

Cts Management Services vs Peacock Media Limited on 24 December, 2024

IN THE COURT OF METROPOLITAN MAGISTRATE EAST
DISTRICT, KARKARDOOMA COURTS, DELHI.

Presided by: Sh. Divyam Lila

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| CTS Management Services | versus | Peacock Media Ltd. |
| Ct. Case No. | : | 47244/2016 |
| Jurisdiction | : | P.S Pandav Nagar |
| Unique ID/ CNR No. | : | DLET02-001641-2015 |
| Name of the Complainant | : | CTS Management Services Pvt. Ltd., At. D-1/165, Nand Nagri, New Delhi-110093. 1. Peacock Media Ltd., At: 24B, Apollo Industria Estate, Off. Mahakali Caves Road, Andheri (East) Mumbai-400093. |
| Name of the Accused(s) | : | 2. Sandeep Deepak Chawla, At: 19 A Road, Anand Vihar Society, 2nd Floor, Flat No. 201, Varun Building, Khar Danda Road, Khar (W), Mumbai- 400052. |
| Counsel for the Complainant | : | Sh. Seema Dogra, Ld. Counsel. Sh. Manohar Malik and Ms. Farah Khan, Ld. |
| Counsel for the Accused | : | Counsel. |
| Date of institution of case | : | 21.09.2012 |
| Date of Judgment | : | 24.12.2024 |
| Final Order | : | Acquittal. |
| Offence under Section | : | Under Section 138 NI Act |

—:JUDGMENT:—

Introduction: Factual Matrix:

This case concerns a criminal complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the NI Act"), in

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which the complainant accuses the accused of dishonouring a cheque that was allegedly issued in discharge of a legally enforceable debt. The complainant

contends that the accused issued a cheque dated 21.03.2012, drawn on State Bank of India for an amount of 1,45,00,000/- (hereinafter referred to as "Cheque in question"), which was subsequently dishonoured upon presentation due to reason "kindly contact the drawer/ drawee bank" in the accused's bank account vide return memo dated 23.07.2012. The complainant further alleges that despite the

dishonour, no payment was made by the accused in response to a legal notice sent under Section 138 of the NI Act, prompting the filing of the present complaint.

In legal terms, Section 138 of the NI Act criminalizes the dishonour of a cheque when the cheque has been issued for the discharge of an existing debt or liability. The complainant asserts that the cheque in question was issued to settle an outstanding debt owed by the accused to the complainant. Upon dishonour, a statutory notice was sent to the accused, but the accused allegedly failed to make payment, which led the complainant to initiate the present criminal proceedings.

The accused, however, denies the allegations made by the complainant. According to the defense, the cheque was issued as a security for a separate

contractual obligation and was not intended for the discharge of a legal debt. The accused claims that no such debt exists and that the complainant is misusing the cheque for purposes other than what it was originally issued for. Furthermore, the accused has contended that they are financially insolvent, with their company, M/s Peacock Media Ltd., currently under liquidation.

The present case, therefore, raises significant issues of law and fact. The Court is

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tasked with determining whether the complainant has successfully proven that the cheque was issued in discharge of a legally enforceable debt. This involves examining the nature of the transaction underlying the cheque, the legal presumption of liability under Section 139 of the NI Act, and whether the accused has rebutted this presumption by raising a plausible defense.

At the core of this case lies the issue of whether the dishonour of the cheque can be attributed to a failure to fulfill an existing debt, or if the accused's defense --that the cheque was issued as a mere security--holds merit. This Court must carefully evaluate the evidence and legal arguments presented by both parties,

keeping in mind the standard of proof required in criminal cases and the presumption of innocence afforded to the accused.

The key questions for determination in this case are:

1. Whether the cheque was issued for the discharge of a legally enforceable debt or liability.
2. Whether the statutory presumptions under Section 139 of the NI Act are rebutted by the accused.
3. Whether the complainant has successfully proved all the ingredients of an offence under Section 138 of the NI Act.

The Court will now proceed to examine the evidence presented by both parties, the legal arguments raised, and the applicable provisions of law in order to render its judgment on the matter. Below is a detailed summary of the evidence recorded during the trial, the law of presumption and burden of proof u/s 138 NI act, reasoning on evidence and the conclusion and the Judgment pronounced.:

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Evidence of the Complainant:

Complainant's Witness (CW1) - Mr. Sanjay Jhalla :The complainant, appeared as CW1 and deposed that the accused no. 1 and its directos had issued a cheque for an amount of Rs. 1,45,00,000/- drawn on Axis Bank, Mumbai, in his favor as a payment towards an existing liability. The complainant testified that the cheque was given in exchange for an outstanding payment, allegedly owed by the accused

to the complainant due to a business transaction between the two. According to CW1, the cheque was presented to the bank but was dishonored with the bank remarking "Contact Drawer," indicating that the accused's account either had insufficient funds or the cheque was otherwise invalid.

