IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
KAMRUP (M), ASSAM.
C.R Case No. 783c/2010

U/S 138 Negotiable Instrument Act.

Housing and Urban Development Corporation Limited
Represented by Smti. R.Sema,
Asstt. General Manager (Law) of
HUDCO Ltd.
.........Complainant

-VS-

1. **M/S Rameswar Health Care (India) Pvt.Ltd.**
   Represented by Managing Director/ Director
2. **Shri Rameswar Chetia (Dead)**
   Managing Director, M/S Rameswar Health Care (India) Pvt. Ltd.
3. **Dr. Ruhini Kr. Chetia (Dead)**
   Director, M/S Rameswar Health Care (India) Pvt. Ltd.
4. **Dr. Rina Ahmed**
   Director, M/S Rameswar Health Care (India) Pvt. Ltd.

..... Accused Persons

PRESENT: - SRI SIDDARTH BROOK, LL.M, A.J.S.
JUDICIAL MAGISTRATE FIRST CLASS,
KAMRUP (M), ASSAM.

For the Complainant	: Mr. A.C. Sarma and Mr. Kalyan Pathak
For the Accused	: Mr. Pajiruddin Ahmed, Mr. Baharul Islam, Mr. A.Lahkar, Mr. S.S.Sailaia
Evidence recorded on	: 04.11.2019, 07.01.2020.
Argument heard on	: 25.10.2021.
Judgment delivered on	: 30.10.2021

JUDGMENT

Introduction:

1. Complainant Housing and Urban Development Corporation Limited (hereinafter referred as HUDCO), represented by Smti. Songita Daas, Law Officer, HUDCO, has instituted the instant case alleging an offence under section 138, Negotiable Instruments Act (hereinafter referred as Act) against accused persons namely (i) M/S Rameswar Health Care (India) Pvt.Ltd, (ii) Shri Rameswar Chetia, (iii) Dr. Ruhini Kr. Chetia and (iv) Dr. Rana Ahmed. During the course of trial complainant has been represented by Smti. R.Sema, Asstt. General Manager (Law) of HUDCO Ltd. Further the case against accused Dr. Ruhini Kr. Chetia and Shri Rameswar Chetia stood abated vide order dated 21.03.2013 and 03.02.2018 respectively, on account of their death.

Brief facts of the case:

2. The complainant is a financial institution and a Govt. of India enterprise registered under the companies Act, while accused no.1 is a borrowing firm and accused no.2, 3 and 4 are directors of accused no.1. the accused applied to the complainant for a loan for construction of 46 bedded Hospital at Dibrugarh. As per the proposal of the accused a loan of Rs. 225.00 lacs was approved and disbursed by HUDCO Zonal Officer, Guwahati. In return accused has issued 2

(Two) cheques in favour of the complainant vide cheque no. 765433 dated 15.06.2009 for Rs. 10,00,500/- (Rupees Ten Lacs Five hundred) and cheque no. 765434 dated 15.09.2009 for Rs. 9,84,370/- (Rupees Nine Lacs Eighty-four Thousand Three hundred and Seventy), drawn on Punjab National Bank, Dibrugarh Branch. Upon presentation of said cheques in its Bank namely Union Bank of India, GS Road Branch for encashment, the banker had returned the cheques as unpaid due to "funds insufficient" on 30.12.2009. Thereafter the complainant on 28.01.2010 has sent a demand notice by registered post with acknowledgement due demanding the payment of cheque amount within 15 days from the date of receipt of notice. The said notice was duly served upon the accused on 03.02.2010. But the accused has failed to honour the cheque amount within the stipulated period. As such the cause of action arose on 18.02.2010. Hence the case.

3. This Court has proceeded with the case by taking cognizance of offence punishable u/s 138 of Negotiable Instruments Act (hereinafter referred as NI Act).

4. On appearance of the accused persons, the particulars of offence under section 138 of the NI Act were explained to them to which they have pleaded not guilty and claimed to be tried. However, on

account of the death of accused Dr. Ruhini Kr. Chetia, offence could not be explained to him.

5. The complainant side has adduced the evidence of 1 (one) witness namely Smti. Rolice Sema, Asstt. General Manager (Law), HUDCO and exhibited 15 (Fifteen) documents. She has submitted Letter of Authority i.e. Exhibit-1(A) whereby the company has authorized her to take steps in this case. The accused has raise no dispute with respect to her competency to depose evidence on behalf of her company i.e. HUDCO.
6. Further, during trial accused Shri Rameswar Chetia has also passed away so, the sole surviving accused person namely Dr. Rina Ahmed (as accused Dr. Ruhini Kr. Chetia already died before the stage of offence explanation) was then examined under section 313, Cr.PC. The accused has admitted that a sum of Rs. 2,25,00,000/- was sanctioned as per the proposal of the accused made to complainant company. As regards the issuance of cheques in question, she has not specifically denied them. Accused has declined to adduce evidence.
7. I have heard the arguments put forward by both sides. After meticulously perusing the evidence on record, I have framed the following points for determination.

