

SUPREME COURT OF INDIA

Moser Baer Photo Voltaic Ltd.

Vs.

Photon Energy Systems Ltd. & Ors.

Crl.A.No.235 of 2016

(Dipak Mishra and Shiva Kirti Singh,JJ.)

18.03.2016

JUDGMENT

Shiva Kirti Singh,J.

S.L.P.(Crl.)No.9288 of 2011

1. Leave granted.

2. In course of its business of supplying solar cells and laminates, the appellant-company made supplies to the respondent no.1. Respondent nos.2 to 6 are the Chief Executive Officer; General Manager (Finance); Ex-Chief Executive Officer; Chairman; and the Managing Director respectively of respondent no.1. According to appellant's case, against larger outstanding dues, the respondent no.1 issued a cheque dated 31st May 2008 for Rs.3,21,53,903/- only. On a request that there was shortage of some funds the cheque was not to be presented immediately. There were some disputes between both the parties which were settled through a mutual meeting and as per minutes of meeting held on 22nd and 23rd September 2008, the net payable amount by respondent no.1 was reduced and settled at Rs.2,87,09,640/-.

3. The cheque was presented with the bankers - M/s. HDFC but it was returned on 28.11.2008 with the remark - "funds insufficient". On receipt of Memo of Dishonour at its Delhi office, appellant sent a legal notice dated 18.12.2008 demanding only the settled outstanding amount of Rs.2,87,09,640/- and not the cheque amount which was Rs.3,21,53,903/-. On 19.12.2008, respondent no.1 paid an amount of Rs.20 lacs towards its debt liability and in reply to the notice it denied the balance liability. It also adopted a further defense that the cheque was given for a larger amount by way of security and was not for any payable debt. The criminal complaint filed by the appellant under Sections 138/141/142 of the Negotiable Instruments Act, 1881 in the Court of XI Additional Chief Metropolitan Magistrate, City Criminal Courts at Secunderabad registered as C.C. No.829 of 2009 was entertained and non-bailable warrant was ultimately issued against the accused persons on 04.03.2009. The respondents could not succeed against the order issuing non-bailable

warrant but their subsequent petition under Section 482 of the Code of Criminal Procedure was entertained and finally allowed by the impugned order under appeal dated 12.10.2011. As a result, the criminal complaint of the appellant has been dismissed mainly on the ground that the cheque amount was different from the legally enforceable debt as per notice given by the appellant to the accused persons.

4. An interesting question of law as to whether in view of payments or settlements made after the issuance of a cheque, a complainant can disclose the true state of affairs and issue a demand for a lesser amount and whether in such circumstances the criminal prosecution for dishonor of a cheque for higher amount is legally sustainable or not, did arise in this case. However, on account of subsequent talks between the parties, an amicable settlement has been arrived at and hence there is no requirement now to answer the aforesaid question of law in the present proceedings and hence the same is left open for adjudication in any other appropriate case.

5. In the instant proceeding the parties have agreed that between the parties the total outstanding amount shall be treated as Rs.1,80,00,000/- (Rupees one crore eighty lac only) and the same shall be paid by the respondents to the appellant in regular monthly installments of Rs.15,00,000/- (Rupees fifteen lac). We accordingly direct that the respondents shall pay the first installment of Rs.15 lac by first week of April 2016. The remaining 11 installments of Rs.15 lac each shall be paid regularly by the first week of each succeeding month. On admission or proof of such payments in accordance with the aforesaid arrangement, the complaint case shall stand quashed if the entire amount of Rs.1,80,00,000/- is paid by the respondents to the appellant by the first week of March 2017. Till then the complaint case shall remain in abeyance. It is made clear that if the entire payment is not made within the time indicated above then this order shall stand recalled and the complainant will be at liberty to move the concerned court for proceeding with the criminal case any time in April 2017 by virtue of the present order. The appeal is disposed of in the aforesaid terms.