* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: <u>02, July 2026</u>
Pronounced on: <u>10, July 2026</u>

\+ **CRL.M.C. 1676/2025**

MS PHARMACEUTICALS .....Petitioner

Through: Mr. Vipin Nandwani and Mr. Ajay Chaudhary, Advs.

versus

NITYAM PHARMA .....Respondent

Through: Ms. Shweta Garg, Adv.

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

<u>J U D G M E N T</u>

<u>MADHU JAIN, J.</u>

1. The present petition has been filed by the petitioner, MS Pharmaceuticals, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as *'BNSS'*), challenging the Order dated 07.10.2024 passed by the learned Session Court, in ***Criminal Revision No. 2003/2024***, titled ***Nityam Pharma & Ors. v. MS Pharmaceuticals,*** whereby the learned session court has allowed the aforesaid revision petition and set aside the summoning order dated 15.03.2021 passed in ***CC No. 198/2021.***

<u>FACTUAL MATRIX</u>

2. The genesis of the matter lies in a business transaction between the petitioner and respondent, wherein the petitioner supplied goods (Cefixime Trihydrate IP Compected) to the respondent *vide* invoice dated 21.08.2019 for a sum of Rs.10,02,410/-, payable within 60 days, with interest of 24% chargeable on default.

3. Towards the said invoice value, the respondent issued three cheques drawn upon Yes Bank amounting to Rs.10,02,410/-, all of which were dishonoured with the remark ‘payment stopped by drawer’. It is the case of the petitioner that upon the threat of legal action, the respondent made part payments of Rs.2,00,000/- through NEFT.

4. Towards the balance invoice value of Rs.8,02,410/-, the respondent issued 8 fresh cheques drawn upon HDFC Bank, Chandigarh. In the interregnum, the respondent made further part payments of Rs.1,50,000/- through NEFT, leaving an outstanding balance of Rs.6,52,410/-.

5. The said 8 cheques, upon presentation, were dishonoured with the remark ‘funds insufficient’. A legal demand notice dated 21.03.2020 was issued by the petitioner, specifying the invoice value, the cheques issued, the part payments received, and demanding the outstanding amount of Rs.6,52,410/-.

6. Upon failure of the respondent to make payment despite service of the legal demand notice, the petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the ‘*NI Act’*), registered as CC No. 198/2021, titled ***MS Pharmaceuticals v. Nityam Pharma & Anr.,*** wherein the learned Metropolitan Magistrate, Dwarka Courts, summoned the respondent *vide* order dated 15.03.2021.

7. Aggrieved by the summoning order, the respondent preferred a revision petition under Section 397 Cr.P.C. before the Sessions Court, primarily contending that the legal demand notice dated 21.03.2020 did not reflect the correct legal liability of the respondent, as the amount demanded (Rs.6,52,410/-) was less than the cumulative value of the 8 cheques

(Rs.8,02,410/-) forming the subject matter of the complaint, thereby rendering the notice, and consequently the complaint, invalid.

8. The learned Sessions Court, *vide* impugned judgment dated 07.10.2024, allowed the revision petition and set aside the summoning order dated 15.03.2021, holding that the legal demand notice was invalid inasmuch as it did not reflect the legally enforceable debt corresponding to the impugned cheques, and that the demand was omnibus in nature. The relevant portions of the impugned judgment are reproduced hereinunder:

> *"9. The main argument of the Counsel for petitioner is that the legal notice does not reflect the legal liability of the petitioner towards the respondent/complainant and hence, the summoning order/impugned order is bad in law. The petitioner has approached this Court stating that the amount of the cheques is more than the due amount of Rs.6,52,410/- and hence, the legal notice demanding an amount lesser than that of the impugned cheques is bad in law making the entire complaint invalid u/s 138 NI Act. Ld. Counsel has relied upon various Judgments specially Mahdoom Bawa Bahrudeen Noorul vs. Kaveri Plastics, (2024) 02 Del CK 0095, to state that a legal demand notice asking the accused to pay an amount which was not a legally enforceable debt is bad in law making the legal demand notice invalid. In the present case, it is obvious that 8 cheques are subject matter of the present complaint bearing no. 000127, 000128, 000129, 000130, 000131 and 000132 for the sum of Rs. 1,00,000/- respectively and cheque no. 000133 and 000134 for a sum of Rs. 1,01,000/- and Rs. 1,01,410/- respectively. Thus, the total demand for the above said cheques amounts to Rs. 8,02,410/-. Hence, it is obvious that the amount demanded through the legal notice and the complaint is less*

