IN THE COURT OF SH. ANKUR JAIN-1: ADDITIONAL SESSIONS JUDGE-04, CENTRAL, TIS HAZARI COURTS, DELHI.

CA NO: 188/2025
CNR No. : DLCT-01-007309-2025

1. M/s. Adron Interiors Pvt. Ltd.
(through its Directors)
Sh. Tarun Kumar Thakkar)
Add: 214, CR Avenue, 3rd Floor,
Kolkata, West Bengal-700007

2. Sh. Bharat Thakkar
S/o Tarun Kumar Thakkar (Director)
Adron Interiors Pvt. Ltd.
61/6/1a Moore Avenue,
2nd Floor, Room No.1,
Kolkata, West Bengal-700007 **…………...Appellant.**

Versus

M/s Aadi Pants Pvt. Ltd.
(through its Director)
Ms. Ritu Jain W/o Sh. Vivek Jain,
R/o 17/98, Gali No.5,
Thansingh Nagar, Anand Parbat
New Delhi-110005 **…………..Respondent**

Date of Institute of Appeal	**:19/05/2025**
Date on which order reserved	**:28/04/2026**
Date on which order pronounced	**:04/08/2026**
Final order	**:Dismissed**

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ORDER:-

1. The present order shall dispose of the appeal filed by accused who has been convicted by the Ld. Trial Court for the offence punishable u/s 138 Negotiable Instruments Act **(hereinafter referred to as N.I. Act)** and have been sentenced to pay a fine of Rs. 4,50,000/- as compensation, in default of payment of fine appellant has been sentenced undergo SI for one month.

2. The parties shall be referred to as per their status before the Ld. Trial Court. The appellant was the accused and respondent was the complainant.

3. A complaint u/s 138 N.I. Act was filed by the complainant stating that complainant is the distributor / manufacturer of paints under the name and style of M/s. Aadi Paints Pvt. Ltd. and accused approached the complainant for supply of paints, acting upon the request, complainant supplied paints to the accused persons against various invoices. The complainant maintained regular books of accounts and as per the same for the period of 01/03/2021 to 31/10/2021, the outstanding amount was Rs. 3,19,308/-. In discharge of the liability, complainant issued one cheque bearing No.000057 dated 29/09/2021 for Rs.3,19,308/- drawn on HDFC Bank duly signed by accused No.2, in favour of

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the complainant. On presentation, the said cheque was dishonoured with remarks ‘Stop Payment’. A legal notice dated 21/10/2021 was sent, despite receipt of legal notice, accused did not make any payment and accordingly, the present complaint was filed.

4. Vide order dated 18/02/2022 accused were summoned. Vide order dated 29/11/2022, notice u/s 251 Cr.PC was framed wherein, accused No.2 admitted the signature on cheque, receipt of legal notice, however, denied filling the particulars. Complainant examined the AR as CW-1 and CE was closed on 10/10/2023. Statement of accused was recorded on 10/10/2023. Accused no. 2 examined himself as DW-1 and DE was closed on 16/01/2025.

5. Vide the impugned judgment and order the accused was convicted and sentenced accordingly. Hence, the present appeal.

6. Ld. counsel for the accused/appellants has argued that the goods which were supplied were of inferior quality. It is submitted that there is whatsapp communication between the parties which suggests that the goods were of inferior quality. The cheques were given as security as the particulars on the cheques were never filled by the accused No.2.

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7. On the other hand, ld. Counsel for the respondent submits that the whatsapp chats cannot be looked into as the ld. Trial Court vide its order dated 16/01/2025 dismissed the application of the accused to lead additional evidence. It is submitted that the signatures on the cheques and the factum of the notice being delivered has been duly admitted by the accused. It is submitted that no expert was examined by the accused which could suggest that the goods were of inferior quality and in any case, the accused in his cross examination has admitted that complainant had visited their factory. It is submitted that there is no infirmity or illegality in the order of the ld. Trial Court.