Exhibits Produced by CW1:

Exhibit CW1/1 - A copy of the dishonored cheque for Rs. 1,45,00,000/-.

Exhibit CW1/2 - A copy of the bank memo or dishonor slip showing the reason for dishonor as "Contact Drawer."

Exhibit CW1/3 - A copy of the legal notice sent to the accused under

Section 138 of the Negotiable Instruments Act.

Exhibit CW1/4 - Proof of service of the (acknowledgment from the accused).

Exhibit CW1/5 - Bank statements or other documents purportedly evidencing the complainant's payment to the accused, claiming that

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the amount was a part of the outstanding debt.The complainant testified that after the dishonor of the cheque, a legal notice was duly issued within 30 days of the dishonor, demanding payment. He further claimed that despite the legal notice being received by the accused, no payment was made, leading to the present criminal complaint.

Cross-Examination of the Complainant: The defense counsel cross-examined CW1, attempting to cast doubt on the authenticity of the complainant's claim.

Inconsistencies in the Complainant's Story:

The defense pointed out contradictions in the complainant's testimony regarding the nature of the transaction. The complainant's claim that

the cheque was issued for an outstanding debt was challenged with reference to the underlying contractual agreements between the parties.

The defense raised questions about the payment history and whether the complainant's documents truly reflected a debt or merely part of a

complex commercial arrangement.

Challenging the Debt and the Transaction:

The defense argued that the amount mentioned in the cheque was not intended to settle any existing debt but was part of a larger financial arrangement. The defense also highlighted that the complainant's

documents, such as the bank statement, did not conclusively show that

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the amount was a loan or an enforceable liability.

The defense further questioned the absence of any formal agreement in writing that substantiated the complainant's claim that the payment was a debt settlement.

Testimony on the Cheque's Purpose:

The complainant was questioned on whether the cheque was intended to be used as security or a guarantee for the payment of the sum. The complainant's responses were inconsistent, and the defense argued that this ambiguity weakened his case.

Statement of the Accused: The accused, took the stand and gave a statement in his defense. He denied any liability for the dishonored cheque and explained that the cheque was issued for a different purpose.

Defense Claim - Cheque Issued as Security: The accused stated that the cheque was not issued as a payment for any pre-existing debt but was

instead issued as part of a security arrangement for a business deal. The accused maintained that there was a commercial understanding between the complainant and his company, CTS Management Services Pvt. Ltd., where the cheque was provided as a security for future financial transactions. According to the accused, the complainant had paid Rs. 1,45,00,000/- as part

of a transaction between the two entities, but the cheque was not meant for the discharge of any existing liability at the time. The accused also explained

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that the cheque was meant to be held in escrow and was not intended for immediate encashment or as payment for an outstanding debt.

Defense Evidence: In this case, the defense has presented the testimony of the accused, Sandeep Chawla, along with a defense witness DW 2 to establish that the cheque issued by the accused to the complainant was not for the discharge of any debt, but rather as part of a security arrangement in the course of a business transaction. Below is a detailed brief on the testimony of the defense and the accused:

Testimony of the Accused (DW1): The accused, Sandeep Chawla, took the witness stand and gave his version of events in response to the allegations of dishonor of the cheque. His testimony can be summarized as follows:

Denial of Debt: The accused denied any liability for the amount of Rs. 1,45,00,000/- claimed by the complainant. He stated that the cheque in

question was not issued as a payment for a debt or to settle any pre-existing financial obligation. Rather, the cheque was provided by him to the complainant as part of a security arrangement related to a larger business transaction between the parties.

Nature of the Transaction: According to the accused, the cheque was

issued in connection with a business deal between the complainant and his

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company, CTS Management Services Pvt. Ltd. The accused explained that the cheque was intended as security for future transactions and was not meant to be cashed or encashed immediately. He further clarified that the cheque was part of a broader agreement where the complainant had

advanced a sum of money, and the cheque was given to secure that payment or to ensure fulfillment of the contract.

Cheque as a Guarantee: The accused emphasized that the cheque was not issued with the intention to pay off an existing debt. Instead, it served as a guarantee or collateral for a transaction, which was still in progress at the

time. The accused pointed out that the cheque was meant to be held in escrow, with the understanding that it would only be presented or encashed under specific conditions or once the entire transaction was finalized.

Cheque Misuse Allegation: The accused alleged that the complainant had misused the cheque by presenting it for encashment prematurely and without

a valid reason. He reiterated that the cheque was never intended to be a substitute for immediate payment and that it should not have been treated as

a discharge of any liability at that point in time.

Lack of Formal Debt Agreement: The accused also highlighted that there was no formal loan agreement or written contract that evidenced the claim of

an existing debt between him and the complainant. The absence of a clear written agreement or a promissory note undermined the complainant's position, according to the accused.

