

M/S.Nouveau Labs Private Limited vs M/S.Meritsind Technologies Private on 13 February, 2023

KABC030931622019

IN THE COURT OF THE XXV ADDL. CHIEF METROPOLITAN
MAGISTRATE, AT BANGALORE

Dated this the 13th day of February 2023

Present:

SMT SUJATA SIDAGOUDA PATIL,

B.SC.,LL.B.

XXV Addl. Chief Metropolitan Magistrate,
Bangalore.

CC NO.30059/2019

Complainant :

M/s.Nouveau Labs Private Limited
Office at GINSERV, JSS Campus
Kodihalli, Bangalore 560008.

Rep. By its Director Mrs.Lakshmi
Polisetty.

Having its registered office at 101, DSR
Orchids , 5th Main, Chandra Reddy Layout
S.T.Bed, Koramangala 4th Block
Koaramangala, Bengaluru 560 047.
(By ABM -Advocate)

V/s

Accused :

1. M/s.Meritsind Technologies Private
Limited
Having its office at #41/42, FF-01,
Anand Lake Vista, 3rd Main, 7th Phase
JP Nagar, Bangalore 560 078.
Rep. By its Director and CEO
Sri Ashok Kumar Kalash.

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Branch office at :

(ii) 91 springboard, 175 & 176
Bannerghatta Main Rd, Dollar
Colony, Phase 4, JP Nagar

Bengaluru, Karnataka 560 076.

(iii) Mr.Ashok Kalash, 006-R,C
Block, Aratt Lake View
Apartments, AECS C Block, Begur,
Bengaluru, Karnataka 560 068.
(By RM – Advocate)

1.	Date of Commencement of offence	10.05.2019
2.	Date of report of offence	01.10.2019
3.	Name of the Complainant	M/s. Nouveau Labs Private Limited
4.	Date of recording of evidence	02.11.2019
5.	Date of closing of evidence	22.11.2022
6.	Offence Complained of	138 N.I.Act.
7.	Opinion of the Judge	Accused is Acquitted
8.	Complainant Represented by	ABM – Advocate
9.	Accused defence by	RM - Advocate

JUDGMENT

The complainant filed the complaint under Sec.200 Cr.P.C. against the accused for the offence punishable under Sec.138 Negotiable Instruments Act (For short N.I.Act).

2. The brief facts of the complainant case is as under:

CC NO.30059/2019 The complainant is a Private Limited Company engaged in the business of Software product and services. It provides various services and have different verticals to achieve the same. They provide services including technology support for analytics, AI & machine learning, provides assistance for organization in technology, media and entertainment space; cloud infrastructure set up & Deployment and provide end to end services in automation, human resources etc. to companies across the globe.

That the complainant and the accused entered into Global Vendor Service Agreement and other allied agreements such as Statement of Work dt.25.09..2018, Non Disclosure, Non compete and Non solicitation agreement dt.25.09.20281, Service Agreement dt.25.09.2018 and MOU - Joint Venture Agreement dt.24.09.2018 between themselves. The complainant for the purpose of expanding the accused business and other business which the accused and the complainant intended to work together without stake and co-ownership of the complainant company, the accused borrowed loan of Rs.52,00,000/-(Rupees Fifty Two Lakhs Only) from the complainant company and loan agreement dt.25.09.2018 was also executed between

the complainant and the accused. Clause No.2 of the loan agreement clearly states CC NO.30059/2019 that the loan should be returned within 3 months from the date of execution of the loan agreement. It also stated that this initial duration of 3 months for repayment of the loan amount can be extended for a maximum period of 6 months from the date of execution of loan agreement by mutual consent of both the parties.

