DLST020198722018

IN THE COURT OF SH. NITIN SHAH, JMFC-05, N.I. ACT, SOUTH DISTRICT, SAKET, NEW DELHI

CC No. : 9011/2018
U/s : 138 N. I. Act
PS : Hauz Khas
M/s Unimet Profiles Pvt. Ltd. vs. M/s Aable Traders

JUDGMENT

1. CC No.	**:**	9011
2. Date of institution of the case	**:**	04.07.2018
3. Name of complainant	**:**	Unimet Profiles Pvt. Ltd. having its registered office at A-1/308, Safdarjung Enclave, New Delhi.
4. Name of accused, parentage and address	**:**	M/s Aable Traders through its proprietor Rakesh Gupta, S/o Sh. Kasturi Lal Gupta Office at Village Channi Chowadi, Plot No. 131, Bypass, Jammu.
5. Offence complained of	**:**	138 N. I. Act
6. Plea of accused	**:**	Accused pleaded not guilty
7. Final order	**:**	**Conviction**
8. Date on which order was reserved	**:**	27.11.2025
9. Date of pronouncement	**:**	19.12.2025

THE CONVICT HAS THE RIGHT TO AVAIL FREE LEGAL AID AS PER ENTITLEMENT IN ORDER TO PURSUE REMEDY BEFORE THE APPELLATE COURT/APPROPRIATE FORUM OF LAW.

THE CONVICT MAY CONTACT THE FOLLOWING :
O/o Ld. Secretary, DLSA-South, Room No. 309,
3rd Floor, Saket Court Complex, New Delhi.
Contact No. 011-29562440, south-dlsa@nic.in

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FACTUAL BACKGROUND OF THE CASE

1. The present complaint has been filed by M/s Unimet Profiles Pvt. Ltd. (hereinafter complainant) against Sh. Rakesh Gupta, proprietor of M/s Aable Traders (hereinafter accused) of Section 138 of the Negotiable Instruments Act, 1881(as in after referred to as NI Act).

2. The facts giving rise to the instant complaint case, as per the complainant, may be summarized as hereafter: That complainant is into the business of manufacturing, supplying and fixing of Unimet Profile Metal Sheets. That accused placed purchase orders for supply of metal beam crash barriers with the complainant and complainant had supplied the same to accused. However, an outstanding amount of Rs. 22,90,945/- was due and payable by the accused to the complainant. Consequently, complainant had also filed civil suit for recovery of the said amount before Hon'ble High Court of Delhi and Hon'ble High Court of Delhi has passed a judgment and decree dt. 20.05.2015 for recovery of sum of Rs. 31,22,775 alongwith interest @ 15% per annum. That accused neither complied the decree dt. 20.05.2015 nor preferred any appeal against the said decree and thereafter complainant filed an execution petition for recovery of Rs. 48,79,336/- alongwith interest and costs. That in the execution proceeding, accused arrived at a settlement with the complainant for Rs. 35 lacs in full and final settlement as per MOU dt. 14.12.2017 and in compliance of said settlement, accused had issued 7 post dated cheques of Rs. 5 lacs each. That when complainant presented the cheque bearing no. 000277 dt. 31.03.2018 for a sum of Rs. 5 lacs drawn on HDFC Bank, Karan Market, Indira Chowk, Jammu Branch (hereinafter referred as cheque in

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question) for encashment, same was returned unpaid with remarks "Funds Insufficient" vide return memo dt. 10.05.2018. Thereafter, complainant sent a legal demand notice dated 18.05.2018 calling upon the accused to pay the amount of the aforesaid cheque within the stipulated period but the accused did not make the payment within the statutory period.

