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Exh. No. :

<u>IN THE COURT OF ADDITIONAL SESSIONS JUDGE-2 AMRAVATI</u>

(Presided over by Yashwant A. Goswami)

<u>Criminal Appeal No.100/2022</u>

Ameya Paper Mills Pvt. Ltd
Through its Directors Through

1. Dilip Shrikrushna Andhare,
Age 69 Yrs., Occu. Business

2: Shriniwas Dilip Andhare
Age: 39, Occupation : Business
Nos. 1 & 2 R/o Vihangam Plot No. 5
Ambazari Hill top,
Nagpur, Tq. Dist. Nagpur …. **<u>Appellants</u>**

<u>VERSUS</u>

1. Gharkul Industries Pvt. Ltd
Badnera Road, Amravati Through Manager,
Tushar Arun Warangaonkar,
Age 45 Yrs., Occu. Business.
R/o: Sai Nagar, Amravati Tq. Dist. Amravati

2. State of Maharashtra
Through DGP,
Amravati. …. **<u>Respondents.</u>**

APPEAL UNDER SECTION 374 OF CRIMINAL PROCEDURE CODE

Advocate for Appellant	**:**	**Shri. S.P. Dharmadhikari**
Advocate for respondent no.1	**:**	**Shri. P.V.Deshpande**
Advocate for respondent no.2	**:**	**Shri. P.S.Ganorkar**

J U D G M E N T

(Dated 31.07.2026)

These appeals are directed against the common Judgment and Order dated 19.05.2022 passed by the learned Judicial Magistrate First Class, Court No. 3, Amravati, in Summary Criminal Case Nos. 2600/2014, whereby the accused came to be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and were sentenced accordingly. By the impugned Judgment, the learned Trial Magistrate held that the complainant had established all the essential ingredients constituting the offence punishable under Section 138 of the Negotiable Instruments Act and consequently convicted the accused and directed payment of compensation in terms of the operative order. Being aggrieved thereby, the accused have preferred the present appeals seeking setting aside of the impugned Judgment and Order of conviction and sentence.

2. For the sake of convenience and to avoid confusion, the parties shall hereinafter be referred to as the complainant and the accused, in accordance with their original status before the learned Trial Court.

COMPLAINT

3. The case of the complainant, in brief, is that the complainant is a Company duly incorporated under the provisions of the Companies Act and is engaged in its business activities through its authorised representatives. According to the complainant, the accused approached the complainant with a proposal for financial assistance in connection with the business activities of accused No.1 Company. Negotiations culminated into execution of a Memorandum of Understanding governing the terms and conditions of the financial arrangement between the parties. Pursuant thereto, the complainant advanced various amounts from time to time in favour of accused No.1 Company, which aggregated to ₹1,50,19,833/-.

4. It is the case of the complainant that the amount advanced constituted a legally recoverable debt and liability of accused No.1 Company. Accused Nos.2 and 3, being persons in charge of and responsible for the conduct of the business of accused No.1 Company, acknowledged the said liability from time to time. According to the complainant, despite repeated demands, the outstanding liability remained unpaid. In discharge of the said legally enforceable liability, the accused issued the cheques which form the subject matter of the present proceedings.

5. According to the complainant, the said cheques, on presentation within their period of validity, came to be dishonoured for the reasons mentioned in the respective bank return memos. The complainant thereafter caused statutory demand notices to be issued within the prescribed period calling upon the accused to make payment of the cheque amounts. Despite receipt/deemed service of the statutory notices, the accused failed to comply with the demand within the

statutory period. Consequently, the complainant instituted the complaints under Section 138 of the Negotiable Instruments Act, culminating in the present conviction.

PROCEEDINGS BEFORE THE TRIAL COURT

6. After presentation of the complaints, the learned Trial Magistrate took cognizance of the offence punishable under Sections 138 and 141 of the Negotiable Instruments Act and issued process against the accused. During the pendency of the proceedings, pursuant to the directions of the Hon'ble Supreme Court, the present complaint came to be clubbed with S.C.C. Nos.2500/2012 and 4984/2012 and was transferred to the Court trying the said matters. After the appearance of the accused, particulars of the offence were explained to them at Exh.34. The accused pleaded not guilty and claimed to be tried.

7. In support of the complaints, the complainant examined Tushar Arun Warangaonkar, Executive Director and authorised representative of the complainant company, Amol Bhaurao Bharadwaj, a bank official, and Kavin Parmanand Khatri, Company Secretary. Through their oral evidence, the complainant proved the authority in favour of its authorised representative, the disputed cheques, the bank return memos, the statutory demand notices, the postal records, the correspondence exchanged between the parties regarding verification of accounts, the account extracts, the Memorandum of Understanding and the company records obtained from the office of the Registrar of Companies, including the Memorandum of Association, Form No.23, Form No.32 and the audit report.

8. After completion of the complainant's evidence, the statements of the accused under Section 313 of the Code of Criminal Procedure were recorded. The accused denied the incriminating circumstances and contended that the complainant had invested money in the accused company pursuant to the Memorandum of Understanding; that the disputed cheques had been issued only as security; and that shares had subsequently been allotted to the complainant towards the said investment. In defence, accused No.1 Dilip Shrikrishna Andhare and accused No.2 Shrinivas Dilip Andhare entered the witness box and relied upon Form No.2, Form No.MGT-7, the challan, notice of the general meeting and the certificate issued from the records of the Registrar of Companies in support of their defence. Thereafter, both sides addressed elaborate oral arguments and also filed written notes of arguments before the learned Trial Magistrate.

EVIDENCE

8. In support of the complaints, the complainant examined Tushar Arun Warangaonkar, Managing Director and authorised representative of the complainant company, Amol Bhaurao Bharadwaj, a bank official, and Kavin Parmanand Khatri, Company Secretary. The complainant relied upon the authority letter (Exh.38), the disputed cheques (Exhs.39 to 50), bank return memos (Exhs.51 to 63), statutory notice and postal documents (Exhs.64 to 88), correspondence relating to verification of accounts (Exhs.89 to 91), account extracts (Exhs.92 to 95), Memorandum of Understanding (Exh.96), and the company documents including the challan (Exh.114), certificate (Exh.115),

Memorandum of Association (Exh.116), Form No.23 (Exh.117), Form No.32 (Exhs.118 and 119) and the audit report (Exh.120).

9. The accused examined Dilip Shrikrishna Andhare (Accused No.1) and Shrinivas Dilip Andhare (Accused No.2) in defence. They relied upon Form No.2 (Exh.130), Form No.MGT-7 (Exh.131), challan (Exh.133), notice of the general meeting (Exh.134) and certificate (Exh.135). The defence of the accused, as emerging from the cross-examination of the complainant's witnesses, the statements under Section 313 of the Code and the defence evidence, was that the complainant had invested money in the accused company pursuant to the Memorandum of Understanding, the cheques had been issued only as security, shares had thereafter been allotted to the complainant towards the investment, and therefore no legally enforceable debt or liability subsisted. The accused also questioned the competency of the complainant's authorised representative, the validity of the statutory notices and the applicability of Section 141 of the Negotiable Instruments Act to accused Nos.1 and 2.