Response to the Legal Notice: In his testimony, the accused admitted that

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he had received the legal notice issued by the complainant but maintained

that he had already explained the situation regarding the cheque's true purpose. He argued that the legal notice did not adequately reflect the true nature of the transaction and the context in which the cheque was issued.

Testimony of the Defense Witness (DW2): The defense also called a witness, who supported the accused's version of events. The defense witness provided the

following testimony:

Confirmation of Security Arrangement: The witness corroborated the accused's testimony that the cheque was issued as part of a security arrangement related to the business dealings between the complainant and the accused's company. The witness explained that the cheque was not

issued to settle any debt, but rather as a form of collateral to secure the payment for goods or services rendered, which were still in progress.

Nature of the Transaction: The witness described the nature of the transaction as a commercial agreement involving the complainant and the accused's company. The payment of Rs. 1,45,00,000/- was made by the

complainant in relation to this business deal, but the cheque was not meant to settle a debt. The witness confirmed that the cheque was handed over with the understanding that it was not for immediate encashment, and its role was simply to secure the future completion of the deal.

Additional Documentation: The defense witness also presented documents

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supporting the claim that the cheque was part of the broader business arrangement, including communication (e.g., emails, letters) between the parties, business invoices, and transaction details. These documents were meant to show that the transaction was of a commercial nature and did not involve any debt that needed immediate settlement.

Brief on the Law of Presumption in Cheque Dishonour Cases:

Under Section 138 of the Negotiable Instruments Act, 1881 (NI Act), the dishonour of a cheque for insufficiency of funds or any reason within the drawer's control is a criminal offence, attracting penalties, including imprisonment or fines. A central aspect of such cases is the presumption of liability that arises in favor of the complainant upon proof of dishonour of the cheque.

Presumption under Section 139 of the NI Act:

Section 139 of the NI Act provides a presumption in favor of the complainant in cases of cheque dishonour. Once the complainant proves that the cheque was drawn, that it was dishonoured, and that the accused issued

the cheque, the court is mandatorily presumed that the cheque was issued in discharge of a debt or liability.

The provision places the burden of proof on the accused to rebut the presumption that the cheque was issued for the discharge of a legally enforceable debt or liability. The presumption is not absolute, and the

accused may rebut it by leading evidence to the contrary.

This presumption is a rebuttable one, and the accused does not have to

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prove his innocence beyond reasonable doubt. Instead, the accused is required to raise a probable defense that casts doubt on the complainant's case. Once the accused raises such a defense, the presumption of debt under

Section 139 can be effectively neutralized.

Requirement of the Accused to Rebut the Presumption:

The presumption of debt under Section 139 is in favor of the complainant, but it is rebuttable. The accused is entitled to rebut this presumption by leading credible and convincing evidence. The legal standard is not that the

accused must prove his case beyond reasonable doubt but that he must raise a probable case or a preponderance of probabilities that the cheque was not issued for the discharge of a debt or liability.

How to Rebut the Presumption:

The accused can rebut the presumption by demonstrating that the

cheque was issued for reasons other than discharging a debt, such as for security, collateral, or as part of a business transaction.

The accused may lead evidence to show that no debt existed at the time the cheque was issued, that the cheque was issued under duress, or that the complainant presented the cheque for encashment in bad

faith.

The accused can present documentary or oral evidence, such as business agreements, communications, or testimonies that provide an alternative explanation for the issuance of the cheque.

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The standard of rebuttal requires the accused to show that, on the

balance of probabilities, the cheque was not intended for the discharge of a debt, thus creating a reasonable doubt in the prosecution's case. Burden of Proof: While the presumption shifts the burden onto the accused to rebut the claim, the burden of proof does not shift to the accused to prove his innocence beyond reasonable doubt. It only

requires the accused to lead evidence on the preponderance of probabilities that the cheque was not issued in discharge of a debt or liability.

The Requirement of the Accused to Prove His Evidence on the Preponderance of Probabilities:

Preponderance of Probabilities means that the evidence presented by the accused should tip the scale of justice in his favor, even if slightly. The accused does not need to prove his defense beyond reasonable doubt, but must simply raise a probable defense that casts doubt on the complainant's version of the events.

Standard of Proof: While the standard of proof required from the accused is not as high as beyond reasonable doubt, the defense evidence must still be strong enough to create a reasonable doubt in the mind of the court regarding the complainant's claim.

The defense is not required to disprove the complainant's case entirely;

rather, the defense's job is to introduce sufficient evidence to make the

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complainant's version less probable than the accused's defense.

Requirement of the Court to Find the Accused "Must Be" Guilty and Not "May Be" Guilty:

The law requires that a criminal case be proved beyond reasonable doubt.

In a cheque dishonour case under Section 138 of the NI Act, even though there is a presumption in favor of the complainant, this presumption can be

rebutted by the accused. However, the ultimate responsibility of the court is to ensure that the accused is proven guilty beyond reasonable doubt. In criminal law, the principle of "beyond reasonable doubt" applies to the

accused. The court must be satisfied that the accused's guilt is the only reasonable conclusion from the evidence presented. If there is any reasonable doubt about the accused's guilt, then the accused must be acquitted.