That the accused did not return the loan amount after expiry of 3 months as per the loan agreement dt.25.09.2018. The accused did not return the loan amount or the interest at the rate of 15%.a. even after 6 months from the date of execution of the loan agreement. As per the loan agreement dt.25.09.2018, the accused had given a post dated cheque bearing No.066752 dt.22.03.2019 of IndusInd Bank, Basavangudi, Bangalore for a sum of Rs.52,00,000/□to the complainant towards the loan amount. On failure of accused to repay the loan amount, the complainant requested the accused to make payment as promised, however, the accused failed to make payment, hence, the complainant presented the cheque with their bankers and the said cheque returned dishonored for the reason "Drawer's Signature Differs". The accused tried to play fraud on the complainant company by intentionally not affixing the signature CC NO.30059/2019 properly on the cheque. The accused pleaded ignorance and promised to pay the loan amount of Rs.52,00,000/□with interest, accordingly, issued another cheque dt.10.05.2019 for a sum of Rs.56,55,000/□ The previous cheque was substituted by the accused with fresh cheque bearing No.066788 dt.10.05.2019 drawn on IndusInd Bank, Bull Temple Road, Basavangudi, Bangalore for Rs.56,55,000/□ The complainant presented said cheque through its bank and the said cheque returned dishonored for the reason "Funds Insufficient". Subsequently, the complainant issued legal notice 22.08.2019 to pay the outstanding amount, inspite of service of notice, the accused failed to pay the outstanding amount to the complainant. Therefore, the complainant was constrained to file the complaint against the accused. Hence, this complaint.

3. After filing of the complaint, cognizance taken and recorded the sworn statement of the complainant. The complainant has complied all the statutory requirements under Sec.138 of N.I.Act. Thereafter, the case is registered against the accused and summons issued. The accused appeared with the Advocate and released on bail. Copy of the complaint furnished CC NO.30059/2019 to the accused. Plea recorded and read out to the accused. The accused pleaded not guilty and claimed to be tried.

4. In support of the complainant's case, the Authorized Representative of the complainant company got examined as PW1 got marked Ex.P.1 to Ex.P.21. After closure of the evidence of the complainant, 313 Cr.P.C statement of the accused has been recorded. The accused denied the incriminating evidence placed by the complainant. Inspite of grant of sufficient opportunity, the accused has not lead defence evidence Hence defence evidence taken as nil. Ex.D1 and Ex.D.2 have been confronted during cross examination of PW 1.

5. Heard arguments and perused the material on record.

6. The counsel for the complainant has relied on the following citations:

1. (H.Pukhraj V/s.D Parasmal) CrI.A.No.1789/2014 MANU/SC/0992/2014

2. (R.Vijayan V/s.Baby and Ors.) CrI.A.No.1902/2011 MANU/SC/1433/2013 The counsel for the accused has relied on the following citations:

1. 2000 CrI.L.J.624

2. 2000 0 Supreme (AP) 806 2001 1 ALT (Cri) 97; 2001 1 RCR(Cri) 822

3. (2013) 3 SCC 86 CC NO.30059/2019

4. (2009) 2 SCC 513

5. 2012 3 Crimes (HC) 346

6. 2009 (3)KCCR 2188.

7. On the basis of the contents of the complaint the following points arise for my consideration. :

1. Whether the complainant proves beyond reasonable doubt that the accused issued a cheque bearing No.066788 dt.10.05.2019 drawn on IndusInd Bank, Bull Temple Road, Basavangudi, Bangalore for Rs.56,55,000/□in favour of the complainant towards discharge of legal liability ?

2. Whether the complainant proves beyond reasonable doubt that the accused has committed the offence punishable under Sec.138 of N.I.Act?

3. What order ?

8. My findings to the above points are as follows:

Point No.1&2: In the Negative.

Point.No.3 : As per final order for the following:

REASONS

9. Point Nos.1 & 2: Both these points are interconnected with each other. In order to avoid repetition of facts, both the points have been taken up together for consideration.

10. The complainant is a Private Limited Company engaged in the business of Software product and services. It CC NO.30059/2019 provides various services and

have different verticals to achieve the same. They provide services including technology support for analytics, AI & machine learning, provides assistance for organization in technology, media and entertainment space; cloud infrastructure set up & Deployment and provide end to end services in automation, human resources etc. to companies across the globe.

11. That the complainant and the accused entered into Global Vendor Service Agreement and other allied agreements such as Statement of Work dt.25.09..2018, Non Disclosure, Non compete and Non solicitation agreement dt.25.09.20281, Service Agreement dt.25.09.2018 and MOU - Joint Venture Agreement dt.24.09.2018 between themselves. The complainant for the purpose of expanding the accused business and other business which the accused and the complainant intended to work together without stake and co-ownership of the complainant company.