IMPUGNED JUDGMENT

10. Upon appreciation of the oral and documentary evidence, the learned Trial Magistrate held that the complainant had proved the advancement of ₹1,50,19,831/- to the accused company, the issuance of the disputed cheques, their dishonour for the reason "Funds Insufficient" and due compliance with the statutory requirements under Section 138 of the Negotiable Instruments Act. The learned Trial Magistrate held that, since the execution of the cheques was not disputed, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act operated in favour of the complainant and that the

accused had failed to rebut the said presumptions by raising a probable defence. The learned Trial Magistrate further held that the defence that the cheques had been issued merely as security and that the complainant's investment stood satisfied by allotment of shares was not established by reliable evidence. It was also held that the complainant had proved the service of the statutory demand notice and that accused Nos.1 and 2, being Directors responsible for the conduct of the business of the accused company, were liable under Section 141 of the Negotiable Instruments Act. Consequently, the learned Trial Magistrate convicted the accused and sentenced them to suffer simple imprisonment for eight months and to pay compensation of ₹1,50,00,000/- under Section 357(3) of the Code of Criminal Procedure.

GROUNDS OF APPEAL

11. The accused have assailed the impugned Judgment on several grounds. The principal grounds urged in the memorandum of appeals are that the learned Trial Magistrate failed to appreciate the true nature of the transaction embodied in the Memorandum of Understanding; erroneously held that a legally enforceable debt subsisted despite allotment of shares; failed to appreciate that the disputed cheques were issued merely as security; wrongly invoked the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act; erroneously rejected the objections regarding maintainability of the complaints and the competency of the complainant's representative; incorrectly fastened vicarious liability upon accused Nos.2 and 3 under Section 141 of the Negotiable Instruments Act; failed to appreciate the effect of the company

documents and ROC records; and generally misread the oral as well as documentary evidence on record, thereby resulting in a miscarriage of justice.

SUBMISSIONS

Submissions on behalf of the accused

12. Learned Senior Counsel Shri Dharmadhikari submits that the impugned Judgment and Order of conviction suffers from serious errors of fact as well as law. According to him, the learned Trial Magistrate has failed to appreciate the oral and documentary evidence in its proper perspective and has returned findings which are contrary to the material available on record. It is submitted that the entire transaction between the parties has been misconstrued, resulting in an erroneous conviction of the accused.

13. Shri Dharmadhikari submits that the transaction in question is governed by the Memorandum of Understanding executed between the parties and the rights and obligations of the parties are required to be determined in the light of the terms and conditions contained therein. He submits that the learned Trial Magistrate has failed to appreciate the legal effect of the allotment of shares, the company records, the documents maintained by the Registrar of Companies, the balance confirmations and the surrounding circumstances. It is further submitted that the disputed cheques were not issued in discharge of any legally enforceable debt but were issued only as security and that the statutory presumptions stand effectively rebutted by the material brought on record.

14. Shri Dharmadhikari further submits that the complaints themselves are not maintainable as they were not instituted by a duly authorised representative of the complainant Company. He submits that the statutory demand notices also suffer from want of proper authority. It is further submitted that the mandatory requirements of Section 141 of the Negotiable Instruments Act have not been satisfied so far as accused Nos.2 and 3 are concerned and that the learned Trial Magistrate has erroneously fastened vicarious liability upon them without the requisite pleadings and proof. According to Shri Dharmadhikari, the complainant has also suppressed material facts and documents which materially affect the prosecution case. He has placed reliance upon various decisions of the Hon'ble Supreme Court and different High Courts in support of the aforesaid submissions, which shall be referred to while dealing with the respective points for determination.

Submissions on behalf of the complainant

15. Shri Prashant Deshpande submits that the impugned Judgment and Order is well-reasoned, legal and based upon a proper appreciation of the evidence on record. He submits that the complainant has duly established the foundational facts necessary for raising the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act and that the accused have failed to rebut the said presumptions even on the touchstone of preponderance of probabilities. According to him, the learned Trial Magistrate has rightly appreciated the oral and documentary evidence and has recorded findings which call for no interference in appeal.

16. Shri Prashant Deshpande further submits that the Memorandum of Understanding, the subsequent conduct of the parties, the balance confirmations, the company records, the statutory notices and the other documentary evidence unequivocally establish the subsisting liability of the accused. He submits that the objections regarding maintainability of the complaints, competency of the complainant's representative, validity of the statutory notices and the liability of accused Nos.2 and 3 under Section 141 of the Negotiable Instruments Act are wholly devoid of merit. Shri Prashant Deshpande has also relied upon various decisions of the Hon'ble Supreme Court and different High Courts, which shall likewise be considered while deciding the respective points for determination.

17. The points for determination along with my findings thereon with reasons therefor are as under:

POINTS FOR DETERMINATION

S.N	Points	Findings
1	Whether the complainant proves that the cheque in question was issued by the accused towards discharge, wholly or in part, of a legally enforceable debt or other liability and that all the essential ingredients constituting the offence punishable under Section 138 of the Negotiable Instruments Act stand established?	..Yes
2	Whether the accused have succeeded in rebutting the statutory presumptions available under Sections 118(a) and 139 of the Negotiable Instruments Act by establishing a probable defence?	..No
3	Whether the impugned judgment and order call for interference?	..No
4	What order.	The appeal is dismissed.

REASONS

As to Point Nos. 1 and 3:

I. Maintainability of the complaints and competency to institute the proceedings

18. The first objection raised by the accused goes to the very root of the complaints. Learned Senior Counsel Shri Dharmadhikari submits that the complaints have not been instituted by a person duly authorised by the complainant Company. According to him, the statutory demand notices also suffer from the same defect. He submits that in the absence of proper authority, the complaints are not maintainable in law.

19. On the other hand, Shri Prashant Deshpande submits that the objection is devoid of merit. According to him, the complainant has established by documentary evidence that the complaints have been instituted by a duly authorised representative of the Company. He submits that the authority to issue the statutory notices and to institute the complaints flows from the resolutions and company records produced on record.

20. In support of his submission, Learned Senior Counsel Shri Dharmadhikari has placed reliance upon **A.C. Narayanan v. State of Maharashtra and another, (2014) 11 SCC 790 : AIR 2014 SC 630**. He submits that the Hon'ble Supreme Court has held that although a company can prosecute a complaint under Section 138 of the Negotiable Instruments Act through a power-of-attorney holder or an authorised representative, such person must derive authority from the company. The requirement of authorisation is not an empty formality. It

is intended to ensure that the complaint is instituted on behalf of the company by a person competent to represent it and who can depose either from his personal knowledge or on the basis of the records maintained by the company.

21. Shri Dharmadhikari has also relied upon **TRL Krosaki Refractories Ltd. v. SMS Asia Private Limited and another, (2022) 7 SCC 612**. According to him, the Hon'ble Supreme Court reiterated that a complaint on behalf of a company is maintainable through an authorised representative only when the authority is validly conferred. He submits that the complainant has failed to establish such authority in the present case and, therefore, the complaints deserve to be dismissed.