PROCEEDINGS BEFORE COURT :

3. The complainant tendered his evidence by way of affidavit and relied upon following evidences: -

a)	Board Resolution	Ex. CW1/1
b)	Account statement of complainant	Ex. CW1/2 colly.
c)	Order dt. 20.05.2015 passed by Hon'ble High Court of Delhi.	Mark-CW1/3
d)	Order dt. 30.07.2015 passed by Hon'ble High Court of Delhi.	Mark-CW1/4
e)	Order dt. 07.03.2018 passed by Hon'ble High Court of Delhi.	Mark-CW1/5
f)	MOU dt. 14.12.2017	Mark- CW1/6
g)	Order dt. 12.02.2018 passed by Principal District Judge, Jammu.	Mark-CW1/7
h)	Cheque	Ex. CW1/8
i)	Return Memo	Ex. CW1/9
j)	Legal demand notice dt. 18.05.2018	Ex. CW1/19

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k)	Postal receipts	CW1/11 & CW1/12
l)	Tracking report	Ex. CW1/13
m)	Evidence Affidavit	Ex. CW1/A

4. Upon appreciation of pre-summoning evidence, accused was summoned for an offence punishable under Section 138 of NI Act and notice under Section 251, Code of Criminal Procedure, 1973 (herein after referred to as Cr.P.C.) was served upon accused on 24.01.2020 to which he pleaded not guilty and claimed trial. Accused had taken the defence that cheque in question was given as security qua supply of crash barriers by the complainant to him. He further stated that he had already made payment of Rs. 5 lacs by way of one cheque and Rs. 1 lac by way of another cheque. He further stated that complainant had misused the cheque in question and instituted the present complaint. He further stated that he had already made proper payment to the complainant through cheques which are still lying with the complainant. He further stated that he had already given cheques to the complainant towards the liability owe by him.

5. Thereafter, on oral plea, accused was granted opportunity to cross examine the complainant as well as his witnesses u/s 145(2) NI Act, if any vide order dt. 24.01.2020.

6. The complainant company has examined his AR as CW1, Sh. Shymal Roy, Executive Secretary of complainant company as CW-2 and Sh. Sanjay Shrivastav, Sr. Manager Accounts in complainant company as CW-3. In the post

NITIN SHAH Digitally signed by NITIN SHAH Date: 2025.12.20 +0530 summoning evidence, the complainant (CW1) has adopted his pre-summoning evidence. The complainant and his witnesses were examined by the Ld. Counsel for accused. CE was closed vide order dated 23.02.2023.

7. Accused was, thereafter, examined U/s 281 r/w Sec 313 Criminal Procedure code, 1872 on 01.06.2023 wherein entire incriminating evidence was put to him. The accused took defence that he has no liability towards the cheque in question.

8. Accused in his defence has examined himself as DW-1 and one Sh. Rajesh Garg as DW-2. Further, accused has failed to produce further witnesses in his defence and his right to lead further DE was closed VOD-17.11.2025 and the matter was fixed for final arguments.

9. I have considered the rival submissions of the parties and perused the entire evidence led by the parties and the material available on record.

FINAL ARGUMENTS

10. Thereafter, final arguments were heard on behalf of the Ld. Counsels for the parties.

INGREDIENTS OF OFFENCE UNDER SECTION 138 NI ACT AND DISCUSSION

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11. Before delving into discussion over the facts of the present case, it would be apposite to discuss the legal standards required to be met by both sides in trial of offence under Section 138 NI Act. In ***Gimpex Private Limited vs. Manoj Goel (2022) 11 SCC 705 (Decided on October 08, 2021)*** Hon'ble Supreme Court has divided the ingredients forming the basis of the offence under Section 138 of the NI Act in the following structure:

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

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12. The accused can be held guilty of the offence under Section 138 NI Act only if the above-mentioned ingredients are proved by the complainant co-extensively. Moreover, conditions stipulated under Section 142 NI Act have to be fulfilled in addition to above-mentioned ingredients. Hence, unless all the above ingredients are fulfilled in a trial under Section 138 NI Act, accused cannot be held liable.