than the total amount of the impugned cheques and prima facie, legal liability is not proved. It is settled law that for a claim to be made u/s 138 NI Act, the legal demand notice must reflect the exact amount of legal liability due. The Hon'ble Supreme Court has recently held that a notice of demand made under NI Act shall not be omnibus and there must be a clear demand for the cheque amount else the notice would be invalid1. It was further held that if in a notice while giving break-up of the claim, the cheque amount, interest, damages, etc. which are separately specified and are severable, such demand would not invalidate the notice. To quote, it was held that

6. …..In other words, as held therein, in the demand notice, demand has to be made for the "cheque amount" and therefore, notice sans such demand would fall short of legal requirement.

10.Thus in view of the above-mentioned Judgment, in the opinion of the Court, the legal demand notice in the present matter is invalid. There has been a specific demand of Rs. 6,52,410/- in the last para of the legal notice, which demand is not reflected from the impugned cheques. Further in the complaint in Para 14, it is stated that the petitioner was liable to pay an amount of Rs. 6,52,410/- alongwith charges and interest subject to the compliance of terms and conditions settled upon. These charges and interest have not been specified anywhere and are not even part of the demand made in the legal notice, hence, they cannot form part of legal liability u/s 138 NI Act. Prima facie, the demand made in the legal demand notice for a sum of Rs. 6,52,410/- only and demand made in the complaint for a sum of Rs. 6,52,410/- alongwith charges and interest does not match. Further, the impugned cheques in any case, do not reflect legally enforceable debt of Rs. 6,52,410/-, the cheques being of a much higher *amount than the amount of Rs. 6,52,410/-.*

11.Hence, in view of the above discussion, the impugned Order dt. 15.03.2021, summoning petitioner no. 1 company and petitioner no. 2 is set aside. Accordingly, revision petition is allowed."

9. Aggrieved by the aforesaid impugned order, the petitioner has approached this Court by way of the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

10. The learned counsel for the petitioner submitted that the learned Sessions Court failed to appreciate that the only ground raised by the respondent that the legal demand notice did not demand a legally enforceable debt was misconceived, as the notice dated 21.03.2020 demanded only the amount actually due and payable, i.e., Rs.6,52,410/-, after accounting for all part payments received.

11. It was submitted that the learned Sessions Court committed a grave error in returning a finding that legal liability was 'not proved' without relegating the parties to trial, particularly when the notice categorically specified the invoice value, the cheques issued, the part payments received, and the resultant outstanding liability.

12. It was further submitted that the notice was not an omnibus demand, since it clearly and separately specified each of these particulars, and therefore there was no defect in the notice as contemplated in ***Suman Sethi v. Ajay K. Churiwal, (2000) 2 SCC 380,*** wherein it was held that a notice is bad in law only where an omnibus demand is made without specifying what is due under the dishonored cheque, and not otherwise.

13. The learned counsel for the petitioner placed reliance on ***M/s Alliance Infrastructure Project Pvt. Ltd. & Ors. v. Vinay Mittal, 2010 SCC OnLine Del 182,*** to submit that a notice is invalid only where the principal amount demanded exceeds the principal amount actually payable, without indicating the basis for the excess; whereas in the present case, the demand was less than, and not more than, the cheque amount, and hence the notice was legal and valid.

14. It was further submitted that the judgment relied upon by the affirmed before the Sessions Court, namely ***Mahdoom Bawa Bahrudeen Noorul v. Kaveri Plastics (2024) 02 Del Chandhok 0095,*** was factually distinguishable, as it concerned a notice demanding double the cheque amount on account of a typographical error, whereas no such typographical error or excess demand existed in the present case.