22. Per contra, Shri Prashant Deshpande submits that the reliance placed upon **A.C. Narayanan (supra)** and **TRL Krosaki (supra)** is misconceived. According to him, those very judgments recognise the right of a company to prosecute a complaint through an authorised representative. He submits that the complainant has produced sufficient material to establish such authority and, therefore, the ratio laid down in the aforesaid decisions supports the complainant rather than the accused.

23. In support of the authority of the person who instituted the complaints, the complainant has relied upon the Challan (Exh.114), Certificate (Exh.115), Memorandum of Association (Exh.116), Form No.23 (Exh117), Form No.32 (Exhs.118 and 119) and the Audit Report (Exh.120). The complainant has also relied upon the documents conferring authority upon its representative to issue the statutory notices and to institute the present proceedings.

24. The legal position is now well settled. **A.C. Narayanan (supra)** does not lay down that every complaint filed by a company through an authorised representative is defective. On the contrary, it recognises such a course of action, provided the authority is traceable to the company. Likewise, **TRL Krosaki (supra)** reiterates that the law does not insist that a complaint must necessarily be filed by a Director or the Managing Director. A duly authorised representative can validly institute the proceedings if the authority is established from the record.

25. The controversy, therefore, is not whether a company can file a complaint through an authorised representative. That question is no longer open to debate. The real question is whether, on the facts of the present case, the complainant has succeeded in proving that the person who issued the statutory demand notices and instituted the complaints was duly authorised to do so. The answer to that question depends upon an examination of the documentary evidence produced by the complainant and not merely upon the legal principles laid down in the above decisions.

26. Accordingly, the documentary evidence relied upon by the complainant requires close scrutiny. The objection raised by the accused cannot be examined in isolation by merely referring to the legal principles. It has to be tested on the basis of the evidence available on record.

27. The complainant has examined its authorised representative, who has stated that he was authorised to represent the Company, to issue the statutory demand notices and to institute the present complaints. During his evidence, the complainant relied upon the company records including the Challan (Exh.114), Certificate

(Exh.115), Memorandum of Association (Exh.116), Form No.23 (Exh.117), Form No.32 (Exhs.118 and 119) and the Audit Report (Exh.120). These documents were produced to establish the legal existence of the complainant Company, its corporate structure and the persons who were managing its affairs.

28. Learned Senior Counsel Shri Dharmadhikari submits that these documents merely establish the incorporation of the Company and disclose its statutory particulars. According to him, none of these documents, by themselves, authorise the person who has instituted the complaints. He submits that unless there is a specific authorisation empowering the representative to issue the statutory notices and to prosecute the complaints, the complaints cannot be said to have been validly instituted.

29. The submission, though attractive at first blush, cannot be accepted in such broad terms. Neither **A.C. Narayanan (supra)** nor **TRL Krosaki (supra)** lays down that every document relating to the authority must be in a particular form. What is material is whether the authority of the person acting on behalf of the company can be established from the material placed before the Court. The Court is required to examine the substance of the authority and not merely its form.

30. The evidence further shows that the representative of the complainant did not institute the complaints in his personal capacity. He consistently acted on behalf of the complainant Company. The complaints themselves disclose that they were filed for and on behalf of the Company. The statutory demand notices were also issued in the name of the Company. Throughout the proceedings, the Company has remained the complainant and not the individual representing it.

31. It is also significant that the accused has never disputed the existence of the complainant Company. The defence is also not that some other person was the competent representative of the Company. The objection is confined to the legal sufficiency of the authority of the person who instituted the complaints.

32. At this stage, it is necessary to bear in mind the object behind insisting upon authorisation. The purpose is to ensure that the company is before the Court through a competent representative and that the prosecution has been launched with the approval of the company. The law does not require the Court to adopt a hyper-technical approach so as to defeat an otherwise genuine prosecution merely because the authority is questioned on technical grounds, if the evidence as a whole establishes that the company has in fact authorised the institution of the proceedings.

33. The Hon'ble Supreme Court in **TRL Krosaki (supra)** has cautioned against adopting an unduly technical approach in matters of this nature. The emphasis is on the existence of authority and not on the form in which it is expressed. If the materials on record show that the representative has acted with the authority of the company and the company has accepted and continued the prosecution, the complaint cannot be rejected merely because of a technical objection regarding the mode of authorisation.

34. The above legal principles have, therefore, to be applied while appreciating the evidence relating to the authority produced by the complainant. Equally important is the conduct of the parties during the transaction and during the trial, which will be examined while considering the remaining objections raised by the accused.

II. Authority to issue the statutory demand notices

35. The accused has next challenged the validity of the statutory demand notices. Learned Senior Counsel Shri Dharmadhikari submits that the notices were not issued by a person duly authorised by the complainant Company. According to him, issuance of a valid demand notice under clause (b) of the proviso to Section 138 of the Negotiable Instruments Act is a mandatory requirement. If the notice itself is invalid, the subsequent complaints cannot survive.

36. Shri Prashant Deshpande submits that the contention proceeds on an incorrect understanding of law. According to him, the notices were issued on behalf of the complainant Company by its authorised representative. He submits that the authority of the representative has been duly proved and, therefore, the notices cannot be invalidated on this ground.

37. The legal requirement under Section 138 of the Negotiable Instruments Act is that the payee or the holder in due course should make a demand for payment by issuing a written notice within the prescribed period. In the case of a juristic person like a company, such notice has necessarily to be issued through a natural person acting on its behalf. The law does not require the company to act personally. What is required is that the person issuing the notice should be acting under the authority of the company.

38. The principle laid down in **A.C. Narayanan v. State of Maharashtra and another, (2014) 11 SCC 790 : AIR 2014 SC 630** equally governs the issuance of the statutory notice. If the representative acts on behalf of the company under its authority, the

notice cannot be regarded as invalid merely because it has not been signed by a Director or the Managing Director.

39. Similarly, **TRL Krosaki Refractories Ltd. v. SMS Asia Private Limited and another, (2022) 7 SCC 612** recognises that a company acts through its authorised representatives. The validity of the proceedings depends upon the existence of authority and not upon the designation of the person signing the notice.

40. Keeping the above principles in view, the evidence on record requires examination. The statutory demand notices forming the foundation of the present complaints were admittedly issued in the name of the complainant Company. The accused has never disputed the receipt of the notices. It is also not the defence that the notices were issued by a stranger having no connection whatsoever with the complainant Company. The challenge is confined to the competency of the person signing and issuing them.

41. The evidence further shows that immediately after the notices were issued, the complaints came to be instituted on behalf of the very same complainant Company by the same representative. Throughout the trial, the Company accepted and continued those proceedings. At no stage has the Company disowned either the notices or the institution of the complaints. This subsequent conduct assumes significance while appreciating the objection raised by the accused.

42. It is well settled that procedural requirements are intended to ensure fairness and not to defeat substantive justice. Where the evidence establishes that the demand notice was issued on behalf of the payee company by its authorised representative and the company has

throughout affirmed that action, the notice cannot be treated as non est merely because a technical objection is raised regarding the form of authorisation.