8. I have heard Ld. Counsels for the parties and perused the record.

9. The Ld. Trial Court after considering the earlier facts and circumstances and the law held accused to be liable. The relevant portion of the judgment is reproduced as under:-

> "24.However, since beginning, it has been the defence of the accused that second lot was of inferior quality and he asked the complainant to take back the material. Accused in his cross-examination admitted that he had that he did not reply to the legal notice. It is not clear why the accused did not reply to the legal notice where he could have mentioned about inferior quality of the material. Moreover, if that was the case of accused, he should have denied his liability by stating his objections in the reply. However, the same has not been done.
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> 25. Similarly, it is pertinent to mention that accused in his cross-examination has stated that he has not filed any

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technical report or procured any such report to show that material was of inferior quality. In addition to this, accused has not placed any evidence either oral or documentary to prove that communication regarding inferior quality of material was made with the complainant. Accused in his cross-examination further admitted that both oral and written communication took place between the parties regarding freight charged to be paid on return of goods. However, no such document was placed on record. Hence, without any evidence to this effect, mere plea of the accused cannot be accepted."

10. In ***Gimplex Private Limited Vs. Manoj Goel, (2022) 11 SCC 705*** the Hon'ble Supreme Court has laid down the basic ingredients forming the basis of the offence under Section 138 of N.I.Act in the following structure:-

(i) The drawing of a cheque by person on do account maintained by him with the banker for the payment of any amount of money to another from that account.
(ii) The cheque being drawn for the discharge in whole or in part of any debt or other liability.
(iii) Presentation of the cheque to the bank arrange to be paid from that account.
(iv) The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount.
(v) A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within 30 days of the receipt of information from the bank in regard to the return of the cheque; and
(vi) The drawer of the cheque failing to make payment of the amount of money to the payee or the holder in due course within 15 days of the receipt of the notice.

11. This court being the first Appellate Court needs to satisfy whether all the ingredients, of the offence have been satisfied or not and whether the Ld. Trial Court has committed any illegality or not.

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12. The appellant in the notice framed u/s 251 Cr.PC has admitted that the cheque bears his signature and that he had received the legal notice. Thus, one of the essential ingredients of the offence u/s 138 N.I.Act stands fulfilled.

13. It was contended by the counsel for the appellant that the quality of the goods supplied by the complainant was inferior and the cheques which was given as security, the banker was accordingly instructed to stop its encashment. CW-1 tendered his evidence by way of affidavit and in the cross examination, he stated that he has no personal relation with the accused. He was suggested that the goods which were supplied were of inferior quality which he denied. Apart from that there is no cross examination to the witness which could suggest that which goods against which invoice were of inferior quality. DW-1 in his cross examination stated that he is doing the business of furniture since 2014. The first lot of goods were received in March, 2021, the second lot in May, 2021. He used the first lot but could not use the second one. He admitted in his cross examination that complainant had visited the factory after two months. He also admitted that goods worth Rs.7 lacs were sent and they had made payment of around 50%. He also admitted that the amount mentioned in the cheque and the balance as per

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ledger is same. He admitted in the cross examination that the material is still lying with them. He also admitted that he has not filed any report suggesting that the goods were of inferior quality. As per section 42 of Sale of Goods Act, 1930, a buyer is deemed to have accepted the goods when he intimates to the seller or when the goods have been delivered, he does any act which is inconsistence with the ownership or when after lapse of reasonable time, he retains the goods without intimating to the seller that he has rejected them. In the present case, there is no written communication on record which could suggest that accused had rejected the goods. When CW-1 was cross examined, no suggestion was given to him as to when the goods were rejected by the accused. Despite, receipt of legal notie by the accused, he did not raise any defence at the first given instance that the goods are of inferior quality. The accused is merely taking a stand of defective goods only in order to avoid his liability, hence, the arguments that goods were defected is liable to be rejected.

14. Ld. counsel for the accused has argued that the cheques were given as security. The concept of security cheques does not exist as held by the Hon'ble Supreme Court in ***Suresh Chand***

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Goyal Vs. Amit Singhal 2015 SCC Online Del. 9459. *It was held in the aforesaid case that:*

> *"28. There is no magic in the word "security cheque", such that, the moment the accused claims that the dishonoured cheque (in respect whereof a complaint under Section 138 of the Act is preferred) was given as a "security cheque", the Magistrate would acquit the accused. The expression "security cheque" is not a statutory defined expression in the NI Act. The NI Act does not per se carve out an exception in respect of a security cheque to say that a complaint in respect of such a cheque would not be maintainable. There can be myriad situations in which the cheque issued by the accused may be called as security cheque, or may have been issued by way of a security, i.e. to provide an assurance or comfort to the drawee, that in case of failure of the primary consideration on the due date, or on the happening (or not happening) of a contingency, the security may be enforced. While in some situations, the dishonor of such a cheque may attract the penal provisions contained in Section 138 of Act, in others it may not".*