Therefore in order to extend the financial help to the accused company, complainant company has entered into loan agreement on the same day ie., on 25.9.2018 and sanctioned the loan amount of Rs.52,00,000/-(Rupees Fifty Two Lakhs Only). As per loan agreement it is clearly states that the loan should be returned CC NO.30059/2019 within 3 months from the date of execution of the loan agreement. It also stated that this initial duration of 3 months for repayment of the loan amount can be extended for a maximum period of 6 months from the date of execution of loan agreement by mutual consent of both the parties.

12. In order to substantiate the complainant company's case the PW.1 who being a Manager Director got himself examined as PW.1 and produced material documents which have been duly marked under Ex.P.1 to P.13, during cross examination again the complainant company has produced other material documents in order to prove the amount mentioned under the cheque is legally recoverable debt. Same documents have been duly marked under Ex.P.14 to P.21.

13. PW.1 who being Managing Director of the complainant company has produced Ex.P.1 to P.21. Ex.P1 is the complaint. Ex.P.2 is the Board Resolution, Ex.P.3 is the authorized copy of the Authorization Letter. Ex.P.4 & P5 are the cheques. Ex.P.6 & P7 are the Bank Endorsements. Ex.P.8 is the copy of the Account Extract. Ex.P.9 is the office copy of Legal Notice. Ex.P.10 are the Receipts. Ex.P.11 and P12 are the Track Consignments. Ex.P.13 is the returned Postal Cover. Ex.P.14 is CC NO.30059/2019 the Original Global Vendor Service Agreement dt.25.09.2018. Ex.P.15 is the original Loan Agreement dt.25.09.2018. Ex.P.16 is the Agreement concerned to Statement of Work dt.25.09.2018. Ex.P.17 and Ex.P.18 are the original agreements concerned to Master Reputation and Master Requirement Service. Ex.P.19 are the Web Copy of history of whatsapp chat communications. Ex.P.20 are the web copies of e-mails. Ex.P.21 are the web copies of Letter e-mails communication.

14. During his cross examination he narrated that himself and his wife by name Laxmi Polisetty are working as Directors of company. Now third director by name Manoj Wagale has entered. PW.1 is the Managing Directors. The Ex.P.3 which has been confronted to the PW.1 by suggesting that, there

is no signature of the executor. But it is digitalized signature of the PW.1. But explains the contents of Ex.P.2 dt: 14.10.2019 which was executed by the directors. But very document was signed by the PW. 1 and not by other directors. He deposed about 4 agreements which have been executed in between parties. After expiry of Ex.P.4 cheque, Ex.P.5 another cheque was issued. Further he deposed about what's app communications and Mail communication held between two companies. But failed to CC NO.30059/2019 produce Memorandum of Association or Articles of association before this court.

15. Further he deposed that accused company has availed loan of Rs.24,00,000/□towards its business. Further he volunteers that he cannot remember exact amount availed by the accused. The PW.1 has confronted service agreement and MOU documents on his admission both have been marked under Ex.D1 and D.2. As per service agreement accused company has sent SOW and not WO. and PW.1 has send invoices for supplience of the human resources. But no relevant documents have been produced by saying that those documents are not connected with the present loan transaction. He had Email communications regarding supplience of human resources. Some time they may be of accused company's clients. After conducting of interview accused company select the human resources and it has right to reject the some of the candidates. Accordingly PW.1 has sent 3 human sources. But to prove the same, he has not produced any statement of work or the documents of compliance of work order. Further he admits that there is no specific provision to sanction the loan to any person and there was no specific resolution passed in his company prior to sanction of loan. The said loan was sanctioned out of CC NO.30059/2019 involvement made by the some persons in his company. He deposed that on 23.09.2018 loan was sanctioned. But service agreement, loan agreement have been executed on 25.09.2018 as per Ex.P.14 & 15. He also produced What's App chat communications and bulk of E□mail communications collectively and respectively marked under Ex.P.20, P.21. I have gone through carefully above said all the communications through which there is no such discussion specifically regarding availing the loan by the accused company.