The court, therefore, needs to consider:

Whether the complainant has established, beyond reasonable doubt, that the cheque was issued for the discharge of a debt.

Whether the defense has succeeded in raising a reasonable doubt or rebutting the presumption of debt.

Whether the complainant has provided sufficient evidence to prove the

debt, and whether the accused has proved his case on the preponderance of probabilities.

"Must be guilty": The court must reach the conclusion that the accused

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must be guilty based on the totality of the evidence, and not just that he may be guilty. A vague suspicion or possibility of guilt is insufficient for

conviction. It is only when the evidence points towards the accused's guilt in a way that leaves no room for reasonable doubt that the presumption of guilt can be affirmed.

If, after examining the evidence, the court is left with reasonable doubt about whether the cheque was issued in discharge of a debt, or whether the

accused's defense is plausible, the court must acquit the accused. This aligns with the fundamental principle in criminal law that no one should be convicted unless their guilt is proven beyond reasonable doubt.

In light of the above principles, it is crucial for this court to carefully evaluate whether the presumption of debt has been sufficiently rebutted and whether the

evidence presented by both the complainant and the accused establishes the guilt of the accused beyond reasonable doubt.

Legal Reasoning:

1. Burden of Proof:

In the present case, The complainant was able to demonstrated the prima

facie case and case of presumption of dishonor of the cheque as the accused had admitted the issuance of the cheque, admitted the signature on the cheque, admitted receiving the legal notice issued by the complainant and had even admitted that subject transaction of Rs. 1.45 cr was received in the account of

accused's company from the complainant company. However, the defence of the

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accused is that the transaction of Rs. 1.45 Crore was actually an payment received from the complainant company under the financial arrangements between both companies owing to contractual obligation undertaken for railways, and that the complainant has misused to cheque in question to avoid paying their own liability and the ground of loan/ ICDs is an afterthought.

2. Inconsistent Testimony:

Testimony Contradictions: CW-1 gave conflicting statements in different parts of his testimony, which raises doubts about his credibility. The instances of the testimonial contradiction throughout the evidence and cross-examination of witness CW-1 has been demonstrated for the purpose of

understanding the nature of transaction and the reliability of the witness. For instance,

In the cross-examination, CW-1 was confronted with a statement made on 31-10-2017 where he had mentioned that Peacock Media provided him remuneration for the period of 2007-2008 and 2008-

2009. The witness also stated that he was hired as a consultant for Northern Railway during the period 2007 2008; but the witness denied that he was consulted at the northern Railway while working with the accused as an employee. On further cross-examination the witness denied the suggestion that he was a marketing consultant in the

accused company for two years and when confronted the witness admitted that he was marketing consultant for a period of two years. This shows that witness was not giving coherent replies and the

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answers were contradictory.

On one hand, the witness had stated that agreement was signed in

March 2010, and on another hand, the witness CW1 had stated that there was no agreement between accused company prior to 13th of April 2010. This appears to be direct contradiction of the witness. The witness was shown the nature account filed by the complainant in the case, the witness had stated that amount which came to the

company bank account was not from the accused company, but from the ICICI Bank and that he could not understand the question if the amount was paid by the accused company. However, the witness has admitted that on 12th of April 20 5,00,000 received from HDFC bank, on 21st of April 20 5,00,00,000 were received from ICICI

Bank and all 22nd September 20 5,80,48,150 were received by the Complaint company, but the witness was not sure if the same were received from accused company.

However, in the next question, the witness had stated that we generally receive such amounts from ICICI bank and it is possible that

oney might have been arranged by Accused Company, and the witness denied that the ledger account account submitted by complainant company belonging to the accused itself.

The witness, however, again stated that ledger account placed by him belongs to accused company, peacock media Ltd for a period of 1

April 2010 to 31 March 2011, and then the witness had admitted that

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the credited amount has come from the loan account of peacock media from the ICICI Bank, and that the accused company had informed that the said amount was credited from the loan account.

The witness had also stated that he was not the guarantor of the loan

account, but guarantor of a separate loan account. Thereafter, the witness had stated that amount of 11,00,00,000 were credited in the account of complainant which had come from the loan account of peacock media and it is the same account in which the complainant company had given guarantee whereby witness and his wife had stood

as guarantor in the said loan account.