43. The argument advanced by Shri Dharmadhikari would have carried considerable force if the evidence had disclosed that the notices were issued by a person having no authority from the complainant Company or if the Company itself had disputed the act of such person. However, the evidence does not indicate any such situation. On the contrary, the entire prosecution has consistently proceeded on the footing that the representative acted for and on behalf of the complainant Company.

44. Another important circumstance cannot be ignored. The accused has not demonstrated that any prejudice has been caused on account of the notices having been issued by the authorised representative. The purpose of the statutory notice is to inform the drawer about the dishonour of the cheque and to provide an opportunity to make payment within the statutory period. The accused admittedly received the notices, understood their contents and chose not to comply with the demand. Therefore, the very object of the statutory notice stood fulfilled.

45. The Court must be cautious not to elevate a technical objection into a ground for defeating a prosecution which otherwise satisfies the requirements of Section 138 of the Negotiable Instruments Act. The emphasis has to remain on the substance of the transaction and the authority established from the evidence rather than on technical objections regarding the manner in which the representative acted on behalf of the company.

46. The objections regarding the competency of the complainant's representative to institute the complaints and to issue the statutory demand notices are, therefore, closely connected. Their final answer, however, will also depend upon the nature of the transaction between the parties, the authority flowing from the documents executed by them and the surrounding circumstances, all of which are the subject matter of the succeeding discussion.

III. Nature of the transaction – Whether the cheques were issued towards a legally enforceable debt or merely as security for an investment/share transaction

47. The principal defence of the accused is that the transaction between the parties was not a loan transaction. Learned Senior Counsel Shri Dharmadhikari submits that the complainant had invested money in the business of accused No.1 Company with the intention of acquiring shares. He submits that the cheques in question were not issued towards repayment of any existing liability but were obtained only as security till the process of allotment of shares was completed. According to him, once the transaction is viewed in its correct perspective, the basic requirement of Section 138 of the Negotiable Instruments Act, namely, existence of a legally enforceable debt or liability on the date of presentation of the cheques, completely disappears.

48. Developing his submission further, Shri Dharmadhikari invited attention to the Memorandum of Understanding executed between the parties. According to him, the rights and obligations of the parties have to be gathered from the terms of the said document. He submits that the entire transaction was structured as an investment in

the share capital of accused No.1 Company. The complainant was expected to become a shareholder and not a creditor. Therefore, the amount paid by the complainant cannot subsequently be treated as a loan merely because disputes arose between the parties.

49. Learned Senior Counsel Shri Dharmadhikari has further relied upon the judgments cited in his written notes of arguments to contend that where a cheque is issued only as security or where the liability is contingent upon the happening of a future event, the essential requirement of Section 138 of the Negotiable Instruments Act is not fulfilled. According to him, the nature of the underlying transaction and the purpose for which the cheque was delivered are decisive while determining whether an offence under Section 138 is made out.

50. Per contra, Shri Prashant Deshpande submits that the defence proceeds on an incomplete reading of the transaction. According to him, merely because the parties contemplated allotment of shares, it does not automatically follow that the amount paid by the complainant lost its character as a recoverable liability. He submits that the evidence on record clearly shows that the accused accepted the liability to repay the amount and, in acknowledgment of such liability, issued the cheques which are the subject matter of the present complaints.

51. Shri Deshpande further submits that the conduct of the accused assumes considerable importance. According to him, if there was no liability whatsoever, there was no reason for the accused to issue the cheques in question. He submits that the issuance of the cheques,

their dishonour and the subsequent conduct of the accused constitute important circumstances supporting the complainant's case.

52. Learned counsel has also relied upon the judgments referred to in his written submissions to contend that merely describing a cheque as a security cheque does not exclude the operation of Section 138. According to him, the decisive consideration is whether a legally enforceable debt or liability existed on the date when the cheque was presented for encashment. He submits that the subsequent acknowledgments of liability, balance confirmations and the conduct of the parties clearly establish such liability in the present case.

53. The rival submissions require examination in the light of the settled legal position. In **ICDS Ltd. v. Beena Shabeer and another, (2002) 6 SCC 426**, the Hon'ble Supreme Court held that the expression "any cheque" and the words "any debt or other liability" occurring in Section 138 are of wide amplitude. The Court held that the section is not confined to loan transactions alone. If a cheque is issued towards discharge of a legally enforceable liability arising from a lawful commercial transaction, dishonour of such cheque would also attract Section 138.

54. In **Indus Airways Private Limited v. Magnum Aviation Private Limited and another, (2014) 12 SCC 539**, the Hon'ble Supreme Court explained that the liability contemplated by Section 138 must exist on the date when the cheque is drawn or presented. A cheque issued only towards a future contingent liability, which may or may not arise, would not satisfy the statutory requirement.

55. The distinction between a contingent liability and an existing liability was further explained in **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458**. The Hon'ble Supreme Court held that even where a cheque is described as a security cheque, Section 138 would be attracted if, on the date of its presentation, an enforceable debt or liability had already crystallised. The nomenclature assigned to the cheque is therefore not conclusive.

56. The same principle was reiterated in **Sripati Singh (since deceased) through his son Gaurav Singh v. State of Jharkhand and another, (2021) 3 SCC 513**, wherein the Hon'ble Supreme Court observed that a security cheque is not a class apart. If the underlying transaction gives rise to a legally enforceable liability and the cheque is presented towards discharge of that liability, its dishonour would attract Section 138 notwithstanding that it was initially described as a security cheque.

57. Again, in **Sunil Todi and others v. State of Gujarat and another, (2021) 11 SCC 486**, the Hon'ble Supreme Court held that the real test is the existence of a legally enforceable liability on the date of presentation of the cheque and not the label attached to the cheque at the time of its delivery.

58. The above decisions clearly establish two well-settled principles. First, Section 138 does not distinguish between liabilities arising out of a loan transaction, a commercial arrangement or any other lawful transaction. Secondly, the mere description of a cheque as a security cheque is not decisive. What the Court has to ascertain is whether, on the date when the cheque was presented for encashment,

there existed a legally enforceable debt or other liability which the cheque was intended to discharge.

59. The rival submissions in the present case have, therefore, to be examined on the touchstone of these principles. The Court has to ascertain the true nature of the transaction between the parties, the legal effect of the Memorandum of Understanding, the subsequent conduct of the parties, the balance confirmations and the ledger accounts, and thereafter determine whether an enforceable liability existed on the dates when the cheques were presented.

60. The Memorandum of Understanding, therefore, assumes central importance. It is the foundation of the commercial relationship between the parties. The rights claimed by the complainant as well as the defence put forth by the accused have to be tested primarily on the basis of its terms. Consequently, before examining the rival contentions further, it becomes necessary to analyse the material clauses of the Memorandum of Understanding and their legal effect.

IV. Effect of the Memorandum of Principle Understanding

61. Learned Senior Counsel Shri Dharmadhikari has laid considerable emphasis on the Memorandum of Principle Understanding executed between the parties in December, 2007. According to him, the document clearly establishes that the complainant had agreed to invest money in accused No.1 Company for acquiring ownership rights in the Company. He submits that the entire transaction was one of commercial investment and not of borrowing. Consequently, according to him, the amount paid by the complainant could never be treated as a legally recoverable debt.