16. On other angle he deposed that loan was sanctioned on 25.09.2018. Further deposed that, cheque Ex.P.2 was issued on that day by the accused. But he does not know about exact amount which was transferred infavour of the accused company/. But volunteers that within 2 days entire loan process was completed. Later on he stated that without looking the accused statement he unable to say the exact loan amount which was transferred to the accused company.

17. Further it is observed that during cross examination he has explained that as on the date of loan agreement they obtained cheque with filled of all columns except date column from the accused but this fact has not been mentioned either in CC NO.30059/2019 legal notice, complaint or in evidence affidavit. Later on he denied some defence suggestions that as on date of loan agreement the entire sanctioned loan amount of Rs.52 Lakhs has not been transferred to the accused account and only Rs.22 Lakhs amount has been transferred to the accused company, that too towards development of business, complainant company has made investment. Very suggestions has been denied by the witness by stating that there are 4□5 individual persons who have made huge investment of Rs.40 lakhs towards complainant company's business without having written instruments in order to get share in the profit margin. But this fact has not been mentioned either in complaint or in the

evidence affidavit. Further he denied other defence suggestions put by the defence counsel but placed explanation that the service agreement held in between parties is entirely different from the above said loan agreement, as there was no profit and loss sharing agreement held between these two companies, but it is duly admitted that complainant company has not made any investment personally either in of any agreements held in between the parties but it got share in the profit to the extent of 85% and accused company has share in the profit to the extent of 15%. It is also duly admitted that in general who have CC NO.30059/2019 Lion head portion of the profit company is to invest major portion of the investment.

18. In order to rebut the legal presumptions existing infavour of the complainant as per Sec.118 and 139 of N.I.Act, the accused has cross examined the PW.1 in detail and some material facts have been disclosed. Apart it, the accused not stepped into witness box and not lead the defence evidence orally. Accused has got constitutional right to lead the defence evidence or he can impinge the credibility of the complainant's witnesses during cross examination process.

19. Accordingly I have observed that the documentary evidence which have been produced by the complainant among which he has produced earlier cheque got marked under Ex.P.4 which was for Rs.52 lakhs, after presentation same has been dishonoured for insufficient fund , later on cheque in question has been issued by the accused for Rs.56,55,000/-. To support alleged due amount from the accused the complainant PW.1 has produced web copies of What's app communications and E-mail communications which have been marked under Ex.P.20 and P.21. I have gone through the each and every message of Ex.P.20 and P.21 through which none of the message shows about CC NO.30059/2019 transfer/ acceptance of alleged loan amount of Rs.52 Lakhs infavour of the accused company. Further it is observed that by filing of present complaint the employee of the complainant company by name Laxmi Polishetty has filed the complaint along with Board resolution dt: 24.09.2019, letter of authority as marked under Ex.P.3.IN which it has been contended that, the above said Laxmi Polishetty who being the wife of PW.1 got authorisation letter as per Ex.P.3 which is valid till the employee is in service of the company or revoked specifically whichever is earlier. Based on these two documents the above said Laxmi Polishetty has filed the present complaint. But during recording of sworn statement very PW.1 appeared with authorization of Ex.P.2 which is nothing but a board resolution meeting dt:

14.10.2019. I have gone through the entire contents of above said both board resolution meetings in which Ex.P.2 is signed by the PW.1 as authorized agent to empower the PW.1 to proceed with the legal proceedings against the accused company including making declaration on oath and to verify the pleadings and produce any documents on behalf of the complainant company.

But this authorisation is issued by the PW.1 himself in his favour without taking signatures of the other directors. During cross CC NO.30059/2019 examination this fact has been duly verified at that time witness explains that he being a Managing Director he is fully authorised to issue authorised copy of Board resolution meeting and no need of taking signature of other directors. On the contrary I have gone through the board resolution meeting along with authorisation letter which have been issued in favour of the Laxmi Polishetty in which the PW.1 has put his signatures and authorised

Laxmi Polishetty to represent the complainant company in order to initiate the legal proceedings against the accused company. It is observed that, she was authorised to represent the complainant company until she works under the complainant company or revoked specifically whichever is earlier. Accordingly PW.1 has filed board resolution meeting which bears no signature of issuing authority or signatures of other directors. Further more to revoke the authorisation of above said Laxmi Polishetty, PW.1 has not followed due process of law. Therefore the authorisation placed by the Laxmi Polishetty attracts more evidential value compared to the board of resolution produced by the PW.1 on his behalf. Therefore as per Sec.86 of Evidence Act authorisation placed by the PW.1 is not legal one as the complainant company has not obtained permission to substitute PW 1 in place of CC NO.30059/2019 Lakshmi Polisetty by producing the board resolution meeting and the authority letter along with vakalath.

