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

% ***Reserved on: 26th November, 2025***
Pronounced on: 10th March, 2026

CRL.M.C. 4541/2025, CRL.M.A. 19789/2025

MS. RITU GUPTA .....Petitioner
Through: Ms. Arundhati Katju Sr. Advocate with Mr. Animesh Kumar, Mr. Nishant Kumar, Dr Sumit Kumar, Ms Aprajita, Ms. Shristi Borthakur, Mrs. Palak Joshi, Mr. Shikhar Khanna and Mr. Prashant Shukla, Advs.

versus

KOTAK MAHINDRA BANK LTD .....Respondent
Through: Mr. Abhishek Kumar, Adv.

CRL.M.C. 4542/2025, CRL.M.A. 19791/2025

MS. MANISHA GUPTA .....Petitioner
Through: Ms. Arundhati Katju Sr. Advocate with Mr. Animesh Kumar, Mr.Nishant Kumar, Dr Sumit Kumar, Ms Aprajita, Ms. Shristi Borthakur, Mrs. Palak Joshi, Mr. Shikhar Khanna and Mr. Prashant Shukla, Advs.

versus

KOTAK MAHINDRA BANK LTD .....Respondent
Through: Mr. Abhishek Kumar, Adv.

CRL.M.C. 7226/2025, CRL.M.A. 30346/2025 & 30347/2025

MR KUNJ GUPTA .....Petitioner

Through: Ms. Arundhati Katju Sr. Advocate with Mr. Animesh Kumar, Mr. Nishant Kumar, Dr Sumit Kumar, Ms Aprajita, Ms. Shristi Borthakur, Mrs. Palak Joshi, Mr. Shikhar Khanna and Mr. Prashant Shukla, Advs.

versus

KOTAK MAHINDRA BANK .....Respondent

Through: Mr. Abhishek Kumar, Adv.

CRL.M.C. 7262/2025, CRL.M.A. 30467/2025 & 30468/2025

MS POOJA GUPTA .....Petitioner

Through: Ms. Arundhati Katju Sr. Advocate with Mr. Animesh Kumar, Mr.Nishant Kumar, Dr Sumit Kumar, Ms Aprajita, Ms. Shristi Borthakur, Mrs. Palak Joshi, Mr. Shikhar Khanna and Mr. Prashant Shukla, Advs.

versus

KOTAK MAHINDRA BANK LTD & ORS. .....Respondents

Through: Mr. Abhishek Kumar, Adv.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid four Petitions have been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for quashing of Complaint Case under Section 138 of the Negotiable Instruments Act, 1881 *(hereinafter*

referred to as "NI Act") read with Section 420 of the Indian Penal Code, 1860 *(hereinafter referred to as "IPC")*, as well as the Cognizance Order dated 06.06.2024 passed by learned M.M. Further, *Quashing of the Order dated 22.04.2025* of learned ASJ in Criminal Revision Petitions, which upheld the Order of Ld. MM, has also been sought, by way of the present Petitions.

2. The aforesaid four Petitions had been filed by the Complainant under Section 138 Act read with Section 420 IPC in regard to the dishonour of Cheque dated 20.02.2024 amounting to Rs. 70,00,000/- each and also to challenge the Order of Cognizance dated 29.06.2024.

3. It is explained that Kotak Mahindra Bank Ltd./the Complainant had granted financial assistance of Rs. 40,00,00,000/- to KRPM Infrastructure Pvt. Ltd., in which the Petitioners *Ritu Gupta, Manisha Gupta, and Kunj Gupta* had stood as Guarantors while Pooja Gupta was the Director. The *Term Loan was for a period of 7 years*. Two undated Cheques drawn in favour of the Bank superscribing "*Amount not exceeding 40 crores*" were handed over as security.

4. The Complainant deposited these undated and blank cheques given by the Petitioners as Security for the Term Loan, without raising any demand for any sum of money and without giving any intimation to the Petitioners.

5. It is submitted that Petitioner, ***Pooja Gupta is the Director in KRPM Infrastructure Pvt. Ltd***. who entered into a Master Facility Agreement dated 24.03.2023 with the Respondent/Complainant Bank for a Term Loan for a sum of Rs. 40,00,00,000/- which was sanctioned vide Sanction Letter dated 24.03.2023. Pooja Gupta with other Directors of KRPM, also executed a

Deed of Guarantee dated 24.03.2023 in favour of the Complainant Bank.