13. It is pertinent from the pleadings and evidence adduced by the parties that **there is no dispute qua the proof of first, third and fourth ingredient**. The complainant had proved the original cheque vide Ex. CW1/8 which the accused had not disputed as being drawn on the account of the accused company. It was not disputed that the cheque in question was presented within period of validity. The cheque in question was returned unpaid vide return memo Ex. CW1/9 with the remarks 'Funds Insufficient'. The said reason is duly covered within the scheme of NI Act. Therefore, requirement of first, third and fourth ingredients stand fulfilled in the present matter.

<u>With Respect To fifth and sixth Ingredient:</u>

14. In case of ***CC Alavi Haji Vs. Palapetty Muhammed*** **(2007)6 SCC555** Hon'ble Supreme Court has held that giving a legal notice to the drawer before filing of complaint under Section 138 of NI Act is a mandatory requirement. As far as proof of fifth and sixth ingredient is concerned, the complainant sent a legal demand notice to the accused on 15.10.2018 and also filed speed postal receipt (Ex. CW1/11 & CW1/12). In view of the presumption u/s 27 of

the General Clauses Act, 1897, Ex.CW1/10 to CW1/13 (legal notice, postal receipts and tracking reports) alongwith the ratio laid down in the case of ***"C. C. Alavi Haji Vs. Palapetty Mohd. & Anr (supra),*** I am of the considered opinion that the **fifth and sixth ingredient** of the offence stands **proved**.

<u>RAISING OF PRESUMPTION</u>

15. The accused has admitted his signatures upon the cheque in question in his statement at the time of framing of notice u/s 251 CrPC.

16. As per the scheme of the NI Act, once the accused admits signature on the cheque in question, certain presumptions are drawn, which result in shifting of onus. Section 118(a) of the NI Act lays down the presumption that every negotiable instrument was made or drawn for consideration. Another presumption is enumerated in Section 139 of NI Act laying down the presumption that the holder of the cheque received it for the discharge, in whole or part, of any debt or other liability.

17. The combined effect of these two provisions is a presumption that the cheque was drawn for consideration and given by the accused for the discharge of debt or other liability. Both the sections use the expression "shall", which makes it imperative for the court to raise the presumptions, once the foundational facts required for the same are proved. Reliance is placed upon the judgment of the Hon'ble Supreme Court, ***Hiten P. Dalal vs. Bratindranath Banerjee, Kumar***

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Exports vs. Sharma Carpets (2009) 2 SCC 513 and ***Bir Singh vs. Mukesh Kumar (2019) 4 SCC 197.***

18. Therefore, in the instant case, since the accused has admitted his signatures on the cheque in question, the aforementioned statutory presumptions would be raised in favour of the complainant regarding the fact that the impugned cheque has been drawn for consideration and issued by the accused in discharge of legally enforceable debt.

APPRECIATION OF EVIDENCE QUA SECOND INGREDIENT

(Existence of Legally enforceable debt/liability as per the cheque amount)

19. The presumptions contemplated in the NI Act are rebuttable presumptions and once the same are raised, it is for the accused to rebut the same by establishing a probable defence. The principles pertaining to the presumptions and the onus of proof were recently summarized by the Hon'ble Apex Court in **Basalingappa vs. Mudibasappa (2019) 5 SCC 418**as under:

> *"25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.*
> *25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.*
> *25.3.* ***To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials***

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***brought on record by the parties but also by reference to the circumstances upon which they rely.*"**

20. The accused has taken the defence that the cheque in question was given as security to the complainant.

21. It is case of the complainant that the complainant supplied metal beam crash barriers to the accused, towards which outstanding dues remained unpaid, resulting in a Delhi High Court decree dated 20.05.2015 in favour of the complainant. During execution proceedings, the parties settled the matter for ₹35 lakhs under an MOU dated 14.12.2017, pursuant to which the accused issued seven post-dated cheques of ₹5 lakhs each. Further, cheque in question, in the present case, are part of the said cheques given in pursuance of the said MOU.