15. The learned counsel also submitted that it is not the cheque amount but the legally recoverable debt which is required to be demanded in a notice under Section 138(b) NI Act, and since the petitioner had correctly demanded only the legally recoverable debt, the notice did not suffer from any infirmity.

16. The learned counsel places reliance on ***Union of India v. Major Bahadur Singh, (2005) 8 SCC 368***, to submit that each case turns on its own facts, and that the learned Sessions Court erred in mechanically relying upon judgments dealing with notices demanding amounts in excess of the cheque amount, which were factually inapplicable to the present case where the demand was admittedly less than the cheque amount.

17. It is submitted that the impugned judgment dated 07.10.2024 is based on surmises and conjectures and is liable to be set aside, and that the petitioner

has not filed any other petition challenging the said judgment before this Court or any other superior court.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

18. Per contra, the learned counsel for the respondent submits that the complaint filed by the petitioner is not maintainable as it is based on cheques aggregating to ₹8,02,410/-, whereas the statutory demand notice sought payment of only ₹6,52,410/-. It is contended that the learned Sessions Court rightly noticed this material discrepancy, which is also reflected in the metadata form accompanying the complaint. Relying upon ***Suman Sethi v. Ajay K. Churiwal, (2000) 2 SCC 380*** and ***Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul, (2025) 259 Comp Cas 658***, learned counsel submitted that a complaint founded on a defective statutory notice demanding an amount different from the cheque amount is not maintainable and, therefore, the impugned revisional order warrants no interference.

19. Learned counsel for the respondent submitted that no offence under Section 138 of the NI Act is made out as the petitioner presented the cheques for their full amount despite having received part payments prior to their presentation, without making the mandatory endorsement under Section 56 of the Act. Consequently, the cheques did not represent a legally enforceable debt to the extent of their face value on the date of presentation. Reliance is placed on ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel, (2023) 1 SCC 578.***

20. Learned counsel for the respondent submitted that the complaint is founded upon an omnibus statutory demand notice which fails to specify the

break-up of the principal amount, interest, and other charges claimed. It was contended that such a vague and indefinite notice does not satisfy the mandatory requirements of Section 138 of the NI Act and, therefore, the complaint is not maintainable and the present petition is liable to be dismissed.

21. Learned counsel for the respondent submitted that the complaint is not maintainable as it seeks prosecution in respect of eight dishonoured cheques pertaining to different dates of presentation and dishonour, each constituting a separate and distinct transaction. It was contended that in view of Sections 218 and 219 of the Code of Criminal Procedure, 1973, each distinct offence is required to be tried separately, and the joinder of all eight cheque dishonour allegations in a single complaint is impermissible.

22. Learned counsel for the respondent, in support of the aforesaid submissions, also placed reliance upon the following decisions:

- ***Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul, (2025) 259 Comp Cas 658***
- ***Yankay Drugs and Pharmaceuticals Ltd. v. Citi Bank, (2001) 106 Comp Cas 662***
- ***Sunglo Engineering India Pvt. Ltd. v. State Criminal MC No. 3 of 2021, order dated 21-12-2021 (Del).***
- ***Gaurav Mittal v. State (NCT of Delhi), 2023 SCC OnLine Del 1528***
- ***Jay Hanuman Enterprises v. State of Gujarat (CRA. 1625/2023) decided on 9.10.2024.***

ANALYSIS AND FINDINGS

23. I have considered the submissions made by the learned counsels for the parties.

24. The principal question that falls for consideration is whether the learned Session Court was justified in setting aside the summoning order by holding the statutory demand notice to be invalid merely because the amount demanded therein was less than the aggregate amount covered by the dishonoured cheques.