6. Out of the amount of Rs. 40,00,00,000/-, Rs. 3,33,33,333.32 were disbursed under the Master Facility Agreement between 05.05.2023 to 20.02.2024. The Sanction Letter dated 24.03.2023 and Master Facility Agreement, did not specify any particular due date and did contain any repayment schedule. *Hence, without issuing a Demand Notice, the Complainant could not have alleged a Default.*

7. On 20.02.2024, the Complainant filled the signed undated and blank cheques with an amount and date convenient to it and presented the four cheques each in the sum of Rs. 70,00,000/-, for encashment which was returned *vide* Memo dated 21.02.2024 for the reason "*Funds Insufficient"*.

8. The Complainant also served a Notice dated 05.05.2024 under Section 138 NI Act, in respect of the dishonour of the Cheques and thereafter, preferred four Complaint Case in the Patiala House Courts, New Delhi. **The learned M.M took cognizance on the Complaints on 29.06.2024.**

9. The Petitioners have asserted that from 20.02.2024 to 03.06.2024 the Borrowers had paid Rs. 2,68,15,181/- to the Complainant Bank, but the same was not brought to the Notice of learned M.M. at the time when Cognizance was taken on the Complaint under Section 138 NI Act.

10. Four Criminal Revision Petitions were preferred before Learned District & Sessions Judge, vide Criminal Revision No. 51/2025, 52/2025, 97/2025 and 98/2025, but they got dismissed on 22.04.2025 by relying upon *Sripati Singh vs. The State of Jharkhand & Anr*., (2022) 18 SCC 614.

11. The present Petitions have been filed against the Impugned Order of the learned M.M. dated 06.06.2025 taking Cognizance and the Revisional Order dated 22.04.2025upholding the Order of Ld. MM.

12. The **Orders have been challenged on the Grounds** that the Security Cheques for clearance, were deposited by the Complainant without raising any demand for any sum of money and without any intimation to the Petitioners. The loan had not been recalled by the Bank, nor was the Account classified as NPA and as on date, there is no *Outstanding Debt*, in the Loan Account. The EMIs have been paid on monthly basis, by KRPM Infrastructure Pvt. Limited.

13. In case of Loan transactions, the liability of the Guarantor arises when the Borrower is unable to or defaults in paying the Loan Amount. There is no outstanding debt in the Loan Account, as the EMIs have been paid regularly. The substantial amount of Rs. 2,68,15,181/- has been paid from 20.02.2024 to 03.06.2024, in discharge of the Liability.

14. These material facts have been suppressed and not brought to the notice of the Learned M.M. who took Cognizance on the Complaint on 29.06.2024. Such concealment of post-dated payments, amounts to gross abuse of Judicial process, for which reliance is placed on *Pioneer Drip Systems Pvt. Ltd. vs. Jain Irrigation Systems Ltd*., 2009 SCC OnLine Bom. 2046.

15. The Master Facility Agreement dated 24.03.2023 clearly stipulated the limited purpose of the Undated Security Cheques and its purpose was to serve as a mechanism to secure repayment of the Loan in its entirety and not piecemeal, towards individual instalments. The cheque was neither linked to a defined repayment schedule nor was it issued against any specific EMI or

date-wise obligation. These Security Cheques could have been invoked upon the crystallization of total Liability i.e. upon recall of the entire Loan amount or upon definitive Notice of Default.

16. The Judgment of *Sripati Singh*, (supra) relied upon by the Learned District Judge, is clearly distinguishable on the facts. The Security Cheques were to be used against repayment of entire Loan and not against in default of any instalment.

17. It is further stated that even if it is assumed that there was a default under the Loan, the Complainant Bank could not unilaterally revise the EMI and apply Compound Interest, thereby causing a financial burden upon the Borrower, who has continued to make repayments under the revised terms. As reflected in the Statement of Account, the substantial amount of Rs.3,33,33,333.32 between 05.05.2023 to 20.02.2024 has been paid, which indicates that the Borrower was actively serving the Loan, albeit under the enhanced EMI structure imposed by the Bank. Despite this, the Bank proceeded to encash the undated Security Cheques by filling an amount of Rs. 70,00,000/- and *without formal recall of the Loan.*

18. The acts of the Complainant termed as *double vexatious;* **first** by extracting higher repayments through increased EMIs and compounding; and **second,** by invoking the Security Cheque, originally meant as a *last resort tool*, in the event of total Loan recall or final default. With the revised EMIs, an altered situation is created.