15. The Hon'ble Delhi high Court in ***Credential Leasing & Credits Vs. Shruti investments & Anr. 2015 SCC Online Del. 10061*** *observed as under:*

> *"30. Thus, I am of the considered view that there is no merit in the legal submission of the respondent accused that only on account of the fact that the cheque in question was issued as security in respect of a contingent liability, the complaint under Section 138 of the NI Act would not be maintainable. At the same time, I may add that it would need examination on case to case basis as to whether, on the date of presentation of the dishonoured cheque the ascertained and crystallized debt or other liability did not exist. The onus to raise a probable defence would lie on the accused, as the law raises a presumption in favour of the holder of the cheque that the dishonoured cheque was issued in respect of a debt or other liability".*

> *Ld. Counsel for accused had submitted during the final arguments that the ace had given the cheque in question in the present case as a security cheque and*

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not towards legally recoverable liability to the complainant. However, accused has not been able to show that no liability towards the complainant was existing on the date of presentment of cheque. Whenever a cheque is issued, it is presumed to be issued in discharge of a liability on part of the accused, though the liability may be an existing liability or it can be issued for the liability that may arise in future. If that were not so, there would be no purpose of obtaining a security cheque from the debtor. A security cheque is issued by the debtor so that the same may be presented for payment as or when the apprehenced liability arises. Otherwise, it would not be a security cheque. Therefore, if a cheque is issued to secure any future liability arising towards the drawee of the cheque for the purpose of which the cheque was given by the drawer, the drawer cannot raise the defence that the cheque was issued for security purpose.

16. Hence, the submission of the appellant that cheques were given as security is liable to be rejected.

17. It was contended that the cheques were given as blank and the particulars were never filled. The said contention is liable to be rejected as the Hon'ble Delhi High Court in ***Ravi Chopra v. State***, 2008 SCC OnLine Del 351 has categorically held.

18. *Section 20 NI Act talks of "inchoate stamped instruments" and states that if a person signs and delivers a paper stamped in accordance with the law and "either wholly blank or have written thereon an incomplete negotiable instrument" such person thereby gives prima facie authority to the holder thereof "to make or complete as the case may be upon it, a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp." Section 49 permits the holder of a negotiable instrument endorsed in blank to fill up the said instrument "by writing upon the endorsement, a direction to pay any other person as endorsee and to complete the endorsement into a blank cheque, it makes it clear that by doing that the holder does not thereby incurred the responsibility of an endorser." Likewise Section 86 states that where the holder acquiesces in a qualified acceptance, or one*

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limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent has not been obtained to such acceptance would stand discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance. Section 125 NI Act permits the holder of an uncrossed cheque to cross it and that would not render the cheque invalid for the purposes of presentation for payment. These provisions indicate that under the scheme of the NI Act an incomplete cheque which is subsequently filled up as to the name, date and amount is not rendered void only because it was so done after the cheque was signed and delivered to the holder in due course.

18. It was lastly argued that there was whatsapp conversation between the parties which clearly suggests that the goods were of inferior quality and no amount was outstanding. The ld. Trial Court vide its order dated 16/01/2025 had declined to take the whatsapp conversation on record. Even if, the said conversation is looked at, it does not help the case of the accused as the conversation reflects that accused is raising the objection of inferior quality and when the complainant is asking to return the same or send him the sample, he is not replying. It also appears that the entire conversation has not been placed on record. Accordingly, I do not find that the whatsapp conversation has any material bearing on the trial of the case.

19. Once the signatures on the cheque are admitted the presumption u/s 139 N.I. Act r/w Section 118 comes into play in

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that the same was issued in discharge of legally recoverable debt. In ***Bharat Barrel & Drum Manufacturing Vs. Amin Chand 1999 3 SC (35)*** it was held that the court will necessary presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits issuance/execution of the cheque and secondly, in the event where the complainant proves that cheque was issued/executed in his favour by the drawer. Reliance can also be placed on the judgment of ***Bir Singh Vs. Mukesh Kumar (2019) 4 SCC 197.***

20. The onus was upon the accused to rebut the presumption which he has failed. I find no infirmity, illegality in the judgment dated 07/04/2025 and order on sentence dated 17/04/2025.

21. Copy of this order along with TCR be sent back to the Ld. Trial Court for information and necessary action. Copy of the order be given to the appellant free of cost. All pending applications stand disposed off.

22. Appeal file be consigned to Record Room.

Announced on this
4th August, 2026

(ANKUR JAIN-I)
ASJ-04/Central/Delhi.

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