Ambiguity About Contracts: The witness had shown stark resistance to state any clear information with respect to the contracts involved between the parties involving huge sum of money flowing from the accused to the complainant. The witness CW-1 kept on stating that the contract between the

accused and the complainant did not have any bearing to the present transaction, but the evidence brought on record and admitted by the complainant himself stated another story. It appears that the complainant and the accused persons were involved in the complex arrangement of financial transactions involving multiple contracts pertaining to the Indian railway and

the complainant himself was involved in working with the accused company, not to remote from the date of Cheque dishonour. In the cross examination, certain questions were asked by the counsel for the accused and the witness could not answer the same coherently; the instances of the same is demonstrated as follows:

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The witness had stated that during 2007 to 2010, the witness CW1 was running the complainant company and accused company had entered

into a contract with Indian Railways for cleaning and allied services of passenger trains. The witness also stated that complainant company had received contract of 11 passengers during the said period of 2010

to 2011, but the witness denied having memory about the number of trains, which were actually handed over under the contract. The witness also did not answer. If four trains were actually handed over and witness also did not remember if the complainant company had any other contract with Indian Railways. The counsel for the accused

had given adverse suggestion to the witness on his failure to answer coherently.

The witness had also stated that about 10 to 11 rakes of train might be allotted to the accused company for about five years approximately and witness had stated that he did not know how much money was

paid by the accused company.

The witness has admitted that as per ledger account and amount of 15,71,10,10,674 has been received from the bank of peacock media. Initially, the witness had stated that money was received from the bank account of ICICI, then the witness CW1 improvised his version

and stated that the money was received from the loan account of ICICI Bank belonging to the accused company into the account of complainant and later the witness had stated that payment was

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received directly from the accused company into the account of complainant company.

The witness also stated that accounts were not settled between them, and adverse suggestion was given by the counsel for the accused that the said account was not settled due to the accused company seeking their dues.

These lapses in recall about fundamental details could be seen as

problematic, especially for someone serving as the managing director.

3. Documentary Evidence Issues:

Missing Agreements: CW-1 admitted that the agreement signed between the complainant company and the accused company (in March 2010) was not on record, and he only referred to the agreement dated 13.04.2010 in the present

case. The witness also admitted that the ledger account for transaction with the peacock media is also not on record and that he can produce it on the next date. The omission of the complainant to produce the ledger account which is a fundamental piece of evidence in the corporate setting appears to be an attempt to suppress the material information on the accounts and actual

transactions.

Ledger Account Issues: The ledger accounts referred to in the testimony were not clearly explained, and CW-1 was unsure about several entries. For example, there were entries involving large sums of money (Rs.5 lakh, Rs.5 crore, etc.) which CW-1 could not clarify whether they were related to the

accused company or not. This lack of clarity could lead to suspicions that the
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complainant may be unable to substantiate claims of the accused's liability. The witness CW1 had also stated that the accountant used to manage the books of accounts and he also stated that he was not sure if Mr Harish singhal was one of the accountant at the time, maintaining the account of

peacock media. The witness CW1 / complainant did not bring the witness Harish Singhal to clarify upon the ledger account; and the ledger account brought by the complainant remains unproven in absence of the author of the document that is the accountant and the relevant certificate under Indian evidence act. The witness went on to give evasive replies with respect to the

said accounts with excuse that the said accounts were handled by the accountancy department. However, complainant did not bring any witness to prove the said account or answer the questions of the accused pertaining to the said account.

4. Financial Arrangement Ambiguities:

Nature of the Loan/Advance:

CW-1 claims that the complainant had provided a corporate loan or inter-corporate deposit (ICD) to the accused company. However, there is a suggestion that this was a financial arrangement between the companies, not a straightforward loan.

In the cross-examination, the witness had deposed that the subject transaction can be termed as ICD or not, as per company law is not in his knowledge. The witness had admitted that in his own complaint,

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he had termed the subject transaction as ICD received from respondent, the counsel for the accused had given adverse suggestion

that the said transaction was payment made by complainant company to the accused's company. When the witness CW1 was shown, the document mark X1 filed by the complainant, the witness admitted that ICD was mentioned on the entry 31st of March 2011. The witness goes on to say that he does not know why the ICD was mentioned in 435 the account maintained by his company as the same was entered by the account department, and that it must be mentioned as per the provision of law, but he could not tell the relevant provision of law. He then stated that the said account was

maintained as per accounting. The witness also stated that he did not know if the articles of association or memorandum of association contained an clause or direction with respect to ICD and adverse suggestion was given that the complainant company did not have any relevant article of association or memorandum of association and that it was a payment 445 given by the complainant to the accused.

The witness CW1 also expressed his lack of knowledge on the fact that if the alleged ICD was interested, be or not. Thereafter, the witness saw the exhibit CW 1/ 3 and stated that interest was to be charged on the said ICD. The counsel for the accused had given 450 adverse inference that no interest was charged on the said ICD and therefore it is not an ICD.