<u>POINTS FOR DETERMINATION:</u>

(i) Whether the accused issued Cheque No. 765433

(Ext-2) and 765434 (Ext-3) in favor of the complainant for the discharge of its legally enforceable debt or liability?

(ii) Whether Exhibit-2 and Exhibit-3 were dishonoured due to "funds insufficient"?

(iii) Whether the accused received the demand notice issued by the complainant regarding the dishonour of the cheques?

(iv) Whether the accused has failed to repay the cheque amount to the complainant within the stipulated period?

(v) Whether the accused has committed the offence under section 138 of the NI Act?

DISCUSSIONS, DECISIONS, AND REASONS THEREOF:

Point No. (i): Whether the accused has issued cheque no. 765433 (Ext-2) and 765434 (Ext-3) in favor of the complainant for the discharge of its legally enforceable debt or liability?

8. PW-1 has submitted her examination-in-chief on affidavit, and she has deposed that on application by the accused person, the complainant HUDCO Ltd. has disbursed an amount of Rs. 225 lacs in favour of the accused. PW-1 has submitted the Letter of Offer marked as Exhibit-1, whereby financial assistance of Rs. 225 lacs was approved in favour of the accused. PW-1 has also furnished the Cheque no.765433 marked as Exhibit-2 and Cheque no. 765434 marked

as Exhibit-3. Exhibit-2 and Exhibit-3 is seen to be duly signed by accused/ Managing Director/Director Shri Rameswar Chetia.

9. The accused Dr. Rina Ahmed has admitted in her statement made u/s 313 CrPC that a sum of Rs. 2,25,00,000/- was sanctioned as per the proposal of the accused made to complainant company. As regards the issuance of cheques in question, she has not specifically denied them. She has also not denied the signature of Shri Rameswar Chetia affixed in Exhibit-2 and Exhibit-3. Further the accused has not led any evidence in support of her defence.

10. It is pertinent here to mention that during the cross-examination of PW-1 she has deposed that complainant HUDCO Ltd. has also filed a case in Hon'ble Debt Recovery Tribunal for realization of entire loan amount including the amount involved in the cheques in the three cases. She has also deposed that case filed at Hon'ble Debt Recovery Tribunal Guwahati was registered as OA 81/2013 and Hon'ble Debt Recovery Tribunal decreed the amount against the loanee and till date complainant has recovered 6,34,00,000/-(Six Crore Thirty Four Lakhs). However the due amount payable is Rs. 6,88,00,000/- (Six Crore Eighty Eight Lakhs). The Learned Counsel for the accused has argued that cheque amount has already been recovered by the complainant therefore the accused has no liability towards the complainant.

11. I have given my thoughtful consideration on the issue raised by the accused and I found that Hon'ble Gauhati High Court in ***Golden Menthol Export (P.) Ltd. v. Sheba Wheels (P.) Ltd.***, reported in **2007 SCC OnLine Gau 55** has held in para 9 that:

> "9. In *UTI Bank Ltd.* (supra), in which a prayer for winding up of the respondent-company therein, was involved, the petitioner had additionally instituted a criminal proceeding under section 138 of the Negotiable Instruments Act, 1881 (as amended) by filing a criminal complaint in the appropriate court. The plea against its maintainability on that count was negatived by the jurisdictional High Court.
>
> As it is section 138 of the Negotiable Instruments Act, 1881, defines a criminal offence consequent upon the dishonour of a cheque drawn by a person to discharge in whole or any part his debts or any other liability. Though the said penal provision provides for a sentence of imprisonment, as well as of fine to the extent of an amount twice the sum of the cheque, a proceeding thereunder cannot be construed to be for recovery of the money in default. In other words, a proceeding under section 138 of the Negotiable Instruments Act, 1881, cannot be construed to be an alternative to a civil suit or any other proceeding for realization of the amount remaining unpaid as a debt following the dishonour of a cheque by the debtor. The empowerment of a court under the legal provision to impose a fine of a sum, which may extend to twice the cheque amount, per se does not render the proceeding to be dominantly one for the recovery thereof. The remedies comprehended under the Negotiable Instruments Act, 1881 and the Act, are therefore, distinctively different and not mutilative each other. In that view of the matter, I feel persuaded to sustain the contention of the learned counsel for the petitioner bearing on the maintainability of the company petition."

