCLT and the same was also recorded in the order dated 10.05.2018 passed by NCLT.

7. They further submitted that the accused company was admitted into CIRP *vide* order dated 15.01.2020 and was then ordered into liquidation *vide* order dated 22.03.2021 by the NCLT and was finally dissolved by order dated 11.11.2022 by the NCLT. They submitted that the entire process took approximately 3 years and yet during the entire course of time, Respondent No.1 never filed a claim with the Interim Resolution Professional/Resolution Professional or the Liquidator of the accused company thereby admitting that it had no claim from the accused company.

8. They submitted that Respondent No. 1, by agreement and conduct had accepted FLSPL as its debtor in line with the terms of the settlement agreement dated 03.08.2018. They submitted that at first Respondent No. 1 issued a demand notice to FLSPL under Section 8 of the Insolvency and Bankruptcy Code claiming to be the Operational Creditor of FLSPL. They submitted that Respondent No. 1 did not revoke the last settlement dated 03.08.2018 and pursued its remedy against FLSPL before NCLT on the basis of the last settlement dated 03.08.2018. They consequently submitted that there existed no liability of the petitioners or the accused company since the same had already been taken over by FLSPL by entering into agreement and



issuing fresh cheques. They submitted that the same is evident from demand notice dated 12.12.2018 and the petition under Section 9 of the IBC as well as order dated 01.02.2019 passed by the NCLT in claim filed by Respondent No. 1 against FLSPL.

9. They further submitted that FLSPL was incidentally admitted for CIRP on a claim made by another Operational Creditor (M/s Kapoor Logistics) *vide* order dated 02.09.2019 and submitted that Respondent No. 1 also duly filed their claim dated 21.09.2019 as Operational Creditor with Mr. Suresh Goyal the Interim Resolution Professional appointed by NCLT.

10. The learned counsel for Respondent Nos. 1 and 2 vehemently contested the submissions made on behalf of the petitioners. He submitted that no payment whatsoever was received towards the outstanding liability and the offence under NI Act stood completed on the date when the accused failed to honour the subject cheques.

11. He submitted that the matter involves disputed questions of fact as the issue is in relation to interpretation of the consent terms, which is a matter to be adjudicated during course of trial. He submitted that such issues fall outside the scope of inherent jurisdiction of this Court.

12. He submitted that the decision in *Gimpex Pvt. Ltd. v. Manoj Goel (supra)* is not applicable to the facts of the present case as unlike the dispute herein, that matter involved parallel prosecutions where the second set of complaints arose from a compromise that was effected to



resolve the first set of complaints. He submitted that in this case, the complaint under NI Act was kept in abeyance as per the consent terms between the parties and the consent terms provide for a specific clause stating that all legal rights were to remain *temporarily* suspended.

13. He submitted that the matter is at the stage of defence evidence and prosecution was launched only on the basis of initial cheques which render this case materially different from *Gimpex Pvt. Ltd. v. Manoj Goel* (*supra*). He submitted that the accused persons had requested the complainant company to not present the cheques under the consent terms for encashment, however, thereafter, they appeared before the Magistrate and claimed trial ensuring that the said cheques (issued under consent terms) became stale.

14. He further submitted that as the cheques issued under the consent terms dated 01.05.2018 and 03.08.2018 were never deposited by the complainant company, no fresh cause of action ever arose under the settlement cheques and the consent terms expressly preserved the NI Act proceedings.

15. He submitted that the subject complaint in the present case was neither compounded nor withdrawn. Reliance was placed on the case of *Dayawati v. Yogesh Kumar Gosain* : (2017) SCC OnLine Del11032, where another Bench of this Court had opined that complaints under Section 138 of the NI Act are withdrawn/compounded *only* after receipt of the entire settlement amount. He submitted that while the settlement was brought to the



notice of the Trial Court and multiple adjournments were sought on pretext of delayed payments, however, the trial court record indicates that no payment was ever made, which led to issuance of notice under Section 251 of the CrPC.