19. Hence, presenting the Cheque despite active servicing of the Loan, is not only contractually impermissible, but also an abuse of Section 138 proceedings. Moreover, the Master Facility Agreement dated 24.03.2023

clearly recorded that such Undated Cheques were in lieu of repayment of the Loan with the superscription "*Amount not exceeding 40 crores".*

20. Section 138 (a) NI Act provides that a Cheque must be presented to the Bank within six months from the date of its drawn or within its validity, whichever is earlier, which has also been affirmed by the Supreme Court in *MSR Leathers vs. S. Palaniappan*, (2013) 1 SCC 177 and also by Coordinate Bench of this Court in *Ansh Chug vs. Pradeep Kumar*, CRL.M.C2973/2018.

21. Admittedly, the Cheques that were issued on 24.03.2023, were presented on 20.02.2024 i.e. after 11 months which is well beyond the statutory six months validity. Even if the Cheques were undated at the time when they were issued, the date would be reckoned on 24.03.2023 i.e. the date on which the Loan Agreement was executed and the Cheques were handed over to the Complainant Bank. There was no timeline agreed upon between the parties and there was no Recall Notice and the Cheque was presented after expiry of six months period; therefore, the condition laid down in Clause (a) proviso to Section 138 NI Act, were not met.

22. It is further contended that the impugned Cheques were Security Cheques and not for the entire Loan and not against any specific repayment transaction. Reliance is placed on *Sampelly Satyanarayana Rao vs. India Renewable Energy Development Agency Ltd.*, (2016) 10 SCC 458, wherein it was clarified that though the word "*Security*" is used in Clause 3.1(iii) of the Agreement, it refers to the Cheques being towards payment of instalments, which is not so in the present case. There were no subsisting outstanding dues on the date of presentation of the Cheques, as the EMIs were being paid regularly and the Account was not classified as NPA.

23. It is further contended that the Complaint was filed on 01.01.2024 by the Officer of the Bank, in terms of Board Resolution No.372D dated 31.03.2023. However, this Resolution expressly authorized certain Officers to file Complaints and was valid only upto 31.03.2024. The Complaint was filed on 01.01.2024 i.e. after the expiration of the Resolution. Therefore, the person who had signed, verified and instituted the Complaint on behalf of the Complainant Bank, was not authorized under Resolution No. 372D. Therefore, *the Complaint has not been instituted by a legally competent person.*

24. It is further contended that *Clause 2 of the Guarantee Deed* stated that Guarantor shall be liable to pay the *secured obligations*, only upon a specific and formal demand being made by the Bank. The Guarantor's liability was contingent on receipt of such a demand and the obligation to pay arises *"forthwith upon such demand being made*". In the absence of any such demand, no Liability under the Guarantee could have crystallized in law. Reliance is placed on *Syndicate Bank vs. Channaveerappa Beleri*, (2006) 11 SCC 506.

25. It is claimed that the Learned Sessions Judge erroneously relied upon the Clause in the Master Facility Agreement, which provided that if the Loan Account is overdue, it would be classified as Special Mention Account initially as SMA-0, then SM-1 and thereafter SMA-2 and eventually as a Non-Performing Asset (NPA). However, it has not been considered that no such classification was ever made by the Respondent Bank, even though it is their own internal standard for identifying incipient stress.

26. Moreover, this clause forms part of the Master Facility Agreement executed between KRPM Infrastructure Pvt. Ltd. (the borrower) and the

Respondent Bank and did not bind the Guarantors in any manner. The Petitioner/Guarantors were solely governed by the Deed of Guarantee, Clause 2 of which expressly provided that the Guarantor's Liability arises only upon a specific and formal demand made by the Bank, which has not been made in this case.