25. Section 138 of the NI Act reads as under:

> *"138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 4 [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:*
>
> *Provided that nothing contained in this section shall apply unless—*
>
> *(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
>
> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, 5 [within thirty days] of the receipt of information by*

> *him from the bank regarding the return of the cheque as unpaid; and*
>
> *(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*
>
> *Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability."*

26. A plain reading of Section 138 of the NI Act makes it evident that for constituting an offence under the said provision, the conditions stipulated in clauses (a), (b) and (c) of the proviso are mandatory. In the present case, the controversy centres around clause (b) of the proviso, namely, the requirement that the payee must make a demand for payment of the 'said amount of money' by issuing a statutory notice within the prescribed period.

27. Before adverting to the facts of the present case, this Court considers it apposite to examine the legal position governing the controversy in issue, as emerging from the judgments relied upon by the learned counsel appearing for the parties.

28. It is a pertinent to refer to the judgment of the Supreme Court in ***Suman Sethi v. Ajay K. Churiwal, (2000) 2 SCC 380***, wherein the Court examined the scope of the expression 'the said amount of money' occurring in clauses (b) and (c) of the proviso to Section 138 of the NI Act. The Supreme Court held that the expression refers to the cheque amount and that a statutory notice must contain a demand for the cheque amount. At the same time, it was clarified that the notice has to be read as a whole. The relevant extract is reproduced hereinbelow:

"6. We have to ascertain the meaning of the words the "said amount of money" occurring in clauses (b) and (c) to the proviso to Section 138. ***<u>Reading the section as a whole we have no hesitation to hold that the above expression refers to the words "payment of any amount of money" occurring in the main Section 138 i.e. the cheque amount. So in a notice, under clause (b) to the proviso, demand has to be made for the cheque amount.</u>*** ***Dr Dhavan, learned Senior Counsel has urged that Section 138 being a penal provision has to be construed strictly. We may refer the decision of this Court in M. Narayanan Nambiar v. State of Kerala [AIR 1963 SC 1116 : 1963 Supp (2) SCR 724] .*** ***<u>This Court considered the rule of construction of a penal provision and quoted with approval the following passage of the decision of the Judicial Committee in Dyke v. Elliott [(1872) 4 PC 184 : 26 LT 45] . The passage runs as follows:</u>***

"<u>No doubt all penal statutes are to be construed strictly, that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be included if thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity</u>

would clearly not be found or made in the same language in any other instrument."

*7.**There is no ambiguity or doubt in the language of Section 138. Reading the entire section as a whole and applying common sense, from the words, as stated above, it is clear that the legislature intended that in a notice under clause (b) to the proviso, the demand has to be made for the cheque amount. According to Dr Dhavan, the notice of demand should not contain anything more or less than what is due under the cheque.***

*8**. It is a well-settled principle of law that the notice has to be read as a whole. In the notice, demand has to be made for the "said amount" i.e. the cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where in addition to the "said amount" there is also a claim by way of interest, cost etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving the break-up of the claim the cheque amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable and will not invalidate the notice. If, however, in the notice an omnibus demand is made without specifying what was due under the dishonoured cheque, the notice might well fail to meet the legal requirement and may be regarded as bad.***

*13**. In the notice in question the "said amount" i.e. the cheque amount has been clearly stated. Respondent 1 had claimed in addition to the cheque amount, incidental charges and notice charge. These two amounts are severable. In the notice it was clearly stated that on failure to comply with the demand necessary legal steps will be taken up. If Respondent 1 had paid the cheque amount he would have been absolved from the***

> ***<u>criminal liability under Section 138. Regarding other claims, a civil suit would be necessary.”</u>***
>
> ***(emphasis supplied)***

29. The decision of this Court in ***Alliance Infrastructure Project (P) Ltd. v. Vinay Mittal, 2010 SCC OnLine Del 182***, is also relevant to the issue involved in the present case. The relevant portion of the judgment reads as under:

> *“The expression “amount of money” used in Section 138(b) of Negotiable Instrument Act, to my mind, in a case of this nature would mean the amount actually payable by the drawer of the cheque to the payee of the cheque. Of course, if the payee of the cheque makes some demands on account of interest, compensation, incidental expenses, etc. that would not invalidate the notice so long as the principal amount demanded by the payee of the cheque is correct and is clearly identified in the notice. When the principal amount claimed in the notice of demand is more than the principal amount actually payable to the payee of the cheque and the notice also does not indicate the basis for demanding the excess amount, such a notice cannot be said to be a legal and valid notice envisaged in Section 138(b) of Negotiable Instrument Act. In such a case, it is not open to the complainant to take the plea that the drawer of the cheque could have escaped liability by paying the actual amount due from him to the payee of the cheque. In order to make the notice legal and valid, it must necessarily specify the principal amount payable to the payee of the cheque and the principal amount demanded from the drawer of the cheque should not be more than the actual amount payable by him though addition of some other demands in the notice by itself would not render such a notice illegal or invalid.*

30. In ***Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul, (2025) 259 Comp Cas 658***, the cheque in question was admittedly issued for **Rs.1,00,00,000/-**, whereas the statutory notice demanded Rs.2,00,00,000/-, i.e., double the cheque amount. The complainant attempted to justify the discrepancy by contending that it was merely a typographical error. The Supreme Court rejected this explanation and held:

> *"3.3. The fact situation is that the cheque in question was issued for Rs. 1,00,00,000 whereas in both the aforesaid notices sent to the accused-drawer of the cheque upon bouncing of the cheque, the complainant asked for the payment of Rs. 2,00,00,000. At that stage, the respondent accused filed an application seeking discharge contending that the notice of demand as aforementioned was not in terms of proviso (b) to section 138 of the Negotiable Instruments Act, therefore, the complaint was not maintainable. The plea for discharge was dismissed by the Metropolitan Magistrate on October 6, 2021. The respondent herein then filed a petition before the High Court, culminating into the impugned judgment and order whereby the High Court held that as the demand notice under proviso (b) of section 138 of the Negotiable Instruments Act, was at variance with the cheque amount, the same was invalid rendering the complaint liable to be quashed.*
>
> ***xxx***
>
> ***10.** Reverting to recollect the facts of this case, the cheque which was drawn by the respondent was for Rs. 1,00,000,00 whereas in the notice issued under proviso (b) to section 138 of the Negotiable Instruments Act against the respondent, the appellant mentions the amount of Rs. 2,00,000,00. The rigours of law on this score being strict, the defence would not hold good that the different*

amount mentioned in the notice was out of inadvertence. Even if the cheque number was mentioned in the notice, since the amount was different, it created an ambiguity and differentiation about the "said amount". The notice stood invalid and bad in law. The order of quashment of notice was eminently proper and legal."

31. The Supreme Court in ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel, (2023) 1 SCC 578*** revisited the principles governing the validity of a statutory notice under Section 138 of the NI Act. The relevant paragraph is extracted hereinbelow:

> ***"28.*** *In K.R. Indira v. G. Adinarayana [K.R. Indira v. G. Adinarayana, (2003) 8 SCC 300 : 2003 SCC (Cri) 2002] , it was held that the notice did not demand the payment of the cheque amount but the loan amount. It was observed that for the purposes of proviso (b), the amount covered in the dishonoured cheque must be demanded. In Rahul Builders [Rahul Builders v. Arihant Fertilizers & Chemicals, (2008) 2 SCC 321 : (2008) 1 SCC (Civ) 553 : (2008) 1 SCC (Cri) 703] , the drawee demanded the payment of Rs 8,72,409 which was higher than the sum of Rs 1,00,000 represented in the cheque. It was reiterated that the phrase "payment of the said amount" in proviso (b) would mean the cheque amount. Since the demand in the notice was not severable as the cheque amount could not be severed from the demand for the additional amount, it was held that it was an omnibus notice. S.B. Sinha, J. writing for a two-Judge Bench of this Court observed [Rahul Builders v. Arihant Fertilizers & Chemicals, (2008) 2 SCC 321 : (2008) 1 SCC (Civ) 553 : (2008) 1 SCC (Cri) 703] : (Rahul Builders case [Rahul Builders v. Arihant Fertilizers & Chemicals, (2008)*