ANALYSIS

16. At the outset, it is relevant to note that this Court can quash complaints under the NI Act at the pre-trial stage in the exercise of its inherent jurisdiction under Section 482 of the CrPC if such unimpeachable material is brought forth by the accused persons which indicates that they were not concerned with the issuance of the cheques or that no offence is made out from the admitted facts. The Hon'ble Apex Court in the case of ***Rathish Babu Unnikrishnan v. State (NCT of Delhi) : 2022 SCC OnLine SC 513*** had discussed the scope of interference by the High Court against the issuance of process under the NI Act as under:

“8. The issue to be answered here is whether summons and trial notice should have been quashed on the basis of factual defences. The corollary therefrom is what should be the responsibility of the quashing Court and whether it must weigh the evidence presented by the parties, at a pre-trial stage.

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16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is



also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an unmerited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited.”

(emphasis supplied)

17. In line with the dictum of the Hon’ble Apex Court in ***Rathish Babu Unnikrishnan v. State (NCT of Delhi)*** (*supra*), while exercising the power under Section 482 of the CrPC to quash a complaint at the pre-trial stage, it is pertinent for this Court to examine whether the factual defence is of such impeachable nature that the entire allegations made in the complaint is disproved.



18. In the present case, the petitioner accused have not sought quashing of the complaint by disputing that *ex facie* no case is made out against them from the complaint, but rather, they have asserted that quashing of the subject complaint is merited on the basis of the consent terms dated 01.05.2018 and 03.08.2018. It is their case that the debt was transferred to a sister concern of the accused company and having entered into settlements *qua* the liability, it was not open to the complainant to continue with the original complaint under Section 138 of the NI Act.

19. Before this Court can proceed to examine the merits of the said contentions, it is thus imperative to take note of the relevant excerpts of the consent terms.

20. The relevant portion of the consent terms dated 01.05.2018 are as under:

“3)...That, this consent terms are valid for a period of 53 days from the date of execution i.e. from 01.05.2018 to till 23.06.2018 (the aforesaid shall hereinafter for the sake of brevity be referred to as "moratorium period"), and all the legal rights and remedies available to parties including but not limited to enforcing any security/ guarantee, criminal proceedings etc. for realization of the amount due are temporary suspended subject to the action already taken U/s 138 by the operational creditor.

** Operational creditor undertakes that all the proceedings U/s 138 of NI Act, 1881 already initiated, will be put on hold and court be briefed about the settlement or negotiations are under way.*

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UNDERSTANDING FOR CONSENT TERMS

9) That, there was a meeting held on 16.03.2018 between Sh Anil Syal, CEO and Key managerial personnel and representing both



corporate debtors and Sh Prakash Chand Sharma, representing operational creditor along with Sh Harminder Singh, another Director of operational creditor. Sh Anil Syal, has informed the representatives of operational creditor that corporate debtors has all the intentions to pay the admitted claim in a time bound manner. Further, Sh Anil Syal has offered to operational creditor, to transfer the liability of corporate debtor -1 to the tune of Rs. 3,36,16,641.20 in to the books of accounts of Corporate debtor-2 and total liability of operational creditor towards corporate debtor-1 will be transferred in to the books of corporate debtor - 2....

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14) That, corporate debtors, jointly and severally have offered to settle the admitted outstanding due to the operational creditor, and operational creditor has accepted in full and final settlement of all its claims against corporate debtors.

*(a) Corporate debtor -1 (M/s Flywheel Logistics Private Limited) and corporate debtor-2 (Flywheel Logistics Solutions Private Limited) viz shall totally, **jointly and severally** for and behalf of the corporate debtors:*

(i) Handover 7 (seven) post-dated cheques dated 23rd June 2018, as - per Annexure-5 hereto totally aggregating to a sum of Rs. 3,36,16,641.20/- issued in favour of Apace Transco Private Limited (operational creditor) on or before signing of the consent terms. The said cheques will be dated and payable on 23rd June 2018 ...