62. Shri Prashant Deshpande, on the other hand, submits that the Memorandum cannot be read in isolation. According to him, the subsequent conduct of the parties completely belies the defence now sought to be raised by the accused. He submits that even assuming that the parties initially intended to work together, the subsequent documents executed by the accused unmistakably acknowledge the complainant's monetary claim. Therefore, the accused cannot rely upon the Memorandum alone while ignoring the later admissions made by the Company.

63. This submission deserves careful consideration. The document itself is described as a **"Memorandum recording the dictum of Principle understanding"**. Even its title indicates that it was intended to record only the broad understanding arrived at between the parties. It was not drafted as a comprehensive agreement finally determining the rights and liabilities of the parties. The recitals show that accused No.1 Company was running a paper manufacturing unit, whereas the complainant Company possessed financial capacity and marketing expertise. Since both companies intended to work together for their mutual growth, they agreed upon certain broad principles for future business association.

64. Clause 1 provides that accused No.1 Company would look after the manufacturing and selling activities of the paper mill, whereas the complainant Company would look after the finance and commercial aspects of the business. This clause merely distributes the responsibilities between the parties. It does not state that every amount advanced by the complainant would automatically become share capital.

65. Clause 2 states that the complainant would initially invest **Rs.1 crore** as capital funding and would acquire **25% ownership** of the Company. Clause 3 further records that it was *principally agreed* that the complainant would ultimately have equal ownership rights in accused No.1 Company. These clauses undoubtedly show that the parties contemplated induction of the complainant into the ownership of the Company. However, these clauses only record the intention of the parties. They do not show that the complainant actually became a shareholder or that shares equivalent to the amount invested were in fact allotted.

66. The most significant clause is Clause 5. It specifically records that the detailed terms and conditions governing the future working of the unit would be discussed separately and would thereafter be reduced into writing. It further provides that only such detailed memorandum would govern the understanding between the parties. Thus, the parties themselves recognised that the document before them was only a statement of broad principles and not the final contract regulating their legal relationship.

67. This aspect assumes considerable importance. If the Memorandum itself contemplated execution of a detailed agreement in future, the Court cannot presume that all contemplated rights had automatically come into existence merely because the Memorandum was signed. The burden was upon the accused to establish that the contemplated arrangement was actually implemented by allotting shares and by giving effect to the proposed change in ownership. Mere recital of future intention is not proof of its implementation.

68. The subsequent conduct of the parties assumes equal significance. If the amount advanced by the complainant had actually been converted into share capital, one would normally expect corresponding corporate records showing allotment of shares, alteration of shareholding and completion of the agreed change in ownership. The defence, however, has to be examined in the light of the subsequent documents produced on record.

69. One such important document is the balance confirmation dated **18.08.2010**. In this document, accused No.1 Company confirmed that a **credit balance of Rs.1,50,19,831/-** stood in favour of the complainant in its books of account as on 31.03.2009. The amount was not described as share capital or share application money. It was acknowledged as a **credit balance** due to the complainant.

70. The subsequent balance confirmation dated **21.06.2012** is equally significant. Even after the passage of about two years, accused No.1 Company again confirmed that the complainant had an outstanding credit balance of **Rs.1,49,94,831/-** in its books of account. This document also encloses the statement of account. Once again, there is no reference to conversion of the amount into share capital or to discharge of the liability by allotment of shares.

71. The ledger accounts also prima facie indicate continuous accounting of the amounts advanced by the complainant in the books maintained by the parties. These documents assume relevance while examining whether the liability continued to exist notwithstanding the earlier Memorandum of Principle Understanding. Their evidentiary value will be considered while discussing the issue of legally enforceable debt and the effect of the balance confirmations.

V. Effect of the Balance Confirmations and Ledger Accounts

72. The complainant has placed considerable reliance upon the balance confirmations and the ledger accounts maintained by both the Companies. According to Shri Prashant Deshpande, these documents completely demolish the defence that the amount paid by the complainant stood converted into share capital. He submits that long after the Memorandum of Principle Understanding was executed, accused No.1 Company itself repeatedly acknowledged the amount due to the complainant in its books of account. Such acknowledgment, according to him, is wholly inconsistent with the defence now raised before the Court.

73. Learned Senior Counsel Shri Dharmadhikari, however, submits that these documents cannot be read in isolation. According to him, accounting entries by themselves neither create nor extinguish legal rights. He submits that if the real transaction between the parties was one of investment in the Company, the description of the amount in the books of account cannot alter its true character. He, therefore, submits that the balance confirmations do not establish the existence of a legally enforceable debt.

74. The rival submissions require examination in the light of the documentary evidence on record. The first important document is the balance confirmation dated 18.08.2010 . By this document, accused No.1 Company informed the complainant that as per its books of account, a credit balance of **Rs.1,50,19,831/-** stood in favour of the complainant as on 31.03.2009. The document was issued on the letterhead of accused No.1 Company and bears the signature of its Executive Director.

75. The significance of this document lies not merely in the figure mentioned therein but in the nature of the acknowledgment. If, as now contended by the accused, the amount had already become share capital, there was no occasion to acknowledge it as a credit balance payable to the complainant. A company maintains separate accounts for its share capital and for its liabilities. Prima facie, the expression "credit balance" indicates that the amount continued to be reflected as payable to the complainant in the books of accused No.1 Company.

76. The second balance confirmation dated 21.06.2012 (Exh.91) assumes still greater importance. Nearly two years after the earlier confirmation, accused No.1 Company once again confirmed that the outstanding balance of the complainant as on 31.03.2012 was **Rs.1,49,94,831/-** and also forwarded the statement of account along with the confirmation. Thus, even in the year 2012, the amount continued to be shown in favour of the complainant.

77. An equally important circumstance is that the amount shown in the second balance confirmation is almost identical to the amount acknowledged in the earlier confirmation, except for a reduction of Rs.25,000/-. This difference is explained by the ledger account (Exh.92), which shows an opening balance of Rs.1,50,19,831/-, a payment of Rs.25,000/- made on 31.01.2012 and a closing balance of Rs.1,49,94,831/-. The consistency between the balance confirmation and the ledger account lends assurance to the correctness of the entries maintained in the ordinary course of business.

78. The ledger accounts produced by the complainant also throw considerable light on the course of dealings between the parties.

Exh.93 reflects the opening credit balance in favour of the complainant. Exhs.94 and 95 contain the details of various payments made by the complainant to accused No.1 Company through banking channels over a period of time. These entries show that the amount was advanced through several banking transactions and ultimately reached **Rs.1,50,19,831/-**.

79. These contemporaneous business records were prepared much before the present dispute arose. Their evidentiary value has, therefore, to be appreciated together with the other documentary and oral evidence available on record.

80. It is true that, under Section 34 of the Indian Evidence Act, 1872, entries in books of account, regularly kept in the course of business, are relevant, but such entries alone are not sufficient to fasten liability upon any person. At the same time, where such entries receive support from independent documentary evidence and are accompanied by written balance confirmations issued by the opposite party, they assume considerable evidentiary value.

