Received on	14.05.2013		
Registered on	14.05.2013		
Decided on	09.09.2019		
Duration	6 Years	3 Months	26 Days

IN THE COURT OF THE METROPOLITAN MAGISTRATE,
07th COURT, DADAR, MUMBAI.

(PRESIDED OVER BY SHRI. V. R. DASARI)
(JUDGMENT U/SEC. 355 OF THE Cr. PC.)

Exhibit No : 111

(a)	The serial No. of the case;	:	C. C. No. 1461/SS/2015 **CNR No. MHMM15-003834-2015**
(b)	The date of commission of the offence;	:	01.05.2013.
(c)	The name of the complainant (if any) ;	:	Kaveri Impex Pvt. Ltd., (Mr. Mahendra Kumar Saraogi, The Director of the complainant) Add.: 115, Creative Industrial Estate, 72, N. M. Joshi Marg, Mumbai – 400 011.
(d)	The name of the accused person and his parentage and residence;	:	1. Elder Pharmaceutical Ltd. Add.: Elder House, Plot No. C-9, Dalia Industrial Estate, Off Veera Desai Road, Andheri (W), Mumbai – 400 053. 2. Jagdish Kantiswaroop Saxena, **(Abate)** 3. Alok Jagdish Saxena, **(Abate)** 4. Yusuf Karim Khan, Age Adult, Occu.: Business, Add.: (1) Elder House, Plot No. C-9, Dalia Industrial Estate, Off Veera Desai Road, Andheri (W), Mumbai – 400 053 and (2) 502., Khaibar Apartments, Prof. Almedia Road, Bandra (W), Mumbai – 400 050.

5. Suresh V. Pai
Age Adult, Occu.: Business,
Add.: Elder House, Plot No. C-9, Dalia Industrial Estate, Off Veera Desai Road, Andheri (W), Mumbai – 400 053.

6. Shrikrishna Pandurang Date,
(Dismissed the case against him.)

7. Kamal Dave
Age Adult, Occu.: Business,
Add.: Elder House, Plot No. C-9, Dalia Industrial Estate, Off Veera Desai Road, Andheri (W), Mumbai – 400 053.

(e)	The offence complained of or proved;	:	U/Sec. 138 r/w 141 of the Negotiable Instrument Act, 1881.
(f)	The plea of the accused and his examination(if any);	:	Accused No. 4, 5 & 7 pleaded not guilty.
(g)	The final order;	:	Convicted accused No. 4, 5 & 7.
(h)	The date of such order;	:	09.09.2019

Appearance: Advocate Mr. Hasmukh Shah for the complainant
Advocate Mr. Ashok Mishra for accused No. 4.
Advocate Mr. R. Subramaniayam for accused Nos. 5 & 7.

01. This case filed by the complainant against the accused under section 138 read with 141 of the Negotiable Instruments Act. (herein after referred to as 'the N.I. Act').

02. In brief the case of complainant is as under :

It is the case of complainant that the company doing his business in the name and style as Kaveri Impex Pvt. Ltd. This case filed through its representative namely Mahendra Kumar Saraogi. The company had made deposit with the company of accused namely Elder Pharmaceutical Ltd. an amount of Rs. 1 Crore on 19.12.2012. The accused company agreed to pay interest at the rate of 19% per annum. The deposit was an Inter Corporate Deposit. The accused company had undertaken to honour the cheque, not to direct or intimate to its banker to stop the payment, not to close the bank account, not to request and not to present the cheque on its due date, not to change Authorized Signatory of the bank with this a Post Dated Cheque bearing No. 902824, dated 18.03.2013 for Rs. 1 Crore issued by the accused company to the complainant company. Cheque was drawn on Standard Chartered Bank, Branch 90, M. G. Road, Mumbai. The cheque was issued by and delivered by the accused to the complainant towards the discharge of debt and liability of the accused to the complainant to repay the amount of Inter Corporate Deposit. The accused company executed documents like promissory note etc. The accused company had issued a cheque for the payment of interest amount of Rs. 3,60,740/- but it was also dishonour. Thereafter, accused company made the payment of it on 20.03.2013 by RTGS. The complainant company presented the cheque on 20.03.2013 of Rs. 1 Crore it was returned with dishonour and with a return memo for the reason of 'Fund Insufficient'. The memo returned on 21.03.2013. Accused Nos. 2 to 7 were the Directors of accused No. 1 Elder Pharmaceutical Ltd. Company. Accused Nos. 2 to 7 are and were a responsible for the conduct of business of accused No. 1 company. On returning the cheque complainant company had issued a notice of demand on 26.03.2013 by RPAD it was received to accused company on 30.03.2013. All the Directors were received the notice on or about 15.04.2013. The accused company issued an E-mail to the complainant company on 15.04.2013. Accused company and its Directors failed to pay the amount of alleged cheque. Hence, this case filed.