20. Further, I have gone through cross examination of PW.1 carefully through which it has been observed that on 6 th page of his cross examination he admitted that accused has taken loan from him regarding business transaction and is liable to pay amount of Rs.24 Lakhs. Further he volunteers that he cannot remember exact amount to be paid by the accused. When the accused took defence of non existence of loan agreement or non transfer of loan amount of Rs.52,00,000/□ then only producing the agreement is not sufficient to prove its due execution. The complainant is bound to prove transfer of entire sanctioned loan amount to the accused account. Hence, in absence of such proof, the loan agreement cannot said to be executed.

21. Further it is observed that after entering into service agreement and MOU of Joint Venture Agreement there is no relevant and material document produced by the PW.1 to show the supplience of the human resource persons to the accused company in order to comply their work order. Therefore it was unable to the accused company to send the statement of work. Further it is observed that PW.1 has not produced any invoices to CC NO.30059/2019 that effect in order to support that he has complied with the work order placed by the accused company. When he has been asked for producing of such invoices at that time he explained that those documents are not connected to the loan transaction and successfully avoided to produce those documents before this court. Therefore it reveals that after entering into service agreement and MOU of Joint Venture Agreement PW.1 who being a Managing Director of the complainant company has not performed his performance resulting of which accused company is also failed to comply with the agreement as there was no supply of human sources as agreed in between the parties. Further it is observed that the complainant company being a private limited company engaged in the business of software product and services there is no specific provision to sanction the loan to any independent person or institute , company. Therefore as per Sec.186 of Companies Act in absence of any such specific provision the company who wants to enter into loan transaction has to strictly comply with the above said provision. In this case the complainant company has not duly complied with the above said provisions of the Companies Act.

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22. Further it is observed that during cross examination in one angle PW.1 has deposed that loan was sanctioned on 23.9.2018 in another angle during cross examination held on 22.11.2022 he has

been deposed specifically that on 25.9.2018 ie on the date of execution of above said agreements loan amount has been given in favour of accused company through account transfer, but no such account extract has been produced. Despite it PW.1 has produced one account extract which was marked under Ex.P.8 through which it has been gathered that the entire transactions held through complainant company's account has been shown in this document from 01.06.2019 to 27.06.2019. But alleged loan transaction was held in the month of September 2018, therefore the transfer of sanctioned loan of Rs.52 Lakhs in favour of accused company has not been shown in Ex.P.8. Further it is observed that PW.1 volunteers that he do not remember exactly when entire loan amount has been transferred to the accused account further he explained that he do not know exactly as on date of issuance of cheque in dispute whether the entire loan amount of Rs.52 Lakhs has been transferred to the accused account or not. Therefore after going through such changed versions of the PW.1 it reveals that PW.1 he himself not so CC NO.30059/2019 confirmed about transfer of the alleged loan amount of Rs.52 Lakhs infavour of the accused account through account transfer. But he gave material explanation that some 4 □5 individual persons have invested their savings of Rs.40 Lakhs infavour of the complainant's company without having of written instrument only they used to get share in the profit, apart from above said investment complainant company has not invested a single paise in above said alleged loan agreement but it has got share in the profit to the extent of 85% and accused company is having share in the profit to the extent of 15%. This division of shares is itself not lawful looking to the lion share of the complainant's company without making any investment. Hence the agreements held in between complainant company and accused company are not at all duly acted upon consequently both companies sustained loss. Therefore after going through entire versions of the PW.1 it discloses that the approach of complainant to the court is itself not with clean hand. Hence it has been observed that on page No.83 of Ex.P.20 during What's app chatting between accused and the PW.1, the accused has resisted the message sent by the PW.1 and the detail chatting has been specifically marked as under :