81. In the present case, the balance confirmations were not prepared by the complainant. They originated from accused No.1 Company itself. They, therefore, constitute relevant admissions within the meaning of Sections 17 and 21 of the Indian Evidence Act, 1872 and are required to be considered along with the remaining evidence on record.

82. Significantly, none of these documents states that the amount acknowledged therein represented share capital, share application money or the value of shares already allotted to the

complainant. Had that been the true position, one would normally expect the balance confirmations to describe the amount accordingly. The absence of any such description assumes importance when these documents are read together with the defence now raised by the accused.

83. Viewed in this background, the balance confirmations substantially weaken the defence that the transaction had culminated in allotment of shares and that no monetary liability survived thereafter. On the contrary, they prima facie indicate that accused No.1 Company itself continued to acknowledge the complainant's monetary claim even after execution of the Memorandum of Principle Understanding.

84. The balance confirmations and the ledger accounts, however, cannot be read in isolation. They have to be appreciated together with the Memorandum of Principle Understanding and the remaining documentary evidence. The question whether these documents establish a subsisting liability and whether they are inconsistent with the defence that the amount stood converted into share capital will also have to be examined in the light of the evidence relating to the issuance of the cheques and the statutory presumptions available under Sections 118 and 139 of the Negotiable Instruments Act. It is to those aspects that the discussion now turns.

VI. Defence that the cheques were issued only as security

85. The principal defence of the accused is that the cheques in question were never intended to be presented for encashment. Learned Senior Counsel Shri Dharmadhikari submits that the cheques were handed over merely as security in connection with the proposed

business arrangement between the parties. According to him, since the parties contemplated induction of the complainant into the ownership of accused No.1 Company, the cheques were retained only as a measure of security till the arrangement was worked out. He, therefore, submits that dishonour of such security cheques would not attract Section 138 of the Negotiable Instruments Act.

86. According to Shri Dharmadhikari, the real nature of the transaction and the purpose for which the cheques were issued are decisive. He submits that the liability, if any, was contingent upon implementation of the proposed arrangement between the parties and, therefore, the cheques did not represent any legally enforceable debt on the dates of their presentation.

87. Shri Prashant Deshpande submits that the defence is an afterthought. According to him, merely describing a cheque as a "security cheque" does not take the case outside the ambit of Section 138. He submits that the decisive question is whether, on the date the cheques were presented, there existed a legally enforceable debt or liability. According to him, the balance confirmations, ledger accounts and the subsequent conduct of accused No.1 Company clearly establish such liability.

88. The rival submissions require consideration in the light of the settled legal position. In **ICDS Ltd. v. Beena Shabeer and another, (2002) 6 SCC 426**, the Hon'ble Supreme Court held that Section 138 is not confined to loan transactions alone. The expression "debt or other liability" is of wide import and includes liabilities arising out of lawful commercial transactions.

89. In **Indus Airways Private Limited v. Magnum Aviation Private Limited and another, (2014) 12 SCC 539**, the Hon'ble Supreme Court explained that the liability contemplated by Section 138 must be a legally enforceable liability existing on the relevant date. A cheque issued only towards a future contingent liability, which never crystallises into an enforceable debt, would not attract Section 138.

90. The distinction between a contingent liability and an existing enforceable liability was further explained in **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458**. The Hon'ble Supreme Court held that the description of a cheque as a security cheque is not decisive. If, on the date of its presentation, the liability had already become due and payable, dishonour of such cheque would attract Section 138.

91. The same principle was reiterated in **Sripati Singh (since deceased) through his son Gaurav Singh v. State of Jharkhand and another, (2021) 3 SCC 513**, wherein the Hon'ble Supreme Court held that a security cheque is not outside the purview of Section 138 merely because it was initially issued as security. The decisive test is whether a legally enforceable debt or liability existed when the cheque was presented.

92. Again, in **Sunil Todi and others v. State of Gujarat and another, (2021) 11 SCC 486**, the Hon'ble Supreme Court reiterated that the existence of a legally enforceable liability on the date of presentation of the cheque is the governing consideration.

93. The above decisions make the legal position clear. The expression "security cheque" is not an exception recognised by the

Negotiable Instruments Act. Whether Section 138 is attracted depends upon the facts of each case. The Court has to ascertain whether, on the date the cheque was presented, it represented a legally enforceable debt or other liability.

94. Keeping these principles in view, the defence raised by the accused has to be examined in the light of the documentary evidence already discussed.

95. The Memorandum of Principle Understanding does not contain any stipulation that the cheques were issued merely as security or that they could never be presented for payment. On the contrary, it records only the broad understanding between the parties and specifically contemplates execution of a detailed agreement in future.

96. More importantly, after execution of the Memorandum, accused No.1 Company issued balance confirmations acknowledging that substantial amounts continued to stand to the credit of the complainant. Even in the years 2010 and 2012, the liability was reflected in the books of accused No.1 Company. If the entire amount had already stood converted into share capital and no monetary liability had survived, such acknowledgments would ordinarily not have been made.

97. The ledger accounts also indicate that the financial dealings between the parties continued to be reflected as monetary transactions. They do not disclose that the amount had been finally appropriated towards allotment of shares or that the complainant had ceased to have a monetary claim against accused No.1 Company.

98. The defence has consistently asserted that the complainant was to become an equal owner of accused No.1 Company. If that arrangement had in fact been implemented, one would normally expect the production of statutory records showing allotment of shares and consequential changes in the shareholding pattern. No such contemporaneous record has been pointed out. On the contrary, the balance confirmations and ledger accounts consistently recognise the complainant's monetary claim.

99. The Court is conscious that neither the balance confirmations nor the ledger accounts, by themselves, establish every ingredient of the offence under Section 138. Equally, however, the defence cannot succeed merely by describing the cheques as security cheques. The documentary evidence has to be appreciated as a whole.

100. When the Memorandum of Principle Understanding, the balance confirmations and the ledger accounts are read together, they prima facie indicate that the parties continued to treat the amount advanced by the complainant as a subsisting monetary liability. At this stage, therefore, the defence that the cheques were issued only as security does not appear to derive support from the contemporaneous documentary evidence.

VII. Statutory Presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act and Whether They Stand Rebutted

101. Shri Deshpande submits that the execution and signatures on the cheques are not in dispute. Once the execution of the cheques is admitted or proved, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act immediately come into

operation. According to Shri Prashant Deshpande, the burden then shifts upon the accused to rebut those presumptions by raising a probable defence. He submits that the defence put forward by the accused is unsupported by the contemporaneous documentary evidence and, therefore, falls short of the standard required to rebut the statutory presumptions.

102. Learned Senior Counsel Shri Dharmadhikari, on the other hand, submits that the presumptions under Sections 118(a) and 139 are rebuttable. According to him, the accused is not required to establish his defence beyond reasonable doubt. It is sufficient if the material brought on record creates a reasonable probability against the existence of a legally enforceable debt. He submits that the Memorandum of Principle Understanding, the surrounding circumstances and the nature of the transaction are sufficient to rebut the statutory presumptions.

