

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 7444 of 2022**

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KUNAL STRUCTURE (INDIA) PVT. LTD. THROUGH ARVIND AMRUTBHAI
DOMADIA
Versus
STATE OF GUJARAT

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Appearance:

MR. HJ KARATHIYA(7012) for the Applicant(s) No. 1,2,3
for the Respondent(s) No. 2

MS MOXA THAKKAR, LD. ADDL. PUBLIC PROSECUTOR for the
Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 20/07/2022

ORAL ORDER

1. Heard learned advocate Mr. H.J. Karathiya appearing for the applicants.
2. Mr. Karathiya submitted that during the course of the transaction, the applicants have issued eleven cheques to the present respondent-original complainant aggregating to Rs.1,76,01,139/- towards the security purpose, the details whereof in the tabular form, are as under;

<i>Sr. No.</i>	<i>Name of the Bank</i>	<i>Cheque No.</i>	<i>Date</i>	<i>Amount (Rs.)</i>	<i>Cheque Return</i>
1.	Union Bank of India, Kalavad Road Branch, Rajkot	167864	21.04.2021	18,37,377/-	10.05.2021
2.	Union Bank of India, Kalavad Road Branch, Rajkot	-	-	-	-

3.	Union Bank of India, Kalavad Road Branch, Rajkot	167866	21.04.2021	16,14,709/-	10.05.2021
4.	Union Bank of India, Kalavad Road Branch, Rajkot	167867	23.04.2021	15,00,000/-	10.05.2021
5.	Union Bank of India, Kalavad Road Branch, Rajkot	167868	23.04.2021	15,12,257/-	10.05.2021
6.	Union Bank of India, Kalavad Road Branch, Rajkot	167869	23.04.2021	15,00,000/-	10.05.2021
7.	Union Bank of India, Kalavad Road Branch, Rajkot	167870	23.04.2021	14,92,242/-	10.05.2021
8.	Union Bank of India, Kalavad Road Branch, Rajkot	167871	23.04.2021	20,00,000/-	10.05.2021
9.	Union Bank of India, Kalavad Road Branch, Rajkot	167872	26.04.2021	10,12,257/-	10.05.2021
10.	Union Bank of India, Kalavad Road Branch, Rajkot	167873	26.04.2021	20,00,000/-	10.05.2021
11.	Union Bank of India, Kalavad Road Branch, Rajkot	167874	26.04.2021	11,32,297/-	10.05.2021
		Total		Rs. 1,76,01,139/-	

3. It appears from the aforesaid chart that the said cheques, upon being presented by the respondent No.2 herein on 10.05.2021, the same were dishonoured. Thus,

statutory notice under Section 138 of the Negotiable Instruments Act came to be issued on 31.05.2021.

4. Mr. Karathiya further submitted that in the meanwhile, the complainant has instituted proceedings under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "the Code") before the National Company Law Tribunal, Ahmedabad (hereinafter referred to as "the NCLT"). Mr. Karathiya pointed out to this Court that the said proceedings were for the amount of Rs.1,76,01,139/-, for which, those eleven cheques were issued.

5. The applicants, having come to know about the said proceedings, made the entire payment in two parts, i.e, (i) Rs.92,99,999.32/- and (ii) Rs.82,05,891.67/-.

6. Pursuant to the said payment, the respondent No.2 herein filed a withdrawal pursis for withdrawal of the proceedings initiated by it before the NCLT under Section 9 of the Code. The NCLT, vide its order dated 12.07.2021, recorded the statement and granted such permission of withdrawal.

7. Surprisingly, on 18.08.2021, the respondent-original complainant instituted a criminal case by invoking the provisions of Section 138 of the N.I. Act before the learned Metropolitan Magistrate, Ahmedabad being Criminal Case No.17128 of 2021. Mr. Karathiya submitted that as such, on the date, on which, the criminal case came to be

instituted, there was no legally enforceable dues and thereby the cheques, which were given by way of security, appears to have been misused.

8. Considering the aforesaid submissions and keeping in mind the payment of Rs.1,76,01,139/- as well as the withdrawal order of the NCLT, I am of the view that the applicants have been able to make out a strong prima facie case to have an ad-interim order in their favour.

9. Let notice be issued to the respondents, returnable on 22.02.2023. Ms. Moxa Thakkar, the learned APP, waives service of notice for and on behalf of the respondent No.1-State.

10. In the meantime, let there be an ad-interim order in terms of Para-19(B).

Direct service is permitted qua the respondent No.2.

(NIRAL R. MEHTA,J)

Vahid