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16. Event of default:

In the event of cheques as mentioned in Annexure-5 for a sum of Rs. 3,36,16,641.20/- issued jointly and severally for and on behalf of the corporate debtors and Mr. Anil Syal- Authorised representative and Key managerial personnel and representing both corporate debtors is returned un-paid for any reason whatsoever - the same shall be considered as an "event of default" and be deemed default committed jointly and severally by the corporate debtors and Mr. Anil Syal- Authorised representative and Key managerial personnel and representing both corporate debtors

17. Legal Remedies

a) Notwithstanding anything contained in any law; in the event of default i.e. in the event of return of cheque(s) mentioned in Annexure-5 totalling Rs. 3,36,16,641.20/- as un-paid for any reason whatsoever - the same shall, without any furtherance to



parties, be considered as breach of the consent terms. Operational creditor or its assigns shall in such event have the absolute right and discretion to pursue all such remedies available to operational creditor or its assigns as under law including but not limited to remedies for breach of the consent terms and/ or remedies under the Insolvency and Bankruptcy code, 2016

It is agreed by and between the parties that in the event of default; the operational creditor has all the legal rights to initiate the fresh proceedings against M/s Flywheel Logistics Solutions Private Limited (Corporate debtor-2) for total claim of Rs. 3,36,16,641.20/- along with further interest and/ or against the Flywheel Logistics Solutions Private Limited (corporate debtor-1) as corporate guarantor for the equivalent sum of money along with further interest or balance of claim (net of recovery)

It is further agreed that total claim to be recovered from corporate debtor -2 is Rs. 3,36,16,641.20/- along with further interest and corporate guarantee from corporate debtor 1 for sum of Rs. 3,36,16,641.20/- along with further interest being admitted and accepted jointly and severally by M/s Flywheel Logistics Private Limited (Corporate debtor- 1), Flywheel Logistics Solutions Private Limited (corporate debtor-2) - Corporate debtors shall not for any reason whatsoever dispute or be entitled to dispute the "consent admitted liability" of operational creditor

b) It is admitted by and between the parties that the total settlement consideration of Rs. 3,36,16,641.20 is now being considered as total claim due from corporate debtor -2 (Flywheel Logistics Solutions Private Limited) along with a legal recourse on Corporate debtor-1 (M/s Flywheel Logistics Private Limited) and is a discount to the amount(s) admittedly due and payable by corporate debtor-1 and corporate debtor -2.

c) The operational creditor, notwithstanding the admitted outstanding due and payable by Corporate debtor -2, has agreed to restrict the settlement amount as reflected in the settlement consideration on the condition that the 7 (Seven) post-dated cheques all dated 23rd June 2018, for an amount of Rs. 3,36,16,641.20 shall be honoured without any further reference to parties, on its deposit by operational creditor on 23rd June 2018.

d) However, in the event of default i.e. in the event of return of cheques mentioned in Annexure-5, towards total sum of Rs. 3,36,16,641.20/- or balance thereof as unpaid for any reason



whatsoever the parties admit and agree that the operational creditor shall be entitle to receive and/ or recover from, corporate debtors, jointly and severally the entire principle due and payable as specifically as per the consent admitted liability, a sum of Rs. 3,36, 16,641.20/- along with further Simple Interest rate @12% p.a. with monthly rests from the 23.06.2018 and/ or as a legal recourse on Corporate debtor -1, a sum of Rs. 3,36,16,641.20/- along with Simple Interest rate @12% p.a. with monthly rests from 23.06.2018. The calculation of revised interest doesn't affect the validity of Demand notice in Form 3 issued to Corporate Debtors. The settlement consideration as set out in these consent terms shall in such event in no way be deemed a waiver of its claim(s) as set out specifically in Demand notice in Form 3 issued to Corporate Debtors.