103. The rival submissions require consideration. Section 118(a) of the Negotiable Instruments Act raises a presumption that every negotiable instrument was made or drawn for consideration. Section 139 further provides that the holder of a cheque shall be presumed to have received the cheque for the discharge, in whole or in part, of a debt or other liability.

104. The scope of these presumptions has been authoritatively explained by the Hon'ble Supreme Court. In **Rangappa v. Sri Mohan, (2010) 11 SCC 441**, the Hon'ble Supreme Court held that the presumption under Section 139 includes the existence of a legally enforceable debt or liability. Once the execution of the cheque is admitted, the Court is bound to raise the statutory presumption unless the accused succeeds in rebutting it.

105. In **Basalingappa v. Mudibasappa, (2019) 5 SCC 418**, the Hon'ble Supreme Court summarised the principles governing rebuttal of the statutory presumptions. It was held that the accused is not required to prove his defence beyond reasonable doubt. The burden upon the accused is only to establish a probable defence on the touchstone of preponderance of probabilities. Such probability may be established either by leading defence evidence or by relying upon the material brought on record by the complainant.

106. Similarly, in **Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197**, the Hon'ble Supreme Court reiterated that once the execution of the cheque is admitted, the statutory presumption follows. Mere denial of liability or a plausible explanation is not sufficient. The accused must place before the Court material which renders the non-existence of the liability reasonably probable.

107. Again, in **Kalamani Tex and another v. P. Balasubramanian, (2021) 5 SCC 283**, the Hon'ble Supreme Court reiterated that the statutory presumptions are mandatory in nature. Though rebuttable, they continue to operate unless the accused discharges the evidentiary burden cast upon him.

108. Keeping these principles in view, it is necessary to examine whether the defence raised by the accused is sufficient to rebut the statutory presumptions.

109. In the present case, the execution of the cheques is not seriously disputed. The defence throughout has been that the cheques were issued only as security and not towards discharge of any legally enforceable liability. That defence has already been examined while

discussing the Memorandum of Principle Understanding, the balance confirmations and the ledger accounts.

110. The Memorandum of Principle Understanding merely records the broad understanding between the parties and itself contemplates execution of a detailed agreement in future. It does not establish that the complainant's monetary claim stood extinguished by allotment of shares. The balance confirmations issued by accused No.1 Company in the years 2010 and 2012 consistently acknowledge substantial amounts standing to the credit of the complainant. The ledger accounts also continue to reflect the financial dealings as monetary transactions. No contemporaneous corporate record has been produced to indicate that the amount acknowledged by the Company had in fact been converted into share capital.

111. These documents are difficult to reconcile with the defence that no monetary liability survived on the dates when the cheques were presented. It is true that the accused is not required to prove his defence beyond reasonable doubt. However, the material relied upon by him must be sufficient to create a reasonable probability against the existence of the liability. Upon an overall appreciation of the oral and documentary evidence, this Court finds that the defence based upon the Memorandum of Principle Understanding does not satisfactorily explain the subsequent balance confirmations and the consistent acknowledgments made by accused No.1 Company in its own books of account.

112. Consequently, the statutory presumptions arising under Sections 118(a) and 139 of the Negotiable Instruments Act remain unrebutted. The evidence adduced by the accused is not sufficient to

displace the presumptions on the standard of preponderance of probabilities.

VIII. Statutory Notice and Maintainability of the Complaints

113. Learned Senior Counsel Shri Dharmadhikari has contended that the mandatory requirements of Section 138 of the Negotiable Instruments Act have not been duly complied with. According to him, the complaints are not maintainable for want of proper statutory notice and for want of due authorisation on the part of the person who instituted the complaints. He submits that the prosecution under Section 138 being penal in nature, strict compliance with the statutory requirements is mandatory.

114. Shri Prashant Deshpande has opposed the above submissions. According to him, the statutory notices were duly issued after dishonour of the cheques and were served upon the accused. He further submits that the complaints were instituted by a duly authorised representative of the complainant Company. According to him, the documentary evidence produced by the complainant sufficiently establishes compliance with the statutory requirements.

115. The rival submissions have been considered. Section 138 of the Negotiable Instruments Act creates a statutory offence subject to fulfilment of the conditions specified in its proviso. The cheque must be presented within the prescribed period, the payee must issue a written demand notice within the statutory period after receipt of information regarding dishonour, and the drawer must fail to make payment within the prescribed period after receipt of the notice. Only upon fulfilment of

these requirements does the cause of action to institute the complaint arise.

116. The Hon'ble Supreme Court in **K. Bhaskaran v. Sankaran Vaidhyan Balan and another, (1999) 7 SCC 510**, explained the essential components constituting an offence under Section 138 and observed that issuance of the statutory notice is one of the mandatory ingredients of the offence.

117. Similarly, in **C.C. Alavi Haji v. Palapetty Muhammed and another, (2007) 6 SCC 555**, the Hon'ble Supreme Court held that once a notice is sent by registered post to the correct address of the drawer, the statutory requirement regarding service has to be considered in the light of the principles governing deemed service. The drawer who receives summons in the complaint can also make payment within the period indicated therein if he seeks to dispute service of notice.

118. In the present case, the complainant has produced the statutory notices together with the relevant postal documents. The trial Court has discussed the documentary evidence relating to issuance and service of the notices. The accused has not been able to demonstrate that the notices were either not issued within the prescribed period or that the complaints were instituted before accrual of the statutory cause of action.

119. So far as the institution of the complaints is concerned, this aspect has already been discussed while considering the competency of the complainant's authorised representative. The documentary evidence produced by the complainant, including the relevant company records, establishes that the complaints were instituted by a duly authorised

representative. The objections raised by the accused in that regard have already been considered and rejected for the reasons recorded earlier.

120. Upon an independent reappreciation of the record, this Court finds no procedural infirmity affecting the maintainability of the complaints. The mandatory requirements prescribed under Section 138 of the Negotiable Instruments Act have been substantially complied with. The objections raised by the accused on the question of maintainability, therefore, do not merit acceptance.

121. Having examined the documentary evidence, the defence raised by the accused, the statutory presumptions under the Negotiable Instruments Act and the procedural objections regarding maintainability, it now remains to determine whether the findings recorded by the learned trial Magistrate call for interference in these appeals. That aspect is considered while recording the final conclusions on the points for determination.

IX. Findings on the Points for Determination

For the reasons discussed hereinabove, the findings on the points for determination are recorded as follows.

122. The complainant has established that the cheques in question were drawn by the accused on the account maintained by accused No.1 Company and that the cheques were dishonoured upon presentation. The statutory notices contemplated under Section 138 of the Negotiable Instruments Act were thereafter issued and, upon failure of the accused to make payment within the prescribed period, the complaints came to be instituted.

123. The execution of the cheques has not been seriously disputed. Consequently, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act came into operation in favour of the complainant.

124. The principal defence of the accused is that the amounts advanced by the complainant were intended to be invested towards acquisition of ownership in accused No.1 Company and that the cheques were issued merely as security. The Memorandum of Principle Understanding undoubtedly indicates that the parties contemplated a future business association and proposed induction of the complainant into the ownership of accused No.1 Company. However, the Memorandum itself was only a statement of broad principles and expressly contemplated execution of a detailed agreement governing the rights and obligations of the parties. The evidence on record does not establish that the proposed arrangement was subsequently implemented by allotment of shares or by giving effect to the contemplated change in ownership.