CC NO.30059/2019 " the genuine business persons don't get loan from people Like us". The reply from the accused is "U mean I am not genuine one I opt loan from U? In genuinely..... Or U invest on the project and had 86% profit margin on the J.V" which shows that accused has denied the entire transaction with description of loan transaction. Thereafter PW.1 stopped his What's app chatting with the accused and put the cheques for encashment process. But he openly explained that he has no investment made in the accused company other than loan as alleged but he entered into joint venture agreement in order to develop his business at United Arab Countries (UAE) with agreed share in the profit 85:15 with the accused. If for a while we assume about alleged loan transaction stated by the PW.1 then court has to verify whether the complainant company has duly complied with Sec.186 of Companies Act or not. Because as per Sec.2(6)(a) of Karnataka Money Lenders Act which reads as under:

Sec.2(6) reads as under:

(6) "interest" includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest

or otherwise, but does not include any sum lawfully charged by a money lender for or on account of costs, charges or expenses in accordance CC NO.30059/2019 with the provisions of this Act, or any other law for the time being in force;

Sec. 2(g) of Karnataka Money lenders's Act reads as under:

"Loan" means an advance at interest whether of money or in kind, and includes any transaction which the court finds in substance to amount to such an advance, but does not include, (a) a deposit of money or other property in a Government Post Office Bank or in a [Karnataka Government Savings Bank] or in any other bank or in a company or with a co-operative society; 1. Adapted by the Karnataka Adaptation of Laws Order, 1973 w.e.f 1.11.1973 (b) a loan to, or by, or a deposit with, any society or association registered under the 1[Karnataka] 1 societies Registration Act, 1960 (1[Karnataka] 1 Act 17 of 1960) ; 1 Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f 1.11.1973 (c) a loan advanced by Government or by any local authority authorized by Government ; (d) a loan advanced by a co-operative Society;

23. As per pleading and evidence placed by the complainant company it has not obtained money lending license from competent authority to extend the financial help for development of trade in favour of the accused's company. Therefore in absence of compliance of above said provisions complainant company is not at all authorised to hold loan financial transaction with any individual person or company or proprietorship as alleged in the complaint.

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24. Further I have gone through the provisions of Sec.186 of the Companies Act 2013 Disclosure in the Financial Statement:

The company must disclose the full details of the loans granted, investments made, guarantees provided, or security offered to the representatives in the financial report and the intent by which the mortgage, guarantee or security is intended to be used by the beneficiary of the loan. Organisations can include this information in the Board's reports [Section 134(3)(g) of the Act] and the appendices to the accounts.

Mode of Obtaining the Approval of the Board of Directors The corporation may only make an investment, loan, assurance or collateral after the Board of Directors authorises it with the consent of all of the directors participating in the meeting, rather than via circular resolution. According to Section 179(3) of the Act, a firm's Board of Directors has the authority to finance the company's capital through resolutions voted at the Board of Director's gatherings. The Board of Directors can designate such authority to any panel of directors, general manager or senior executive of the firm, or, in the event of a subsidiary, the foremost officer of the subsidiary. The BOD should do such delegation at the conference, not by a circular resolution.

25. As per the above said provisions complainant company has not produced documents concerned to approval of the Board of Directors prior to sanction of the loan. Further more, if they have really entered into loan transaction, they might have disclosed this amount in their financial statement in the year 2018. In absence of such material documents, the alleged loan transaction as described under the complaint cannot be taken CC NO.30059/2019 into consideration. Hence, the complainant company has utterly failed to prove either of the agreement executed with the accused company.

26. Further it is observed that PW 1 being the Representative of complainant company has not followed proper procedure in order to place his representation prior to entering into the witness box. Despite it during cross examination he has failed to place proper explanation to number of questions/suggestions put by the defence counsel. Therefore, it is legally presumed that PW1 had no required knowledge of the entire transaction. Therefore, the representation of PW 1 itself is denied by the defence counsel by comparing with the documents placed by the complainant company with respect to the authorization of Laksmi Polisetty. Therefore under such situation the approach of the complainant company is itself not of clean hand and also failed to prove that the amount mentioned under the cheque is legally recoverable debt.