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The witness's testimony vacillates between describing this as a loan and calling it an advance or financial arrangement, which is crucial for Law on Inter-Corporate Deposits (ICDs) and Related Legal Compliance: The present case, the controversy can be summed up as that a sum of money RS. 1.45 crores have flown from the complainant company to the accused company. Now; The claim of the complainant company is that the said amount was a loan/ ICD to the accused company; whereas the stand 460 of the accused company is that the said amount was infact repayment by the complainant to the accused owing to financial arrangement between the accused and complainant company, and that it was not a loan. An Inter- Corporate Deposit (ICD) is a short-term unsecured loan made by one company to another. In the companies act, the loan are governed by section 465 186, which reads as Section 186 - Loans and Investments by Companies (Sec. 372 A of the companies act 1956):

186 (3) A company is permitted to give loans, guarantees, or make investments subject to certain conditions; The aggregate of such loans or investments cannot exceed 60% of the company's paid-up share 470 capital, free reserves, and securities premium, or 100% of its free reserves and securities premium, whichever is higher, without prior approval by a special resolution passed in a general meeting. No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year 475 CC no. 47244/2016 CTS Management Services Vs. Peacock Media Ltd. Page no. 22 / 33 In the court of Sh. Divyam Lila, MM, East district, Karkardooma courts, Delhi.

Government Security closest to the tenor of the loan. (prevailing rate by RBI)
Requirement of board resolution for the giving the loan. Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a 480 register which shall contain such particulars and shall be maintained in such manner as may be prescribed.

The Income Tax Act, 1961 also governs the treatment of ICDs wherein the ICD must be supported by documentation, such as loan agreements, board resolutions, and

records in financial statements. 485 In the present case, following relevant observations are made after perusal of the law on the corporate loans and advances:-

Complainant's Failure to Prove Compliance: The complainant failed to produce critical documentation or comply with statutory requirements for No board resolution or loan agreement was presented.

The alleged ICD was not reflected in the complainant's financial statements, annual reports, or tax returns.

The complainant could not demonstrate whether the ICD carried any interest, which is a typical feature of such financial arrangements. 495 There is no evidence to show that the complainant had the financial capability or authorization to issue ICDs in the ordinary course of business.

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The absence of any documentation, including income tax returns or audited accounts showing the ICD, further discredits the complainant's claim.

Conclusion : In the present case, the complainant's failure to comply with the 500 legal requirements for granting an ICD makes it improbable that the transaction was an ICD owing to the Procedural lapses in documenting the alleged ICD, Non-disclosure of the alleged liability in financial records and Lack of credible evidence supporting the alleged loan. Reliance is placed by this court on the judgment of John K. John vs. Tom Varghese, (2007) 12 SCC 714, whereby the Hon'ble 505 Supreme Court of India has held that advancement of a huge sum of loan without execution of any written documents or without charging any interest is a significant circumstance and is not conducive with the conduct of a reasonable prudent person. Further, It is highly improbable that the complainant gave a loan such a huge amount to the accused without the due corporate formalities, without interest 510 and when the complainant himself did not have any cash balance in his account and he had to avail the overdraft facility to advance such alleged loan; this appears highly improbable and not in line with the usual conduct of the person where the loan is shown to be given without interest and the complainant himself has taken loan on interest to give such a loan. Therefore, the defense of the accused that the 515 said transaction was a payment by the complainant appears to be more probable, plausible and the likely to have happened.

5. Non-Disclosure of Financial Connections:

Vague Financial Connections: CW-1 acknowledges receiving payments CC no. 47244/2016 CTS Management Services Vs. Peacock Media Ltd. Page no. 24 / 33 In

the court of Sh. Divyam Lila, MM, East district, Karkardooma courts, Delhi. 25 from the ICICI Bank, which he asserts were arranged by the accused 520 company. However, he was not able to confirm the exact nature of these payments, despite the substantial sums involved. This vagueness casts doubt on the direct involvement of the accused company in these transactions. Additionally, CW-1's admission of being a guarantor on the loan account of Peacock Media Ltd, which was used for some of the transactions, could 525 indicate a complex financial arrangement that may not directly tie the accused to the cheque in question. The complainant did not explain the nature of transactions which had evolved between the parties, and gave evasive and contradictory replies throughout the testimony.

Judicial Observation on the Marshaling of Evidence: 530 In this case, the Court has meticulously examined the documentary evidence produced by both the complainant and the accused, considering the requirements of law regarding the admissibility, probative value, and the statutory provisions governing such evidence. The process of marshaling evidence is vital for ensuring that the fact-finding process is conducted in a transparent and just manner, 535 considering the weight of each document, the reliability of its source, and the legal compliance of its presentation.

The legal framework for the admissibility of documents in this case primarily hinges on the Indian Evidence Act, 1872, particularly Section 61 (Proof of documents), Section 62 (Primary evidence), Section 63 (Secondary evidence), 540 and Section 65B (Admissibility of electronic records). The careful examination of CC no. 47244/2016 CTS Management Services Vs. Peacock Media Ltd. Page no. 25 / 33 In the court of Sh. Divyam Lila, MM, East district, Karkardooma courts, Delhi.

the evidence presented by both parties reveals several issues, both procedural and substantive, that are significant for the determination of the issues in this case.