03. During the trial of the case accused No. 2 Jagdish Kantiswaroop Saxena and accused No. 3 Alok Jagdish Saxena both

died. Therefore, case abate against them. This case has been ordered to dismiss in respect of accused No. 6 Shrikrishna Pandurang Date, so the case dismissed to the extent of accused No. 6 Shrikrishana Pandurang Date. Case proceeded against accused company Elder Pharmaceutical Ltd., accused No. 4 Yusuf Karim Khan, accused No. 5 Suresh V. Pai and accused No. 7 Kamal Dave. Accused No. 4, 5 and 7 appeared before the Court, their plea recorded, accused pleaded not guilty and claimed to be tried. The defence of the accused that the complainant company had issued a loan to the accused company. Though they have no legal right to do the non banking official services.

04. From the above the following points arise for my determination and the findings thereon for the reasons therefore are as under :

Sr. No.	**Points**	**Findings**
1	Whether the complainant company has proved that the accused company had issued a cheque of Rs. 1 Crore to the complainant company?	In the affirmative.
2	Whether the complainant company has deposited the alleged cheque within 3 months from the date of issue of cheque?	In the affirmative.
3	Whether the complainant company had issued a legal demand notice within 30 days from the date of dishonour of cheque?	In the affirmative.
4	Whether the complainant company has proved that the accused company failed to make the payment of the alleged cheque within 15 days from the date of receipt of legal notice to accused company?	In the affirmative.
5	Whether the complainant company has proved that there was a legally enforceable debts of Rs. 1 Crore from the accused company?	In the affirmative.
6	What order?	As per final order.

REASONS

AS TO POINT NOS. 1 to 5 :

05. The complainant company namely Kaveri Impex Pvt. Ltd. has adduced oral evidence through its representative namely Mr. Mahendra Kumbar Saraogi and filed Examination-in-Chief affidavit. It is the evidence of complainant that they made a deposit of Rs. 1 Crore with accused company as an Inter Corporate Deposit. The accused company had issued a deposit receipt on 19.12.2012 and also the accused company had issued Post Dated Cheque bearing Nos. 902822, 902824 and 902825, dated 01.01.2013, 18.03.2013 and 18.03.2013 respectively, all these cheques were drawn on Standard Chartered Bank. The accused company executed a promissory note dated 19.12.2012. Photocopy of signature verification has been given. Out of these three cheques, one cheque amounting to Rs. 3,60,740/-, cheque No. 902825, dated 18.03.2013 has been cleared by the accused company and the other two cheques were dishonour. The complainant has presented a cheque bearing No. 902824 for the amount of Rs. 1 Crore in its bank HDFC, Kamla Mill Branch, Mumbai for payment, it returned with dishonour, with a return memo dated 21.03.2013 alongwith debit advice dated 22.03.2013. Complainant company had issued a legal notice of demand dated 26.03.2013 by RPAD to the accused company and its Directors claiming the amount. The notices were received to the accused company and its Directors up to 12.04.2013. One Rajeshkumar Sharma, General Manager of the accused company sent an E-mail on 15.04.2013 to the complainant company stating that the legal notice dated 26.03.2013 received to him and assurance of payment has been given and further submitted that their company facing financial difficulty and they will settle it fully by an Inter Corporate Deposit at the earliest but not later than 31.05.2013 but they did not make the payment of it. The Inter Corporate Deposit issued by accused company