27. *Clause 9.4 of the Master Facility Agreement* provided an exhaustive mechanism to be adopted by the Bank, in case of an event of default which included recalling the facilities cancelling undisbursed amounts, enforcing securities and initiating appropriate legal proceedings. Significantly, none of these contractually stipulated remedies, have been invoked by the Complainant Bank which has in a manifestly, arbitrarily and prejudicial manner, circumvented its own Agreement and hastily proceeded to present the undated Security Cheques, without first invoking any preconditions for Default or Recovery.

28. The Guarantor by the very nature of their role, is not in a position to ascertain real time defaults by the borrower, unless the demand is raised by the Bank. In the instant case, no such demand has been made by the Bank. It has completely bypassed its own contractual protocol, effectively short-circuiting both the *Primary Loan Arrangement* and the *Guarantee Contract*, rendering the initiation of Criminal Proceedings against the Petitioners, unsustainable in law.

29. Moreover, the Charge under Section 420 IPC, is a misnomer. It is imperative that there must be a *mens rea* from the very inception, to constitute an offence of Cheating. Mere Civil wrong or infringement of a Civil Right, does not give rise to any Criminal Prosecution. Reliance is placed on *Suryalakshmi Cotton Mills Limited vs. Rajvir Industries Limited*

and Ors., (2008) 13 SCC 678 and *Rekha Jain vs. State of Karnataka and Anr*., (2022) 18 SCC 174.

30. In the end, it is submitted that the facts as narrated by the Complainant, did not have any ingredients of the offence of alleged Cheating by the Petitioners and, therefore, no such proceedings can be initiated against the Petitioners.

31. *A prayer is, therefore, made that the Impugned Complaint and the Summoning Order as well as the Proceedings emanating therefrom, may be quashed.*

32. Ld. Counsel for Respondent had opposed the Petition and explained that there was an Outstanding Debt of Rs.2,16,19,854.53/- as on 20.02.2024, and the Guarantee Cheques of Rs. 70,00,000/- each of the four Guarantors, had been rightly presented. The Cheques were dishonored and, therefore, the Complaint under Section 138 had been filed.

33. The learned M.M. has rightly Summoned the Petitioners and the Order has been upheld by the Learned District Judge *vide* Order dated 22.04.2025. *The Petitions are, therefore, liable to be rejected.*

Submissions heard and record perused.

34. The Complainant Bank/Respondent had granted Financial Assistance to KRPM Infrastructure (Borrower) by way of a Term Loan of Rs. 40,00,00,000/-. The **Master Facility Agreement dated 24.03.2023 was** executed between the parties. The *Sanction Letter dated 24.03.2023* was accordingly issued. A **Deed of Guarantee** was also executed by the Guarantors, including the four Petitioners, in favour of the Complainant.

35. In the Complaint under Section 138 NI Act, it was asserted that there was an outstanding debt of Rs. 2,86,19,854.53 as on 20.02.2024, and in

order to realize the same, the four Cheques of the four Guarantors/Petitioners in the sum of Rs.70,00,000/- each dated 20.02.2024 were presented which got dishonored for "*Insufficiency of Funds*".

36. To appreciate the contention, it would be pertinent to refer to the requisite terms of the Master Facility Agreement dated 24.03.2023. They are:

> ***"Clause 1.1.9*** *"Due Date" means, in respect of any amount payable under any of the Facilities, the date on which such amount falls due in terms of this Agreement and/or the Facility Letter; and if such date falls on a day which is not a Business Day at the place of the Branch or where the payment is to be made, the immediately preceding Business Day.*
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> ***Clause 1.1.11*** *"Event(s) of Default" shall mean each of the events of default mentioned in Article 9 hereunder and any events of defaults mentioned in any of the Transaction Documents including the Facility Letter.*
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> ***Clause 1.1.20*** *"Guarantor" shall mean the person(s) {If any} who have issued/may be required to issue, guarantee(s) in favour of the Bank, inter alia, guaranteeing the performance of the obligations of the Borrower to the Bank under an pursuant to the Agreement.*
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> ***Clause 1.1.23*** *"Outstanding Balance(s)" shall mean collectively the Facilities, interest, compound interest, Additional Interest, any other charges, dues and monies payable, costs and expenses reimbursable, as outstanding from time to time and whether any of them are due or not for the time being and whether under this Agreement and/or any of the Transaction document(s)."*

37. Further, Article 8 provided for Security as per Facility Letter, for Individual Facility. It provided that Borrower shall secure the due payment, repayments, etc. **of the entire outstanding balance to the Bank,** which shall provide a Security, who shall furnish at its/his own cost such additional Security of such value and in such manner, as may be required by the Bank from time to time. It further provided that the entire Security shall be a continuing Security, till the final Settlement of the dues.