1. Evidence Presented by the Complainant:

The complainant has produced several key documents that form the core of 545 the case. These documents include primary and secondary evidence, which, under the Evidence Act, require careful scrutiny for both authenticity and compliance with statutory rules.

Primary Evidence (Ex. CW 1/1 - Board Resolution):

The complainant has submitted a board resolution dated 08-01-2016 (Ex. 550 CW 1/1) as primary evidence, which has been duly supported by the testimony of the document's author, as indicated in the evidentiary treatment. The document's provenance is established, and it meets the basic requirements for admissibility under Section 61 of the Evidence Act. Since the author is present as a witness and attests to the document's authenticity, the Court finds this piece of evidence 555

proven and legally admissible.

Secondary Evidence and Computer-Generated Documents:

A significant portion of the complainant's evidence consists of secondary evidence, including photocopies, computer-generated reports, and bank statements. For example, the annual return of accused No. 1 (Ex. CW 1/2), downloaded from 560 the MCA site, is a computer-generated report. While such documents can be admissible as secondary evidence, their admissibility under Section 65B of the CC no. 47244/2016 CTS Management Services Vs. Peacock Media Ltd. Page no. 26 / 33 In the court of Sh. Divyam Lila, MM, East district, Karkardooma courts, Delhi.

Evidence Act requires the production of a certificate confirming their authenticity. In this case, the complainant failed to provide a certificate under Section 65B IEA, which results in the document being unproven. This is a critical shortcoming as 565 the law demands that computer-generated evidence be accompanied by the necessary certificate, otherwise, it lacks the foundational validity to be accepted as proof.

Unproven Documents:

The letter dated 31st March 2011 (Ex. CW 1/3), which the complainant claims 570 was sent by the respondent to them, presents an issue of authentication. The accused denies the signature on the document, and the complainant has failed to produce corroborative evidence, such as a handwriting expert's report, or any other supporting evidence, to substantiate the authenticity of the letter. This failure to meet the evidentiary burden results in the letter remaining unproven. Under the 575 Indian Evidence Act, a document that is denied by the opposite party requires more than just production; it demands proof through witnesses or expert testimony, which the complainant has failed to provide in this case.

Similarly, the request letter from ICICI Bank for the overdraft (Ex. CW 1/4), which was presented as secondary evidence in the form of a photocopy, suffers from the 580 same deficiency. The original document has not been produced, and no witness has testified to its authenticity. The complainant failed to meet the statutory requirements of Section 65B IEA for electronic records, rendering the photocopy unproven.

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Several key documents produced by the complainant, such as cheques (Ex. CW 1/6) and email exchanges (Ex. CW 1/7), have been admitted by the accused, albeit with qualifications. The cheque of Rs. 1.45 Crores (Ex. CW 1/6) was admitted as a document with the signature of the accused; however, the accused clarified that the

cheque was issued as security, given that the complainant had 590 made payments through another company. Such an admission impacts the weight of the document in the complainant's favor, but it is equally important to note that this explanation reduces the relevance of the document as evidence of a loan.

Likewise, the email exchanges (Ex. CW 1/7) between the complainant and the respondent are admitted by the accused, but the complainant failed to produce 595 the necessary certificate under Section 65B IEA, which questions the authenticity and legal standing of these electronic communications. The admissions made by the accused, however, lend credibility to the document and may influence the Court's assessment of its overall probative value.

Unproven Due to Non-Production of Originals: 600 Further evidence such as the bank statement (Ex. CW 1/5) from the complainant's account, which shows the receipt of funds, is a key document. While the accused admitted to receiving the money, albeit as a repayment and not as a loan, the complainant has failed to produce the original bank statement. The photocopy submitted has not been proven under Section 65B IEA, rendering it 605 unproven in its current form, despite the admission of the transaction by the CC no. 47244/2016 CTS Management Services Vs. Peacock Media Ltd. Page no. 28 / 33 In the court of Sh. Divyam Lila, MM, East district, Karkardooma courts, Delhi.

accused.

2. Evidence Presented by the Accused:

The accused, too, has submitted several documents, primarily in the form of agreements and ledger accounts, which have been largely accepted as secondary 610 evidence. These include the agreement dated 22.02.2010 (Mark-D1) and the ledger account (Mark-D2). These documents were produced in the form of photocopies but were not challenged by the complainant in terms of their authenticity, and no suggestion was made regarding the inaccuracy of the contents. As a result, the Court considers these documents to be proved, following the established principles 615 of Section 63 and Section 65 of the Indian Evidence Act, which allow for the admissibility of secondary evidence in the absence of challenges to the document's authenticity.

Furthermore, the reply to the legal notice (Mark-D3), dated 22.09.2012, and the order in the insolvency petition (Mark-D4) dated 17.09.2013, were submitted 620 by the accused as secondary evidence. These documents were not contested by the complainant, and there was no suggestion of their incorrectness. Consequently, they are treated as proved in the Court's analysis.