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*18. Full and Final Settlement of all the claims
In the even the post dated cheques dated 23.06.2019 for ₹ 3,36,16,641.20/-, is honoured on its deposit by operational creditor and/or its assigns as contemplated between the parties; the operational creditor undertakes to withdraw all the complaints/ criminal cases or any application pending, if any, before the NCLT Delhi for the said claims.”*

(emphasis supplied)

21. The relevant portion of the consent terms dated 03.08.2018 are as under:

“2) That the present consent terms dated 03.08.2018 is part and parcel and is to be read with consent terms dated 01.05.2018. That, present consent terms dated 03.08.2018 are valid from the date of execution i.e. from 03.08.2018 to till 10.09.2018 (the aforesaid shall hereinafter for the sake of brevity be referred to as "moratorium period"), and all the legal rights and remedies available to parties including but not limited to enforcing any security/ guarantee, criminal proceedings etc. for realization of the amount due are temporary suspended subject to the action already taken U/s 138 by the operational creditor.

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11. Legal Remedies

a) Notwithstanding anything contained in any law; in the event of default totalling Rs. 3,36,16,641.20/- as un-paid for any reason whatsoever – the same shall, without any furtherance to parties, be considered as breach



of the consent terms. Operational creditor or its assigns shall in such event have the absolute right and discretion to pursue all such remedies available to operational creditor or its assigns as under law including but not limited to remedies for breach of the consent terms and/ or remedies under the Insolvency and Bankruptcy code, 2016.

It is agreed by and between the parties that, in the event of default the operational creditor has all the legal rights to initiate the fresh proceedings against M/s Flywheel Logistics Solutions Private Limited (Corporate debtor) for total claim of Rs. 3,75,00,00.00/- along with further interest or balance of claim (net of recovery)

It is further agreed that corporate debtor issued fresh cheques to make the security cheques totalling Rs.3,75,00,000.00/-

Copy of Security cheques issued by Corporate Debtor is enclosed as Annexure-3

b) It is further agreed that total claim, to be recovered from corporate debtor is Rs. 3,36,16,641.20/- along with further interest and corporate debtor shall not for any reason whatsoever dispute or be entitled to dispute the "consent admitted liability" of operational creditor

The operational creditor, notwithstanding the admitted outstanding due and payable by Corporate debtor, has agreed to restrict the settlement amount as reflected on the condition that the 7 (Seven) post-dated cheques on dated 23rd June 2018, for an amount of Rs. 3,36,16,641.20 shall be honoured without any further reference to parties, on its deposit by operational creditor on or after 10.09.2018.

c) However, in the event of default i.e. in the event of return of cheques towards total sum of Rs. 3,36,16,641.20/- or balance thereof as unpaid for any reason whatsoever the parties admit and agree that the operational creditor shall be entitle to receive and/or recover from, corporate debtor, jointly and severally payable as per the consent admitted liability, a sum of Rs. 3,75,00,00.00/- along with further Simple Interest rate @ 12% p.a. with monthly rests from the 10.09.2018. **The calculation of revised interest doesn't affect the validity of Demand notice in Form 3 issued to Corporate Debtor**

12. Full and Final settlement of all the claims

In the event the post-dated cheques dated 23.06.2018 for Rs. 3,36,16,641.20/-, is honoured on its deposit by operational creditor and/or its assigns as contemplated between the parties; **the operational creditor undertakes to withdraw all the complaints/ criminal cases or any application pending**, if any, before the NCLT Delhi for the said claims."

(emphasis supplied)



22. Even though there is a clause which provides for withdrawal of all complaints, perusal of the consent terms *prima facie* indicates that the parties had explicitly agreed that their legal rights and remedies were temporarily suspended *subject to* the action initiated under Section 138 of the NI Act, that is, the subject complaint.

23. The petitioners have however sought to impress upon this Court that once the parties enter into a settlement, it is not open to the complainant to pursue proceedings arising from the original complaint. The case of the petitioners is fulcrumed on the decisions in *Gimpex Pvt. Ltd. v. Manoj Goel (supra)* and *Vinod Bansal v. Intec Capital Ltd. (supra)*. In the opinion of this Court, the decisions in the said cases do not further the case of the petitioners in the present circumstances.