for Rs. 1 Crore on 19.12.2012 stating therein that they have accepted the deposit amount of Rs. 1 Crore for the period of 90 days at an interest rate of 19% per annum from 19.12.2012 to 18.03.2013 the receipt of it is at Exh. 32. The demand promissory note executed by accused company for the amount of Rs. 1 Crore, it is at Exh. 33. Further a letter issued by the accused company on the same date to the complainant company stating therein that they are issued three cheques, two cheques of interest and one cheque for the repayment of Rs. 1 Crore, it is at Exh. 34. The alleged cheque of Rs. 1 Crore is at Exh. 35, the cheque return memo is at Exh. 36 and 37. The legal notice issued by the complainant company is at Exh. 38 and the acknowledgment of legal notice is at Exh. 40. The copies of legal notice issued by the complainant company to the Directors, they are at Exh. 41, 42 to 47, its acknowledgments are at Exh. 48 to 53. The copy of E-mail sent by accused company through its Deputy General Manager namely Rajeshkumar Sharma to the complainant company is at Exh. 54 in which it has been informed that accused company will settle Inter Corporate Deposit amount alongwith all interest due at the earliest but not later than 31.05.2013. The documentary evidence are supporting to the contents of Examination-in-Chief affidavit. The defence of accused company is that the complainant company has not filed the copy of Registration Certificate but the complainant company has filed copy of Registration Certificate which is at Exh. 29. It is the defence of accused that complainant company had to check credential position of the accused company before issuing or depositing the Inter Corporate Deposit. This defence is nothing but an evading of liability. It is the defence of accused that the complainant company had not verified the duties of Directors of the accused company. When the Directors of the accused company started any business in the name and style of the company then it is presumed that the Directors of the company are and were responsible for day to day business activities of its company. It is the defence of accused that the representative of complainant company was not having valid authorization to file and to depose on behalf of the complainant company. In this respect the accused company and its Directors are not having authority to raise such an objection. It is the main defence of accused that the complainant company had issued a loan amounting to Rs. 1 Crore to the accused company. Inter Corporate Deposit and giving a loan by one company to another company by charging interest on deposit is one and same. Though it is one and same but it was the duty of accused company to honour the cheques which had issued by them. It is the defence of accused company that the complainant company was doing business in financial activities, they do not have posses money lending licence. They were not having license of Reserve Bank of India for non banking financial purposes. These are not the defence but they are making the allegations against complainant company.

06. Accused No. 4 Yusuf Karim Khan has taken a defence that he had no role in the in any part of alleged transaction. He was not Authorized Signatory. He was only recruited as Consultant and his designation was Dy. Senior Vice President. He had given his resignation on 28.08.2007. In short his defence is he has no concern with alleged transaction.

07. The defence of accused No. 5 Suresh V. Pai that he had no concern with financial interest in the accused company. He had joined as an Accounts Officer in accused company in July 1994. He was not a Director of the company merely he was an employee. He was not having any power to make financial decision. There was no negligence on his part. He had not utilized money for his personal benefits. He was not responsible for the alleged transaction of the company. He has admitted that the complainant company had taken deposit an amount

of Rs. 1 Crore as an Inter Corporate Deposit. He was an Authorized Signatory of the accused company. The accused company issued the alleged cheque for the repayment of Inter Corporate Deposit.

08. The defence of accused No. 7 Kamal Dave is that he was joined in the accused company as an Accounts Officer. He was also one of the Authorized Signatory. Its company had accepted Inter Corporate Deposit from other company also. He was not working with the accused company since after 20.03.2013. He was not responsible for the conduct of the business of accused company from 21.03.2013.

CITATIONS

The advocate for the accused has relied upon the following citations :

1) SHRADDHA SHIPPIN CO. PVT. LTD. V/S. ADITHRI TRADING COMPANY – 2014 SCC ONLINE BOM 2273
2) SUDHIR ENGINEERING COMPANY V/S. NICTO ROADWAYS LTD. - 86 DRJ(34)1995
3) RANGAMMAL V. KUPPUSWAMI AND ANR. - (2011) 12 SCC 220
4) POOJA RAVINDER DEVIDASANI V/S. STATE OF MAHARASHTRA & ANR. - (2014) 16 SCC 1
5) S.M.S. PHARMACEUTICALS LTD. V/S. NEETA BHALLA & ANR. - (2007) 4 SCC 70
6) BASALINGAPPA V/S. MUDISAPPA – (2019) 5 SCC 418.