> *2 SCC 321 : (2008) 1 SCC (Civ) 553 : (2008) 1 SCC (Cri) 703] , SCC pp. 324-25, para 10)*
>
> *"10. … One of the conditions was service of a notice making demand of the payment of the amount of cheque as is evident from the use of the phraseology "payment of the said amount of money". … It is one thing to say that the demand may not only represent the unpaid amount under cheque but also other incidental expenses like costs and interests, but the same would not mean that the notice would be vague and capable of two interpretations. An omnibus notice without specifying as to what was the amount due under the dishonoured cheque would not subserve the requirement of law. Respondent 1 was not called upon to pay the amount which was payable under the cheque issued by it. The amount which it was called upon to pay was the outstanding amounts of bills i.e. Rs 8,72,409. The noticee was to respond to the said demand. Pursuant thereto, it was to offer the entire sum of Rs 8,72,409. No demand was made upon it to pay the said sum of Rs 1,00,000 which was tendered to the complainant by cheque dated 30-4-2000. What was, therefore, demanded was the entire sum and not a part of it."*

32. The aforesaid decisions, relied upon by both the parties, lay down the general principles governing the validity of a statutory notice under Section 138 of the NI Act. They hold that the demand contemplated under clause (b) of the proviso to Section 138 must ordinarily relate to the amount covered by the dishonoured cheque and that the statutory notice must be read as a whole. They further hold that where, in addition to the cheque amount, the notice separately specifies claims towards interest, costs or other incidental charges, such claims are severable and do not invalidate the notice. Conversely, where the notice contains only an omnibus demand without specifying the amount due under the dishonoured cheque, it may fail to satisfy the statutory

requirement.

33. However, the factual matrix of the present case is materially different, since the demand in the notice was reduced on account of admitted part payments and not because of an erroneous or inflated demand. The applicability of the aforesaid principles must, therefore, be examined in the peculiar facts of the present case. As aptly observed by Lord Denning:

> *"… Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."*

34. At this juncture, this Court deems it appropriate to examine the demand notice in question. The relevant extracts thereof are reproduced hereinbelow:

> *"**11.** That you, the above addressee, further assured our client that the said cheques would be honoured on their presentation.*
> ***12.** That our above-named client presented the above-mentioned three cheques for encashment to its banker, i.e., Syndicate Bank, Mohan Garden, New Delhi. However, the said cheques were received back unpaid with the endorsement of the Bank "**STOPPED BY DRAWER**".*
> ***13.** That my client has requested Addressee Nos. 2 and 3, i.e., Mr. Nikhil Goel and Kanti Nanad Shori, via e-mails, WhatsApp messages, and phone calls on several occasions to make the balance payment.*
>
> *….That in lieu of the same, you, the Addressee No.*

2, had issued a further 8 fresh cheques in favour of our client, i.e.:

- *Cheque No. 000*[redacted] *dated 11.01.2020 for an amount of Rs. 100,000/-;*
- *Cheque No. 0001*[redacted] *dated 17.01.2020 for an amount of Rs. 100,000/-;*
- *Cheque No. 000*[redacted] *dated 21.01.2020 for an amount of Rs. 100,000/-;*
- *Cheque No. 0001*[redacted] *dated 29.01.2020 for an amount of Rs. 100,000/-;*
- *Cheque No. 000*[redacted] *dated 04.02.2020 for an amount of Rs. 100,000/-;*
- *Cheque No. 00*[redacted] *dated 12.02.2020 for an amount of Rs. 100,000/-;*
- *Cheque No. 000*[redacted] *dated 18.02.2020 for an amount of Rs. 101,000/-; and*
- *Cheque No. 000*[redacted] *dated 22.02.2020 for an amount of Rs. 101,410/-,*

all cheques being drawn on HDFC Bank, Chandigarh.

15. That you, the above addressee, further assured our client that the said cheques would be honoured upon presentation.

16. That our above-named client presented the above-mentioned three cheques, namely Cheque Nos. 000132, 000133 and 000134, for encashment through its banker, Syndicate Bank, Mohan Garden, New Delhi. However, the said cheques were returned unpaid with the endorsement "Funds Insufficient", vide the Banker's Return Memos dated 27.02.2020.