Thus, it is clear from the above judgment that criminal proceeding under NI Act is independent of proceedings of civil nature. Even though complainant has got relief by Hon'ble Debt Recovery Tribunal that does not extinguishes the right of the complainant under criminal law.

12. Notwithstanding the fact that criminal proceeding under NI Act is independent of proceedings under Hon'ble Debt Recovery Tribunal, it is important here to ascertain whether complainant got the relief from Hon'ble Debt Recovery Tribunal prior to dishonour of cheques or subsequent thereto? It is clear from the cross-examination of PW-1 that case Hon'ble Debt Recovery Tribunal was registered in the year 2013. While the cause of action to file complaint under NI Act arose on 18.02.2010 when accused failed to make the payment of cheque amount within 15 days from the receipt of demand notice sent to accused. Thus, it is clear that complainant did not get any relief from Hon'ble Debt Recovery Tribunal when the complaint under NI Act was filed. The legally enforceable debt was not discharged at the time of filing of this case.

13. It appears from the above findings that accused has a liability of Rs. 2,25,00,000/- towards the complainant, and accused Shri Rameswar Chetia being the then Managing Director of M/s Rameswar Health Care(India) Pvt. Ltd. has issued the two cheques vide Exhibit-2 and Exhibit-3 in discharge of the legally enforceable debt.

    Hence point for determination no.(i) is decided in affirmative.

Point No. (ii): Whether Exhibit-2 and Exhibit-3 were dishonoured due to "funds insufficient"?

14. PW-1 has deposited that Exhibit-2 and Exhibit-3 in its Bank namely Union Bank of India, Ganeshguri for payment. But the said cheques were dishonoured and returned by the bank on 30.12.2010 due to funds insufficient. PW-1 has submitted Cheque return memos which are marked as Exhibit-4, Exhibit-5 and Exhibit-6. Exhibit-4 is the memorandum issued by Union Bank of India, Exhibit-5 pertains to Cheque no. 765433 while Exhibit-6 pertains to Cheque No. 765434. On perusal of Exhibit-4, Exhibit-5 and Exhibit-6, it appears that the said cheques were returned due to "Funds insufficient". In the cross examination of P.W.1 there is nothing to rebut the evidence on Cheque return memos. Section 146 of the NI Act, provides for statutory presumption as regards the cheque return memo issued by the bank in respect of dishonour of cheque. Hence, I have no difficulty in holding that Exhibit-2 and Exhibit-3 were dishonoured due to funds insufficient.

    Accordingly, point for determination no.(ii) is decided in affirmative.

Point No (iii): Whether the accused received the demand notice issued by the complainant regarding the dishonor of cheque?

15. PW-1 deposed that after the dishonour of Exhibit-2 and Exhibit-3, on 28.01.2010 complainant issued a legal notice demanding payment of cheque amount of Rs. 19,84,870/- (Nineteen Lakh Eighty-four Thousand Eight Hundred Seventy) within 15(fifteen)

days of the receipt of the said notice. But the accused neither gave any reply to the legal notice nor made the payment as requested. The accused in her statement of defence has stated that she has not received the legal notice. PW-1 has submitted the demand notice duly addressed to all the accused persons which has been marked as Exhibit-7. PW-1 has also submitted the postal receipts and A/Ds which are marked as Exhibit-8-11 are the postal receipts and Exhibit-12-14 are the A/D Cards. On perusal of Exhibit-7 to Exhibit-14 it transpires that demand notice was effected by properly addressing it. Therefore as per section 27 of the General Clauses Act the demand notice is deemed to have been served. As such, I am of the opinion that the complainant has discharged its burden to show that the notice was duly sent.

Accordingly, point for determination no.(iii) is decided in affirmative.

Point no (iv): Whether the accused has failed to repay the cheque amount to the complainant within the stipulated period?

16. PW-1 has deposed that accused did not pay the cheque amount within 15 days of the receipt of the legal notice. There is nothing available in the cross-examination of PWs suggesting that accused has paid the cheque amount. Accused has not adduced any evidence to show that cheque amount has been paid to the complainant. The bare contention of the accused is that

complainant has already recovered the cheque amount with the aid of a decree passed by Hon'ble Debt Recovery Tribunal. However as discussed earlier, the relief realized through Hon'ble Debt Recovery Tribunal does not absolve the criminal liability of the accused. Thus, I find it safe to conclude that accused has not paid the cheque amount within the stipulated period.

Point for determination no.(iv) is decided in affirmative.

