CREN NO. 14093/2023

Complainant :- Fintree finance pvt. ltd.

Vs.

Accused :- ANAMAY TRADERS & ORS.

ORDER BELOW EXHIBIT – 1:

Read the complaint filed under Section 138 of the Negotiable Instrument Act, 1881 ("the Act" for short), affidavit under section 145 of the Act and the documents annexed therewith.

Read the decisions of Hon'ble Supreme Court of India in ***Indian Bank Association & Others Vs. Union of India & Others, (2014) 5 SCC 590*** which directs that on the day when the complaint is filed, the Magistrate shall scrutinize the complaint and if the complaint is accompanied by the affidavit & the documents and if they are found to be in order, court can take cognizance of the offence by issuing summons.

Furthermore, the Hon'ble Apex Court in ***Suo Motu Writ Petition (Cri.) No.2/2020*** has also held that when accused resides beyond the territorial jurisdiction of the Court, an inquiry, on receipt of the complaint, shall be conducted, which may be held on the basis of affidavit and in suitable cases, the Court can restrict the inquiry to examination of documents without insisting for examination of witness. Meaning thereby, if the affidavit and examination of documents filed with the complaint are found in order, cognizance can be taken without examining witness, relying on the affidavit & the documents.

Orders of Hon'ble Apex Court issued in ***Suo Motu Writ Petition (Civil) No.03/****2020* are also taken into consideration, which pertain to limitation.

A bare reading of the complaint, affidavit in evidence and the documents makes it evident that, *prima facie*, ingredients of the offence under Section 138 of the Act are attracted. Perusal of the record also indicates that the complainant maintains account at Ahmedabad and the cheaque is also dishonoured at Ahmedabad. Therefore, this Court has jurisdiction. As the complaint, the affidavit and the documents are found in order, this Court is of the view that cognizance of the offence can be taken by issuing summons.

Accordingly, ***the complaint is ordered to be registered as Criminal Case***. Summons under section 204 of the Code of Criminal Procedure, 1973 is ordered to be issued against the accused for the offence under Section 138 of the Act. Summons be issued in the prescribed form as per the direction of the Hon'ble Apex Court in Indian Bank Association (supra) and Circular issued by the Hon'ble Gujarat High Court in view of circular No. 2619/2018. Moreover, **accused no.1 , 2 is/are hereby directed to furnish a surety each accused amount of Rs. 10,000/-** before this Court for the purpose of securing his/her presence during the trial of the present complainant. In addition to normal mode of service, the complainant is also permitted to serve the summons through R.P.A.D. and email. In case of service by email, the complainant is required to declare that the email address is correct.
Next Date: 18/01/24

Place:Ahmedabad
Date : 11/10/2023

(SAGAR SATISHBHAI PARIKH)
Additional chief metropolitan magistrate,
(N.I.Act,Court No.29),Ahmedabad (GJ-01135)