(1) Advocate for the accused has relied upon citation referred at Sr. No. 1 and submitted that this case is not maintainable only because the conditions for filing the case has not been authorized as per law to the deponent Mahendra Kumar Saraogi with due respect of the above citation. It has come on record that the copy of resolution passed by the complainant company in its meeting held on 17.04.2013 and resolution in respect of giving authorization for filing complaint under section 138 of the N. I. Act against the directors, officers, managers and secretary etc. of the accused company namely Elder Pharmaceuticals Ltd. From the copy of resolution it is clear that the Board of Directors of the complainant company has been decided and appointed to represent the complainant company by Mahendra Kumar Saraogi, he is one of the director of the complainant company. If the said resolution has not been decided or resolved by the directors of the complainant company by following rules and regulations and Act, these allegations are against the complainant company made by the accused. Then the responsibilities of the accused and its directors was to prove that the said resolution or the said meeting and its minutes have

not been conducted or prepared as per law. It was the duty of the accused to prove that the complainant company has not been followed the proper procedure of law while resolving the name of the authorized person to file this case. The accused company and its directors i.e. the accused failed to prove that the complainant company has not been followed the proper procedure of law. The procedure in respect of conducting of meeting and preparation of minutes, the procedure which has been mentioned or directed in the Act is to be followed. All the procedure is to be followed by not only the complainant company but also the accused company. It is presumption that when the complainant company has been running its business it means the complainant company has been following the procedure of law for conducting the meeting and preparation of minutes. Therefore, this citation is not helpful to the accused.

(2) Advocate for the accused has relied upon citation referred at Sr. No. 2 and submitted that in this case the complainant has filed documents collected from Office of Registrar of Companies and filed in this case. Those documents are in respect of Form 32 and the details of accused directors. These documents are exhibited at Exh. 30 Colly. These documents are given the exhibits only for the purpose of identification. Therefore, these documents cannot be read in evidence. These documents are the certified copies issued by the Office of Registrar of Companies. Therefore, it is the presumption that the information given by directors accused to the Registrar of Companies by filing Form 32 are true and correct. The documents collected from the government office, therefore, it can be read in evidence. Therefore, this citation is not helpful to the accused.

(3) Advocate for the accused has relied upon citation referred at Sr. No. 3 and submitted that the burden of proof is lying on the complainant to prove all the ingredients of the guilt of accused beyond reasonable doubt. It is but natural in criminal case all the ingredients of offence is to be proved by the complainant beyond reasonable doubt. Therefore, it has been taken into account while considering the evidence of complainant and defence of accused. The complainant company has followed the procedure. Therefore, this citation is not helpful to the accused.

(4) Advocate for the accused has relied upon citation referred at Sr. Nos. 4 and 5 and submitted that the accused persons were directors of the accused company but they were not taken active participation in issuance of alleged cheque, they were non executive directors. They are not liable for making the payment of alleged cheque. The accused directors were not responsible for act of accused company. The accused persons were not concerning with the disputed cheque. The accused had resigned from the accused company. The accused persons were not having powers to take financial decision. They simply signed the alleged cheque. Accused director Kamal Dave was salaried employee. Therefore, he is not responsible for the alleged cheque. Though the accused persons were directors of the accused company, it is the presumption that each and every directors had accepted the powers of the company and accepted the responsibilities of the company for the day to day activities of the company. Therefore, all the directors are responsible for

the duties of each and every directors. All the directors are equally responsible for the liability of the company. It is the presumption that when the alleged amount had been accepted by the accused company at that time all the directors of the accused company were in a positive view to accept the depositing amount of Rs. 1 Crore of the complainant company and as per the memorandum of articles the accused directors have been issued the alleged cheque. Therefore, the accused persons are responsible for repayment of the alleged cheque. Therefore, these citations are not helpful to the accused.

(5) Advocate for the accused has relied upon citation referred at Sr. No. 6 and submitted that the principles of preponderance of probabilities is to be followed. It is mandatory on the Court, the evidence produced by the parties are to be evaluated by taking into account the principles of standard of proof and principles of preponderance of probabilities. The same principle has been followed. Therefore, this citation is not helpful to the accused.