17. That Cheque No. 000130 was also presented by our client for encashment through its banker, Syndicate Bank, Mohan Garden, New Delhi. However, the said cheque was returned unpaid with the endorsement "Funds Insufficient", vide the Banker's Return Memo dated 28.02.2020.

18. That thereafter, our above-named client presented the remaining four cheques, namely Cheque Nos. 000127, 000128, 000129 and 000131, *for encashment through its banker, Syndicate Bank, Mohan Garden, New Delhi. However, the said cheques were returned unpaid with the endorsement "Funds Insufficient", vide the Banker's Return Memos dated 02.03.2020.*

19. That you, Addressee Nos. 2 and 3, on behalf of Addressee No. 1, deposited the following amounts through IMPS/ECS/NEFT/Cheques against the above-stated bills:

i. NEFT No. N3311903[redacted] dated 27.11.2019 – Rs. 100,000/-

ii. NEFT No. N3331903[redacted] dated 29.11.2019 – Rs. 100,000/-

iii. NEFT No. N01720[redacted] dated 17.01.2020 – Rs. 50,000/-

iv. NEFT No. N036200[redacted] dated 05.02.2020 – Rs. 50,000/-

v. NEFT No. N059200[redacted] dated 29.02.2020 – Rs. 50,000/-

20. That the payment deposited by Addressee Nos. 2 and 3, on behalf of Addressee No. 1, was only Rs. 3,50,000/- (Rupees Three Lakhs Fifty Thousand Only) against the total liability of Rs. 10,02,410/- (Rupees Ten Lakhs Two Thousand Four Hundred Ten Only) as on the date of issuance of this notice.

21. That it is now apparent that you have deliberately, with mala fide intention to defraud and cheat our client, failed to pay/deposit the balance amount of Rs. 6,52,410/- (Rupees Six Lakhs Fifty-Two Thousand Four Hundred Ten Only).

22. That the issuance and subsequent dishonour of the aforesaid cheques constitute a criminal offence. Our above-named client has instructed us to initiate proceedings under Section 138 of the Negotiable Instruments Act, 1881, along with appropriate criminal proceedings under the relevant provisions of the Indian Penal Code, as applicable to the facts and circumstances of the case. You, the above-named addressees, intentionally and mala fidely issued the said cheques with the knowledge and

> *intention that they would be dishonoured due to closure of the account, thereby cheating our client.*
> *In view of the aforesaid facts and circumstances, we, on behalf of our above-named client, hereby call upon you, the above-named addressee, to pay the total outstanding amount of Rs. 6,52,410/- (Rupees Six Lakhs Fifty-Two Thousand Four Hundred Ten Only) within 15 days from the date of receipt of this notice, failing which our client has instructed us to initiate appropriate proceedings against you for recovery of the said amount under Section 138 of the Negotiable Instruments Act, 1881, as well as under other applicable provisions of Indian law, entirely at your own cost, risk and consequences.*
> *You are also liable to pay a sum of Rs. 21,000/- (Rupees Twenty-One Thousand Only) towards the cost of this legal notice."*

35. On a plain reading of the statutory notice, it cannot be said that the notice is omnibus in nature. It specifically records the invoice value, the dishonoured cheques, the part payments received through NEFT on different dates and the manner in which the outstanding amount of Rs.6,52,410/- was arrived at before calling upon the respondent to make payment thereof. Whether, in view of the admitted part payments, the statutory requirement under Section 138 read with Section 56 of the NI Act stood satisfied, and whether the dishonoured cheques continued to represent a legally enforceable debt, are issues which depend upon the evidence led by the parties and the factual foundation established during trial. Such disputed questions could not have been conclusively determined while exercising revisional jurisdiction against a summoning order.