24. In *Gimpex Pvt. Ltd. v. Manoj Goel (supra)*, the Hon'ble Apex Court was seized with the issue of parallel prosecutions where the second set of complaints arose from a compromise that was effected to put a quietus to the first set of complaints. The complainant had filed the first set of complaints under Section 138 of the NI Act against dishonor of a number of cheques by Aanchal Cement Ltd. ('ACL'). A criminal complaint was also lodged by the complainant, in relation to which, one of the Directors of ACL was arrested. During the pendency of the bail application of the said Director, ACL allegedly approached the appellant for a compromise. On the basis of the compromise deed, the arrested Director was granted bail. The suit instituted by ACL



alleging that the compromise was illegal was rejected and the appellant filed a second set of complaints under Section 138 of the NI Act against dishonor of cheques given in pursuance of the compromise deed. The second complaint was quashed by the Hon'ble High Court and the first set of complaints were allowed to continue. While dealing with the appeals in this regard, the Hon'ble Apex Court quashed the first set of complaints and allowed the second set of complaints to continue. It was observed that two parallel set of complaints cannot be allowed to continue and once a compromise deed had been entered into, the first set of complaints could not continue.

In that case, the Hon'ble Apex Court was essentially considering the issue of whether a cheque issued pursuant to a settlement agreement arises out of a legal liability. The relevant observations are as under:

*“36. It is in this backdrop that we must now analyse the issue regarding pendency of parallel proceedings for complaints under Section 138 of the NI Act. The question that arises for our consideration is **whether once the settlement has been entered into, the complainant can be allowed to pursue the original complaint under Section 138 of the NI Act.***

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*41. When a complainant party enters into a compromise agreement with the accused, it may be for a multitude of reasons — higher compensation, faster recovery of money, uncertainty of trial and strength of the complaint, among others. A complainant enters into a settlement with open eyes and undertakes the risk of the accused failing to honour the cheques issued pursuant to the settlement, based on certain benefits that the settlement agreement postulates. **Once parties have voluntarily entered into such an agreement and agree to abide by the consequences of non-compliance of the settlement agreement, they cannot be allowed to reverse the***



effects of the agreement by pursuing both the original complaint and the subsequent complaint arising from such non-compliance. The settlement agreement subsumes the original complaint. Non-compliance of the terms of the settlement agreement or dishonour of cheques issued subsequent to it, would then give rise to a fresh cause of action attracting liability under Section 138 of the NI Act and other remedies under civil law and criminal law.

42. A contrary interpretation, which allows for the complainant to pursue both the original complaint and the consequences arising out of the settlement agreement, would lead to contradictory results.

42.1. First, it would allow for the accused to be prosecuted and undergo trial for two different complaints, which in its essence arise out of one underlying legal liability.

42.2. Second, the accused would then face criminal liability for not just the violation of the original agreement of the transaction which had resulted in issuance of the first set of cheques, but also the cheques issued pursuant to the compromise deed.

42.3. Third, instead of reducing litigation and ensuring faster recovery of money, it would increase the burden of the criminal justice system where **judicial time** is being spent on adjudicating an offence which is essentially in the nature of a civil wrong affecting private parties — a problem noted in multiple judgments of this Court cited above. **Most importantly, allowing the complainant to pursue parallel proceedings, one resulting from the original complaint and the second emanating from the terms of the settlement would make the settlement and issuance of fresh cheques or any other partial payment made towards the original liability meaningless. Such an interpretation would discourage settlement of matters since they do not have any effect on the status quo, and in fact increase the protracted litigation before the court.**

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43. Thus, in our view, a complainant cannot pursue two parallel prosecutions for the same underlying transaction. **Once a settlement agreement has been entered into by the parties, the proceedings in the original complaint cannot be sustained and a fresh cause of action accrues to the complainant under the terms of the settlement deed.** It has been urged by Mr V. Giri, learned Senior Counsel, and Ms Liz Mathew, learned counsel, that parallel prosecutions would not lead to a multiplicity of proceedings, as in the present case, both complaints are being tried by the same



court. This may be true for the case before us, however, this Court in Damodar S. Prabhu [Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328] and Expeditious Trial of Cases Under Section 138 of NI Act 1881, In re [Expeditious Trial of Cases Under Section 138 of NI Act 1881, In re, (2021) 16 SCC 116] has recognised multiplicity of complaints as one of the major reasons for delay in trial of cases under Section 138 of the NI Act and the consequent choking of the criminal justice system by a disproportionate number of Section 138 cases. While it is true that the trial in this case is before one court, that is not necessarily the ground reality in all cases.