09. Though the Directors of the accused company were not personally acted upon for the transaction of the complainant company, they are responsible for the alleged transaction as they were being a Director of the accused company for the day to day business activities of its company. The accused have admitted about the Inter Corporate Deposits were accepting by their company for the period of three months. Therefore, the defence of accused regarding the complainant company had issued a loan to the accused company has no weightage. The accused company's had fulfilled by making payment of interest of Rs. 3,60,740/-. From the above evidence it has been proved by the complainant company that complainant company had made a deposit of Rs. 1 Crore as an Inter Corporate Deposit with the accused company for the period of 90 days and it was accepted by the accused company and for repayment of it the accused company had issued three cheques for the repayment of deposit and fulfillment of the payment of interest. The alleged cheque has been issued on the date of acceptance of Inter Corporate Deposit. Therefore, I hold that the accused are guilty under section 138 of the N.I. Act. In this way the complainant company has proved the point Nos. 1 to 5, hence I answer the point Nos. 1 to 5 are in the Affirmative.

10. The accused are found guilty under section 138 of the N.I. Act, before awarding sentence I paused here to hear the accused on the point of sentence.

(V. R. Dasari)
Mumbai Metropolitan Magistrate,
Date : 09.09.2019 7th Court, Dadar,Mumbai

11. Heard the accused. All the accused have submitted that lenient view may be taken. Advocate for complainant has submitted that maximum sentence may be awarded as per law. Advocate for accused Nos. 4, 5 and 7 submitted that, leniency may be shown to the accused.

<u>AS TO POINT NO. 6 :</u>

12. As per section 138 of the N.I. Act the punishment is provided for a term which may extend to two years or with fine which may extend to twice the amount of the cheque or with both.

13. Considering nature of offence it is seen that the business transactions have been performed by the parties of the both the sides. Complainant company has proved the legally recoverable debt of the accused company. The amount of cheque of Rs. 1 Crore. It was due from the date of issuance of cheque i.e. 19.12.2012 to 19.07.2018 (due to oversight interest period calculated less by 13 months) for Rs. 1,00,00,000/- (Rupees One Crore). If the rate of interest 9% per annum is applied to the due amount for a period of 67 months it comes Rs. 27,58,720/- (Rupees Twenty Seven Lakh Fifty Eight Thousand Seven Hundred Twenty) as interest for the period from 19.12.2012 to 19.07.2018. This is the minimum amount of interest is to be paid by

the accused company to the complainant company. In the interest of justice I come to the conclusion that the amount of fine Rs. 10,000/- (Rupees Ten Thousand only) each of accused and the compensation amount of Rs. 1,27,88,720/- (Rupees One Crore Twenty Seven Lakh Eighty Eight Thousand Seven Hundred Twenty) is to be awarded. Hence, in answer to point No. 6, I proceed to pass following order :

ORDER

(01) Accused No. 4 Yusuf Karim Khan, accused No. 5 Suresh V. Pai and accused No. 7 Kamal Dave are hereby convicted for the offence punishable under section 138 of the Negotiable Instruments Act, vide section 255(2) of the Code of Criminal Procedure.

(02) Accused Nos. 4, 5 and 7 are hereby sentenced to pay fine of Rs. 1,27,88,720/- (Rupees One Crore Twenty Seven Lakh Eighty Eight Thousand Seven Hundred Twenty only).

(03) Out of fine amount Rs. 10,000/- (Rupees Ten Thousand only) each (i.e. Rs. 30,000/-) treated as fine amount and in default of payment of fine Simple Imprisonment for 3 (three) months each by accused Nos. 4, 5 and 7.

(04) The remaining amount of fine of Rs. 1,27,58,720/- (Rupees One Crore Twenty Seven Lakh Fifty Eight Thousand Seven Hundred Twenty only) be treated as compensation, and it is to be paid by the accused personally or severally to the complainant company as per section 357 of the Cr.P.C. 1973 within 06 months from the date of this order.

(05) In case accused Nos. 4, 5 and 7 commits default in paying the awarded compensation, they shall further suffer Simple Imprisonment for a period of 1 year each.

(06) All the sentences shall run concurrently.

(07) Accused Nos. 4, 5 & 7 shall surrender their bail bonds.

(08) Copy of this judgment be given free of costs to accused Nos. 4, 5 and 7.

(Judgment dictated and pronounced in open Court).

Vishnu Raghupati Dasari

Digitally signed by Vishnu Raghupati Dasari
Date: 2019.11.11 16:38:13 +0530

(**V. R. Dasari**)
Metropolitan Magistrate,
7th Court, Dadar,Mumbai

Mumbai
Date : 09.09.2019
DCA/-

Dictated on	:	09.09.2019
Transcribed on	:	09.09.2019
Signed on	:	09.09.2019