Point no (v): Whether the accused has committed the offence under section 138 of the NI Act?

17. As this Court has arrived at the findings that Exhibit-2 and Exhibit-3 were issued in discharge of legally enforceable debt of the accused. The cheques were dishonoured due to funds insufficient and accused persons have failed to repay the cheque amount within 15 days of receipt of demand notice. Since all the ingredients of section 138 of NI Act have been satisfied, therefore the offence punishable u/s 138 of NI Act is proved to have been made out. Hence, it is decided that accused M/S Rameswar Health Care (India) Pvt. Ltd. and Dr. Rina Ahmed (being the sole surviving Director of M/S Rameswar Health Care (India) Pvt. Ltd.) have committed the offence under section 138 of the NI Act.

Point for determination No. (vi) is decided in affirmative.

ORDER

18. Considering the discussions made above, accused persons, M/S Rameswar Health Care (India) Pvt. Ltd. and Dr. Rina Ahmed, are found guilty of the offence under section 138 of N.I. Act and Dr. Rina Ahmed, being the sole surviving Director of M/S Rameswar Health Care (India) Pvt. Ltd. is convicted for the same accordingly.
19. I have considered the applicability of the benefits of probation to the convict. Though complainant has already recovered the Rs. 6,34,00,000/- (Six Crore Thirty-four Lakhs) but the accused is not free from criminal liability when offence u/s 138 of NI Act is proved to have been committed. Accused has failed to return the money which was admitted to have taken from the complainant, thereby depriving the complainant of its due money. Considering the overall nature of the offence, I am of the opinion that granting the benefit of probation might send a wrong message to the victims at large. Thus, with a view to create deterrence amongst the prospective offenders from committing similar offence and to deliver justice to the complainant, I am disinclined to extend the benefit of the Probation of Offenders Act or of Section 360, CrPC to the convict.
20. I have heard the convict, Dr. Rina Ahmed, before sentencing her. I have also considered the quantum of sentence to be imposed upon her. I am also cognizant of the fact that complainant has already recovered Rs.

6,34,00,000/- (Six Crore Thirty-four Lakhs) out of total due amount Rs. 6,88,00,000/-(Six Crore Eighty-eight Lakhs). That being said, I have also not overlooked the fact that the convict is a doctor by profession without any record of antecedent serious criminal behaviour.

21. As such, considering the overall facts and circumstances of the case and keeping in view the nature of the offence committed, the convict, Dr. Rina Ahmed, is sentenced to undergo simple imprisonment for 3 (three) months and to pay the cheque amount of Rs.19,84,870/- (Nineteen Lakh Eighty-four Thousand Eight Hundred Seventy) as fine/compensation to the complainant. The fine/compensation shall be recoverable as fine and in default in payment of the same, the convict shall undergo simple imprisonment for another 1 (one) month.

22. The convict is informed of her right of appeal against the judgment and order of conviction and sentence.

23. Let a copy of the judgment be given to the convict forthwith free of cost as per Section 363(1), CrPC.

Given in my hand and under the seal of this Court on this the 30th day of October, 2021.

SRI SIDDARTH BROOK
JUDICIAL MAGISTRATE FIRST CLASS
KAMRUP (M)

Typped by me:
Shri Siddarth Brook
JMFC, Kamrup(M).

APPENDIX

PROSECUTION WITNESS:

1. PW-1: Smti. Rolice Sema.

DEFENCE WITNESS:

NIL.

PROSECUTION EXHIBITS:

1. Exhibit-1: Documentation Circular.
   a. Exhibit-1(A): Letter of Authority.
2. Exhibit-2: Cheque No. 765433 dated 15.06.2009.
3. Exhibit-3: Cheque No. 765434 dated 15.09.2009.
4. Exhibit-4: Memorandum dated 30.12.2009
5. Exhibit-5: Bank Return Memo dated 11.12.2009.
6. Exhibit-6: Bank Return Memo dated 11.12.2009
7. Exhibit-7: Demand Notice dated 28.01.2010.
8. Exhibit-8: Postal Receipt dated 29.01.2010.
9. Exhibit-9: Postal Receipt dated 29.01.2010.
10. Exhibit-10: Postal Receipt dated 29.01.2010.
11. Exhibit-11: Postal Receipt dated 29.01.2010.
12. Exhibit-12: A/D Card.
13. Exhibit-13: A/D Card.
14. Exhibit-14: A/D Card.

DEFENCE EXHIBITS:

Nil.

SRI SIDDARTH BROOK

JUDICIAL MAGISTRATE FIRST CLASS

KAMRUP (M)