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C.2. Liability arising from the settlement agreement

49. *Once a settlement agreement has been entered into between the parties, the parties are bound by the terms of the agreement and any violation of the same may result in consequential action in civil and criminal law.*

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50.1. *Since the proceedings under the NI Act for the dishonour of the first set of cheques was pending, the second set of cheques issued only on the basis of the deed of compromise could not be construed as being towards the discharge of a liability.”*

(emphasis supplied)

In *Gimpex Pvt. Ltd. v. Manoj Goel (supra)*, the Hon’ble Apex Court had specifically noted that the terms of the settlement had effaced the original complaint. Unlike this case, the terms of the settlement as extracted in that case do not reflect that the parties had any understanding that the proceedings under NI Act would be kept in abeyance. Clearly, where the terms of settlement are such that they subsume the original complaint, neither party can evade the consequence of the same, but in this case, the terms reflect intent to merely keep the NI Act proceedings on hold by informing the Trial Court. Pertinently, the second set of cheques were also never



deposited by Respondent Nos. 1 and 2 so as to cause wastage of judicial time or duplicity of proceedings, which were cogent factors which weighed the Hon'ble Apex Court.

25. The facts of *Vinod Bansal v. Intec Capital Ltd.* (*supra*) are also distinguishable from the circumstances at hand. In that case, the parties had entered into a settlement pursuant to issuance of subject cheque wherein certain other cheques were given in furtherance of the settlement. Instead of presenting the latter cheques for encashment, the complainant encashed the earlier cheque, which was dishonoured. Although the complainant therein argued that its conduct had repudiated the settlement, the said assertion was rejected by the Coordinate Bench. In this context, it was held that the complainant could not maintain a complaint *qua* the initial cheque and the complainant could have only gained cause of action once the cheques issued in pursuance of settlement were dishonoured. Rejecting the argument in regard to there being no two complaints, the Court held that allowing the complainant to pursue the initial complaint would run contrary to the settlement. As noted above, the terms of settlement in the present case explicitly provided for the complaint to be kept on hold.

26. It is argued on behalf of the accused persons that on execution of the settlement terms, the original complaint was subsumed and the Trial Court became *functus officio* when Respondent No.1 acted on the settlement by pursuing its remedy against FLSPL before NCLT.



Further, it is stressed that the conduct of Respondent No.1 in not filing any claim against the accused company with the Interim Resolution Professional, Resolution Professional or NCLT, when the accused company went into liquidation, despite being aware of the same, reflects that the complainant company did not treat the accused company as its creditor. It is also argued that pursuant to the said settlements, there is no legally recoverable debt against the petitioners, whereby, the subject complaint is no longer maintainable.

27. Pertinently, Respondent Nos. 1 and 2 have maintained that the cheques given in terms of the settlements were never presented for encashment due to repeated requests of the accused persons and the same were rendered stale as the counsel for the accused persons categorically submitted before the Trial Court that the matter may be proceeded further as no payments could be made. The record also reflects that multiple adjournments were sought by the parties from 30.05.2018 onwards where the accused persons sought more time for disbursing the settlement amount and to *settle the matter*. Furthermore, peculiarly, even after consent terms dated 01.05.2018 and 03.08.2018 were executed in the year 2018, none of the accused pressed for compounding of the matter either. Rather, perusal of order dated 29.11.2018 indicates that the counsel for the accused persons had made the submission on 29.11.2018 for proceeding further with proceedings in presence of the petitioners—Luv and Anil. *Prima facie*, the same reflects that it was never the intention of the parties that the original complaint would be withdrawn immediately after executing



the consent terms *prior* to payment of settlement amount. If that be so, merely because Respondent Nos. 1 and 2 decided to pursue their civil remedy against FLSPL in NCLT, the same cannot *ipso facto* result in quashing of the subject complaint.