Summing Up the Reasoning:

After a meticulous examination of the entire evidence presented by both the 625 complainant and the accused, as well as the application of relevant legal principles, the court concludes that the complainant has not succeeded in proving the essential CC no. 47244/2016 CTS Management Services Vs. Peacock Media Ltd. Page no. 29 / 33 In the court of Sh. Divyam Lila, MM, East district, Karkardooma courts, Delhi. 30 elements required to establish the liability of the accused under Section 138 of the Negotiable Instruments Act, 1881.

1. Dishonour of the Cheque: It is beyond dispute that the cheque issued by 630 the accused was dishonoured due to insufficient funds. However, the dishonour of the cheque alone does not suffice to establish the existence of a legally enforceable debt or liability, which is a requisite under Section 138 of the NI Act. The complainant has failed to provide sufficient evidence to prove that the cheque was issued in discharge of such a debt. 635

2. Failure to Prove the Debt: The crux of the complainant's case hinges on the assertion that the cheque was issued in discharge of a legally enforceable debt. However, the complainant has not provided any concrete documentary evidence that establishes the debt or explains the exact nature and terms of the transaction giving rise to the cheque. The oral testimony of the 640 complainant, while admissible, is insufficient to meet the high burden of proof required in a criminal case.

3. Defense of the Accused: The accused has raised a plausible defense suggesting that the cheque was issued as security for a separate transaction and not for the discharge of a debt. The accused has provided evidence to 645 support this defense, and the complainant has failed to sufficiently rebut or challenge it. The defense of the accused remains reasonable and casts doubt on the complainant's version of events.

4. Legal Presumption Under Section 139 of the NI Act: While Section 139 of the Negotiable Instruments Act provides a statutory presumption that the 650 CC no. 47244/2016 CTS Management Services Vs. Peacock Media Ltd. Page no. 30 / 33 In the court of Sh. Divyam Lila, MM, East district, Karkardooma courts, Delhi.

cheque was issued in discharge of a legally enforceable debt, this presumption is rebuttable. The accused has effectively rebutted this presumption by providing an alternative explanation for the issuance of the cheque. The complainant has not succeeded in disproving the accused's version, nor has the complainant provided strong evidence to support the 655 existence of a debt.

5. Burden of Proof: It is well-settled in law that in criminal cases, including under Section 138 of the NI Act, the burden of proof rests on the complainant. The complainant must prove the existence of the debt beyond a reasonable doubt. In this case, the complainant has failed to discharge this 660 burden. On the other hand, the accused has raised reasonable doubts through his defense, which remain unanswered by the complainant.

6. Principle of "Benefit of Doubt": It is a fundamental principle of criminal jurisprudence that the accused must be presumed innocent until proven guilty. In cases where two views are possible--one that favors conviction 665 and the other that favors acquittal--the court must adopt the view that favors the accused. In the present case, the court finds that the evidence presented by the accused, coupled with the complainant's failure to prove the debt, creates a reasonable doubt about the liability of the accused under Section Conclusion:

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In light of the foregoing reasoning, the court is unable to conclusively establish the existence of a legally enforceable debt that would justify the dishonour of the cheque. The complainant has failed to meet the necessary legal standard of proof required to establish the accused's guilt under Section 138 of the 675 Negotiable Instruments Act. The defense put forth by the accused raises reasonable doubt regarding the purpose of the cheque, which the complainant has not effectively rebutted.

It is also imperative to understand that in order to pronounce a conviction in a criminal case, the accused 'must be' guilty and not merely 'may be' guilty. For an 680 accused to be guilty, guilt should not be based on mere surmises and conjectures but it should be based on cogent evidence. Thus, the accused has been able to rebut the presumption u/s. 118 r/w. section 139 NI Act. Furthermore, the complainant has failed to prove his case beyond reasonable doubt qua the accused in respect of the Therefore, in accordance with the principle of benefit of doubt, the court holds that the accused cannot be held criminally liable under Section 138 of the Negotiable Instruments Act, 1881.

Judgment:

In light of the analysis above, the accused, Sh. Sandeep Deepak Chawla, is 690 acquitted of the charges under Section 138 of the Negotiable Instruments Act, as CC no. 47244/2016 CTS Management Services Vs. Peacock Media Ltd. Page no. 32 / 33 In the court of Sh. Divyam Lila, MM, East district, Karkardooma courts, Delhi.

the complainant has failed to establish the existence of a legally enforceable debt or liability at the time of the cheque's issuance. The complaint is dismissed.

Digitally signed by Announced in the open Court today i.e 24□2□2024. DIVYAM DIVYAM LILA LILA Date:

(DIVYAM LILA)

Municipal Magistrate, East District
Karkardooma Court/Delhi
24.12.2024

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