22. In order to rebut the statutory presumption, the complainant and his witnesses were cross-examined by Ld. Counsel for the accused. CW-1, the AR of the complainant, supported the case of the complainant in his evidence affidavit, and nothing adverse could be elicited from him during cross-examination. In addition thereto, CW-2 deposed that the Memorandum of Understanding was prepared by him on 14.12.2017 and executed on 27.01.2018, and that the details of the cheque in question was specifically mentioned therein. No material contradiction or adverse fact emerged in his cross-examination so as to cast any doubt on the complainant's version. Further, CW-3 was also examined on behalf of the complainant, who stated that the said MOU was prepared in his presence and that the cheque in question, as mentioned in the MOU, were handed over in his

presence. His cross-examination also failed to bring out any adverse material. It is also pertinent to note that no adverse suggestion was put by the accused with respect to the documents relied upon by the complainant.

23. Further, in order to prove his defence, the accused examined himself as DW-1 and deposed that he had been doing business with the complainant since 2008 and that the cheques in question were issued as security in respect of some prior transaction. During his cross-examination, although the accused denied his liability of ₹22,90,945 pertaining to the year 2008–09, he admitted that an ex-parte decree in Suit No. 172416/2011 for recovery of ₹31,22,775 was passed against him by the Hon'ble Delhi High Court. He further admitted that the execution petition was transferred on 30.07.2015 to the District Court, Jammu, as his property was situated there, copies of which orders are available on record.

24. The accused further stated in his cross-examination that he had issued a cheque of ₹5 lakhs, transferred ₹1 lakh through bank, and paid the remaining amount in cash, pursuant to which the execution petition was disposed of. However, no proof whatsoever has been placed on record by the accused to substantiate the alleged bank transfer of ₹1 lakh. It is also pertinent to note that in his cross-examination dated 07.09.2024, the accused himself admitted that the execution petition was withdrawn from the Jammu Court after the complainant filed the MOU on record.

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25. As regards the MOU, the cheque in question find specific mention therein. The accused has also admitted the order passed by the District Court, Jammu, a copy of which is on record. As per the said order, the judgment debtor, i.e., the accused herein, had issued post-dated cheques on the basis of which the execution petition was disposed of. There is no mention in the said order that any cash payment was either required to be made or was in fact made by the accused. On the contrary, the accused has admitted that the execution petition was withdrawn on the basis of the MOU, which clearly records the cheque in question.

In view of the aforesaid, the accused has failed to specify as to which transaction the cheque in question was allegedly issued as security. Accordingly, in light of the foregoing analysis, the accused has failed to rebut the statutory presumption.

26. Hence, in the light of above discussions and the authorities cited in the aforegoing para(s), the accused has failed in establishing a probable defence on standard of preponderance of probabilities to rebut the presumption under section 118 and 139 NI Act. The accused have, thereby, failed to prove that the cheque was not given in discharge of existing legal debt or liability. Thus, the **second ingredient** to the offence under section 138 of NI Act **stands proved**.

CONCLUSION:

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27. **In the result of the analysis of the present case, the accused Rakesh Gupta, proprietor of Aable Traders is hereby convicted of the offence punishable under Section 138, Negotiable Instruments Act, 1881.**

28. This judgment contains 13 pages. This judgment has been signed and pronounced by the undersigned in open court.

29. Copy of this Judgment be given *dasti* free of cost as per rules.

30. Let a copy of the judgment be uploaded on the official website of District Courts, South, Saket forthwith.

31. The convict has a right to suspension of sentence as per the statutory period and to prefer an appeal against the present judgment. He is also at liberty to avail the services of District Legal Services Authority, South as per entitlement in case she cannot afford the professional fee of an advocate. The contact details of the authority have been mentioned on the cover note of this judgment.

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Announced in the open Court on 19.12.2025

(NITIN SHAH)
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