28. Insofar as the issue of absence of legally recoverable debt is concerned, it is pertinent to note that the offence is made out once the cheque in question is dishonored. Though the proceedings under NI Act have the character of a Civil Sheep in Criminal Wolf's clothing and the primary goal is to protect the victim's financial interests, subsequent assignment of debt to a sister concern does not invalidate the liability, especially when the terms of settlement and assignment *prima facie* provide for such exception. It is also pointed out that no amount has been received by the contesting Respondents towards the outstanding liability.

29. Though a complainant may choose to compound the complaint even without payment of the settlement amount, which would result in the original complaint being rendered without cause, the present case is one where the parties *prima facie* appear to have decided to *preserve* the NI Act proceedings. Once the petitioners entered into a settlement which specifically provided for the proceedings under NI Act to be kept on hold and provide for a *prima facie* caveat for the said proceedings, they cannot claim benefit of such settlement for quashing of the complaint as Courts cannot compel the complainant to settle the matter unless it specifically assents to the same. Nonetheless,



the same is a disputed question of fact that cannot be determined in the present proceedings.

30. As noted above, inherent jurisdiction to scuttle proceedings can only be exercised in the face of uncontroverted material. In a case such as this one where there is serious dispute in relation to interpretation of consent terms as well as demonstrable consent on part of the accused persons for continuation of proceedings, it would be insupportable to quash the complaint.

31. Insofar as the order dated 30.11.2019 is concerned, perusal of the same indicates that adjournment was sought on the ground that the counsel had been recently engaged and he had not received a copy of the complaint, which request was opposed by counsel for complainant as it had apparently been made amply clear previously that the entire cross-examination would be conducted on that very day. It was noted that the said counsel had filed an MOA on behalf of the company on 01.11.2019 and the application for certified copies was only made one day before the date of hearing. It was further noted that despite multiple appearances on behalf of the accused company, no such objection was made previously, including on the previous date when the matter had already been fixed for cross-examination. Even so, the file was handed over to the counsel for perusal and the matter was passed over to 2:00 PM for cross-examination for the same day. It was at this juncture when another request for adjournment was made that the Court closed the right of the accused company. Though it is



pleaded that vital right of the accused company was erroneously closed without appreciating that the counsel had only been engaged on 01.11.2019, this Court is not persuaded to interfere with the said order as it has been rightly noted that sufficient opportunities had been afforded for cross-examination and the Court had explicitly indicated on 27.11.2019 that cross-examination would not be deferred any further.

32. Though the petitioner Anil has also sought to belatedly impugn order dated 29.11.2018 on ground of mechanical framing of notice, as noted above, the Court proceeded with the matter only after a categorical submission to this effect was made by the counsel for the accused *in presence of the petitioner Anil*.

33. Although the petitioner Anil has also impugned order dated 31.01.2020 in his petition wherein his statement under Section 313 of the CrPC was recorded, no argument was addressed in this regard and challenge to the said order was not pressed during the course of hearing. It is pleaded in the petition that the petitioner Anil is aggrieved as his statement was record in a perfunctory manner without putting any incriminating or inculpatory material/ circumstances appearing against him in evidence. Mere bald assertions have been made in the petition that the petitioner Anil is aggrieved as his statement was record in a perfunctory manner and he was not accorded a fair opportunity to explain himself. There is no specific averment on record as to how the petitioner was prejudiced and which



inculpatory material was not put to him. Though ordinarily every incriminatory material ought to be specifically put to the accused, as the petitioner has not been able to establish as to how he was prejudiced, this Court is not inclined to interfere with the said order.

34. In view of the aforesaid discussion, this Court finds no reason to quash the complaint and consequential proceedings thereof. Further, no ground is made out to quash orders dated 29.11.2018, 30.11.2019 and 31.01.2020.

35. The present petitions are accordingly dismissed. Pending applications also stand disposed of.

36. A copy of this order be placed in all the matters.

AMIT MAHAJAN, J

JULY 01, 2026