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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 6934/2024**

**SOUTH ASIAN HOSPITALITY
SERVICES PVT LTD & ORS.**

.....Petitioners

Through: Mr. Subham Paliwal and Mr. Varun
Garg, Advocates.

versus

STATE NCT OF DELHI AND ANR

.....Respondents

Through: Mr. Digam Singh Dagar, APP for the
State.
Mr. Anand Awasthi, Advocate for
respondent No. 2.

+ **CRL.M.C. 6937/2024**

**SOUTH ASIAN HOSPITALITY
SERVICES PVT LTD & ORS.**

.....Petitioners

Through: Mr. Subham Paliwal and Mr. Varun
Garg, Advocates.

versus

STATE NCT OF DELHI AND ANR

.....Respondents

Through: Mr. Digam Singh Dagar, APP for the
State.
Mr. Anand Awasthi, Advocate for
respondent No. 2.

+ **CRL.M.C. 6940/2024**

SOUTH ASIAN HOSPITALITY



SERVICES PVT LTD & ORS.

.....Petitioners

Through: Mr. Subham Paliwal and Mr. Varun Garg, Advocates.

versus

STATE NCT OF DELHI AND ANR

.....Respondents

Through: Mr. Digam Singh Dagar, APP for the State.
Mr. Anand Awasthi, Advocate for respondent No. 2.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
03.09.2024

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CRL.M.A. 26516/2024 in CRL.M.C. 6934/2024

CRL.M.A. 26520/2024 in CRL.M.C. 6937/2024

CRL.M.A. 26525/2024 in CRL.M.C. 6940/2024

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

CRL.M.C. 6934/2024 and CRL.M.A. 26515/2024

CRL.M.C. 6937/2024 and CRL.M.A. 26519/2024

CRL.M.C. 6940/2024 and CRL.M.A. 26524/2024

3. These petitions have been filed assailing the order dated 14th December 2023 passed by ASJ dismissing Criminal Revision being Cr. Rev. 350/2020 filed by the petitioners.
4. Petitioners were accused in proceedings under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') for dishonour of three cheques,



pursuant to which complaints have been filed in 2018.

5. The dates of dishonour of the cheques are 13th July, 2018, 13th December, 2017, 9th April, 2018 & 3rd April, 2018 relatable to these three complaints.

6. It is stated that the petitioner/Company was wound up on 23rd November, 2017, prior to the presentation of any of these cheques by order of this Court in Company Petition No. 999/2016.

7. Considering that, the cheques have been presented subsequently after the winding up of the Company, counsel for the petitioner draws attention to the decision of the Single Judge of this Court in ***M.L. Gupta & Anr. Versus Ceat Financial Services Ltd.*** (2006) SCC OnLine Del 1448, wherein it has been held that a complaint under Section 138 of the NI Act cannot be filed if the date of presentation of the cheques is when the Company is in liquidation. It was held that due to consequences of winding up, there was discharge of all the employees and the officers from the service of the company and disbursement of any amount for enforcing of any debt against the Company will be legally void.

8. The offence under Section 138 of the NI Act gets triggered only on the dishonour of the cheques and the said decision was premised on the basis of this reasoning. Counsel relied upon the decision made by the Coordinate Bench of this Court in ***M/s Vijay Steel Tubes & Fittings Pvt. Ltd. Versus M/s Apollo Pipes Ltd.*** (2015) SCC OnLine Del 11075 and ***Re-Catmoss Retail Pvt. Ltd.*** (2024) SCC OnLine Del 776.

9. It is clarified by counsel for the petitioners that post the winding up, there was a compromise which was arrived at and the management has taken back the reins of the Company. Civil proceedings have been initiated by



respondent No. 2 on the petitioner/Company.

10. Issue notice. Notice is accepted by learned APP on behalf of the State and counsel for respondent No. 2, who appears through video conferencing.
11. Response be filed before the next date of hearing.
12. In these circumstances, there shall be a stay of the proceedings in the complaints till the next date of hearing.
13. List on 11th December 2024.
14. Order be uploaded on the website of this Court.

ANISH DAYAL, J

SEPTEMBER 03, 2024/kd/tk

Click here to check corrigendum, if any