125. On the contrary, the subsequent balance confirmations issued by accused No.1 Company in the years 2010 and 2012 consistently acknowledged substantial amounts as standing to the credit of the complainant. The ledger accounts maintained in the ordinary course of business also continued to reflect the transactions as monetary dealings between the parties. These contemporaneous documents are inconsistent with the defence that the entire amount had already stood converted into share capital and that no monetary liability survived thereafter.

126. The defence that the cheques were issued merely as security has also been examined in the light of the law laid down by the Hon'ble Supreme Court. The description of a cheque as a security cheque is not, by itself, sufficient to exclude the operation of Section 138 of the Negotiable Instruments Act. The decisive consideration is whether, on the date of presentation of the cheque, a legally enforceable debt or liability existed. Upon appreciation of the documentary evidence on record, this Court finds that the accused has failed to establish a probable defence showing that no such liability existed on the relevant dates.

127. The evidence adduced by the accused, viewed as a whole, is insufficient to rebut the statutory presumptions available to the complainant under Sections 118(a) and 139 of the Negotiable Instruments Act. The findings recorded by the learned trial Magistrate on the material issues are supported by the evidence on record and do not suffer from any legal or factual infirmity warranting interference in appeal.

128. The defence founded upon the Memorandum of Principle Understanding and the plea that the cheques were issued merely as security does not withstand scrutiny when examined in the light of the subsequent balance confirmations, ledger accounts and the surrounding circumstances appearing from the record. The accused has failed to rebut the statutory presumptions available to the complainant on the standard of preponderance of probabilities.

X. Whether the Findings Recorded by the Trial Court Call for Interference

129. Being the first appellate Court, this Court is required to independently reappreciate the entire evidence on record and arrive at its own conclusions. At the same time, interference with the findings of the trial Court is warranted only when such findings are shown to be contrary to the evidence on record, based upon misreading of material evidence, or founded upon an incorrect application of law.

130. In the present case, this Court has independently examined the Memorandum of Principle Understanding, the balance confirmations, the ledger accounts, the cheques, the statutory notices and the remaining documentary evidence. The conclusions recorded by this Court are substantially in agreement with those reached by the learned Magistrate.

131. The learned Magistrate has rightly held that the Memorandum of Principle Understanding was only a broad understanding between the parties and not a concluded agreement by which the complainant's monetary claim stood extinguished. The subsequent balance confirmations and ledger accounts have also been correctly appreciated as relevant contemporaneous documents while examining the existence of a legally enforceable liability.

132. The learned Magistrate has further rightly invoked the statutory presumptions available under Sections 118(a) and 139 of the Negotiable Instruments Act after the execution of the cheques stood established. The defence raised by the accused has been considered in the light of the documentary evidence and has been rejected for reasons which, upon independent scrutiny by this Court, are found to be proper and supported by the record.

133. Learned Senior Counsel Shri Dharmadhikari was unable to point out any material piece of evidence which was ignored by the learned Magistrate or any finding which could be described as perverse or contrary to the record. The submissions advanced on behalf of the accused substantially amount to a request for taking a different view of the same evidence. However, where the view taken by the trial Court is supported by the evidence and is legally sustainable, the appellate Court would not be justified in interfering merely because another view may also be possible.

134. The learned trial Magistrate has appreciated the evidence in its proper perspective. The findings recorded are based upon the documentary evidence, the admissions appearing on record and the settled legal principles governing the field. No material evidence has been ignored, nor has any legal principle been incorrectly applied. This Court, therefore, finds no reason to take a view different from that taken by the learned trial Magistrate. Accordingly, this Court finds that the impugned judgment does not suffer from any illegality, perversity or material irregularity warranting appellate interference.

135. In the light of this discussion, Point No. 1 is answered in the **Affirmative** and Point Nos. 2 and 3 are answered in the **Negative**.

As to Point No. 4:

136. Having confirmed the judgment of conviction and sentence, the legal consequences contemplated by the Code necessarily follow. The accused was under an obligation to remain present on the date fixed for pronouncement of the appellate judgment after confirmation of the conviction unless exempted in accordance with law.

His unexplained absence has the effect of frustrating the execution of the sentence and delaying the culmination of the criminal proceedings. Such conduct cannot receive the approval of the Court.

118. The accused has remained absent during the hearing of the appeal. Despite sufficient opportunities, neither the accused nor his learned Advocate advanced arguments. Since the appeal is liable to be dismissed and the conviction and sentence are liable to be confirmed, necessary directions will have to be issued to the learned Trial Court to ensure execution of the sentence. The learned Trial Court will also have to be directed to take appropriate steps for recovery of the balance amount of compensation, if any, by invoking the provisions of Sections 421 and 431 of the Code of Criminal Procedure, as may be applicable. Thus, in answer to Point No. 4, I pass the following order.

ORDER

1. The Criminal Appeal is dismissed.

2. The Judgment and Order dated 19.05.2022 passed by the learned Judicial Magistrate First Class, Court No.3, Amravati, in Summary Criminal Case No.2600 of 2014, is hereby confirmed. Consequently, accused - Ameya Paper Mills Pvt. Ltd. stands convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Accused No.1 - Dilip Shrikrishna Andhare and accused No.2 - Shrinivas Dilip Andhare, being the persons sentenced on behalf of accused Company, shall undergo Simple Imprisonment for eight months. Accused Company and accused Nos.1 and 2 shall jointly and severally pay compensation of ₹1,50,00,000/- to the complainant within one

month and, in default of payment, accused Nos.1 and 2 shall undergo Simple Imprisonment for two months.

3. During the pendency of the appeal, the accused deposited partial amount of compensation, therefore, the complainant is permitted to withdraw the same. Due credit shall be given to the amounts already deposited while giving effect to this judgment.

4. The appellant remained absent on the date fixed for pronouncement of judgment without obtaining exemption from personal appearance. He has thereby committed breach of the conditions of the bail bond executed by him. Accordingly, the bail bond and surety bond executed by the appellant stand forfeited. The learned trial Court shall take consequential proceedings in accordance with Section 446 of the Code of Criminal Procedure.

5. The learned Trial Court shall immediately take effective steps under Section 418 of the Code of Criminal Procedure, 1973 to secure the presence of the accused and commit him to prison for undergoing the substantive sentence. For that purpose, the learned Trial Court shall issue appropriate coercive process permissible in law, including warrant of arrest, if necessary, and ensure due execution of the sentence without avoidable delay.

6. After giving due credit to the amount already deposited by the accused, the balance amount of compensation, if remaining unpaid, shall be recovered by the learned Trial Court in accordance with Sections 421 and 431 of the Code of Criminal Procedure, 1973.

7. Record and Proceedings be transmitted forthwith to the learned Trial Court together with a copy of this judgment for immediate compliance.

8. The appeal stands disposed of accordingly.

(Yashwant A. Goswami)
Additional Sessions Judge,
Amravati.

Date: 31.07.2026