36. The learned Session Court, while setting aside the summoning order, has primarily relied upon the decision in ***Mahdoom Bawa Bahrudeen Noorul***

v. Kaveri Plastics, 2024 SCC OnLine Del 1302 which was affirmed by the Supreme Court *in **Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul, (2025) 259 Comp Cas 658.*** The learned counsel for the respondent has also placed substantial reliance on the said decision. However, this Court is of the considered view that the said judgment is distinguishable on facts and does not govern the controversy involved in the present case. In the said case, the cheque amount was Rs.1,00,00,000/-, whereas the statutory notice demanded Rs.2,00,00,000/- solely on the ground of an alleged typographical error. The Supreme Court held that such a notice was invalid as the amount demanded was neither the cheque amount nor was there any legal basis disclosed for the excess demand.

37. The present case stands on a different footing. The statutory notice specifically sets out the invoice value, the particulars of all the dishonoured cheques, the part payments admittedly received from the respondent, and the manner in which the outstanding amount of Rs.6,52,410/- has been computed before calling upon the respondent to make payment thereof. On its face, the statutory notice cannot be characterised as an omnibus notice or as a notice making an arbitrary or inflated demand. The controversy here is not whether the notice *ex facie* demands an incorrect amount, but whether, in view of the admitted part payments, the dishonoured cheques continued to represent a legally enforceable debt and whether the provisions of Section 56 of the NI Act were attracted. Those issues cannot be conclusively determined while examining the validity of the summoning order in exercise of revisional jurisdiction.

38. Similarly, the reliance placed by the respondent on ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel, (2023) 1 SCC 578*** does

not conclude the issue arising in the present case. In ***Dashrathbhai*** *(supra)*, the Supreme Court was considering an appeal against acquittal after a full-fledged trial where the complainant had admitted receipt of part payments and the Courts below had returned findings of fact that the cheque no longer represented the legally enforceable debt on the date of its presentation. It was in those proved facts that the Court examined the effect of Section 56 of the NI Act and held that, in the absence of the requisite endorsement, the offence under Section 138 was not attracted.

39. The present case is factually distinguishable from the aforesaid decision. The challenge before this Court arises from an order passed in revision setting aside the summoning order. At this stage, there is no adjudication on whether the admitted part payments were made towards the very dishonoured cheques, whether Section 56 was attracted in the facts of the case, whether the cheques continued to represent a legally enforceable debt on the date of presentation, or what legal effect, if any, the alleged absence of endorsement would have. These are disputed questions which require appreciation of evidence and, therefore, could not have been conclusively determined while examining the legality and correctness of the summoning order in exercise of revisional jurisdiction.

40. The learned Session Court proceeded on the premise that since the amount demanded in the statutory notice was lower than the aggregate amount covered by the dishonoured cheques, the notice was necessarily invalid. In doing so, it did not examine that the statutory notice itself disclosed the invoice value, the dishonoured cheques, the admitted part payments received from the respondent and the manner in which the outstanding amount of Rs. 6,52,410/- had been computed. Whether such reduced demand correctly

represented the legally enforceable debt in view of the admitted part payments, and the legal consequences flowing therefrom, are matters requiring appreciation of evidence and could not have been conclusively determined while exercising revisional jurisdiction against the summoning order.

41. At the stage of issuance of process, the Court is only required to examine whether a *prima facie* case is disclosed from the complaint and the material placed on record. It is not expected to adjudicate disputed questions of fact or return findings on issues which require evidence.

CONCLUSION

42. Therefore, the impugned judgment dated 07.10.2024 passed by the learned Session Court is hereby set aside. Consequently, the present petition is allowed, and the summoning order dated 15.03.2021 passed by the learned Metropolitan Magistrate in ***CC No. 198/2021*** is restored.

43. The parties shall appear before the learned Trial Court on 08.08.2026. The learned Trial Court shall proceed with the complaint in accordance with law and decide the same on its own merits, uninfluenced by any observations contained in the impugned revisional order or the present judgment.

44. The petition is accordingly disposed of in the above terms. Pending application(s), if any, stand disposed of.

45. Copy of this order be communicated to the concerned learned Trial Court for necessary information and compliance.

(MADHU JAIN)
JUDGE

JULY 10, 2026/RM/b