27. In this regard I have gone through the principle discussed in reported Judgment held between Indus Airways Pvt Ltd, V/s. Magnum Aviation Pvt ltd, 2014 (12) SCC 539 in which it has been held that :

CC NO.30059/2019 'The dishonour of post dated cheque issued by way of advance payment against the purchase order that has arisen for consideration in that circumstance , it was held that same cannot be considered as cheque issued towards discharge of legally enforceable debt'.

28. Now in the present case it is to be decided whether the complainant had succeeded in establishing the case against the accused . As it is already held in the above that, the complainant has failed to prove the allegations made against the accused beyond all reasonable doubt, to prove the said allegations there must be a clinching and clear evidence against the accused to establish all the ingredients constituting the offence U/s.138 N.I.Act. The complainant has failed to prove the initial burden that lies on him.

29. Mere production of the cheque is not sufficient to prove the ingredients of Sec.138 of N.I.Act. There must be a existing legally recoverable debt on the part of the accused. The complainant has not discharged the initial burden which lies on him. The accused has successfully rebutted the presumption available under Sec.139 of N.I.Act. On the other hand the complainant has not produced sufficient evidence or materials to prove the complaint averment and ingredients of section 138 of CC NO.30059/2019 N.I.Act. In this regard, it is necessary to refer the following decisions :

(2010) 11 SCC 441Rangappa V/s Sri.Mohan 'N.I.Act, 1881 S.139 Presumption under □
Scope of

- Held , presumption mandated by S.139 includes a presumption that there exists a legally enforceable debt or liability □However, such presumption is rebuttable in nature - Criminal Trial - Proof Presumption - Generally'.

30. The principles of the above case are amply applicable to the case on hand. In view of the principles laid down in the above cases and materials on record, the court comes to the conclusion that the complainant has utterly failed to prove the case beyond all reasonable doubt and has not placed sufficient oral and documentary evidence for convincing the court in order to convict the accused for the offences punishable under Sec.138 of N.I.Act . Hence, Point Nos.1 and 2 are answered in the Negative.

31. Point No.3 : In the light of the above findings on point Nos.1 & 2 I proceed to pass the following :

ORDER Exercising the powers conferred upon this court u/s.255(1) Cr.P.C., the accused is hereby Acquitted for the offence punishable under Sec.138 Negotiable Instrument Act.

CC NO.30059/2019 The bail bond of the accused and that of the surety if any stand cancelled.

[(Dictated to the Stenographer on line , transcribed and typed by her, corrected and signed and then pronounced by me in the open court on this the 13th day of February , 2023).

(SUJATA SIDAGOUDA PATIL) XXV A.C.M.M., BANGALORE.

ANNEXURE

1) LIST OF WITNESSES EXAMINED FOR THE COMPLAINANT:

P.W.1 : Satyanarayana Tummalapenta.

2) LIST OF DOCUMENTS MARKED FOR THE COMPLAINANT:

Ex.P1	:	Complaint
Ex.P2	:	Board Resolution
Ex.P3	:	Authorization letter
Ex.P4&5	:	Cheques
Ex.P6&7	:	Bank Endorsements
Ex.P8	:	Account Extract
Ex.P9	:	Office copy of legal notice
Ex.P10	:	Postal receipts
Ex.P11&12	:	Track consignments
Ex.P13	:	Returned Postal Cover
Ex.P14	:	Global Vendor Service Agreement
Ex.P15	:	Loan Agreement
Ex.P16	:	Statement of Work Agreement

Ex.P17 : Master Reputation Agreement
Ex.P18 : Master Requirement Services Agreement
Ex.P19 : Web copies of History of whatsapp communication

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Ex.P20 : Web copies of e mails
Ex.P21 : Web copies of letter e mail communication

3) LIST OF WITNESSES EXAMINED FOR THE ACCUSED: ☐ Nil

4) LIST OF DOCUMENTS MARKED FOR THE ACCUSED: ☐ Ex.D1 : Copy of the Service Agreement
Ex.D2 : Copy of Joint Venture Agreement.

(SUJATA SIDAGOUDA PATIL) XXV A.C.M.M., BANGALORE.

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