38. Admittedly, the Petitioners who are also the Directors of KRPM Infrastructure, had stood as Guarantors in terms of the Deed of Guarantee and had given *blank Undated Cheques to the Bank.*

39. According to the Complainant, because there was an *Overdue Amount as on 20.02.2024,* the four Cheques of the four Guarantors, got presented by the Bank. On the other hand, it has agitated by the petitioners that, in fact there was no termination of Loan Agreement and determination of Default amount; default of individual instalment, did not entitle the Bank to present the Security Cheques.

40. It is pertinent to note, that this is the continuing Loan facility and the Master Facility Agreement continues to prevail till date; *it has not been terminated and there is no final calculation of the Outstanding Liabilities.*

41. Article 9 lists the events of Default and consequences thereof. The relevant part of the Article 9 reads as under:

> ***"Article 9***
> ***EVENTS OF DEFAULT AND CONSEQUENCES THEREOF:***
> ***Clause 9.1*** *Happening or occurrence of any of the following events shall constitute an "Event of Default"*
> *I.* ***Failure and/or breach on Borrower's/guarantor(s) part to perform any of the obligations or terms or***

conditions applicable under this Agreement/ Facility Letter/ Transaction Documents/ other documents/ any other agreement with any other bank, financial institutions, creditor or any other person including non-payment in full of any part of the Outstanding Balance when due or when demanded by Bank;

...

V. If the Borrower or Guarantor fails to pay any of its debts or defaults under any contract or agreement with any party including any bank, financial Institutions, creditor or any other person.

...

XVIII. ***Inability of the Borrower (or the security provider and/or the guarantor) to repay debts to any person or any steps being taken by any person accelerating the payment obligation of the Borrower/ security provider/ guarantor*** *(prior to the relevant due date either for payment of interest or principal or instalment) or declaration by any person of an event of default (howsoever described) under their respective arrangements with the Borrower (or the security provider and/or the guarantor) or any event which under any law, statute, rule ordinance etc. would have the effect of suspending or waiving all or any right of the creditors generally, against the Borrower (or the security provider and/or the guarantor) or in respect of any contract or agreement concerning the Borrower (or the security provider and/or the guarantor);*

XIX…..

Clause 9.2 *If any Event of Default or any event which,* ***after the notice or lapse of time or both would constitute an Event of Default shall have happened****, the* ***Borrower shall forthwith given the Bank notice thereof in writing clarifying such Event of Default, or such event."***

42. In terms of the Master Facility Agreement, the Petitioners had signed **Deed of Guarantee dated 24.03.2023.** The following Clauses of ***Deed of Guarantee*** are pertinent and reproduced as under:

> ***"Clause 2. The Guarantor hereby guarantees as primary obligator and not merely as surety, the discharge of the Secured Obligations by the Borrower and hereby irrevocably, unconditionally and unequivocally undertakes to the Bank*** *that, the Guarantor shall, on each demand by the bank from time to time, forthwith unconditionally and irrevocably pay to the Bank and make good all amounts demanded in respect of the Secured Obligations, without any counter-claim, set-off, protest, despite or demur,* ***Any such demand made by the Bank on the Guarantor shall be final, conclusive and binding*** *notwithstanding any difference or any dispute between the Bank and the Borrower or any arbitration or other legal proceedings, pending before any court, tribunal, arbitrator or any other authority. All such payments to be made by the Guarantor shall be made forthwith* ***upon each such demand being made and in the event of failure by the Guarantor to make payment in accordance with the terms of this Clause, the Guarantor shall pay interest*** *thereon at the rate of Additional demand/ claim till the date of payment without prejudice to any in addition to any other remedies that the Bank may have against the Guarantor and/or the Borrower."*
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> ***Clause 4*** *Since the security/guarantee hereunder has been issued/created for covering/securing all the Facilities from time to time within the Overall Limit, the same shall not be affected by any grant of totally new or otherwise limits/account/Facilities, change in, addition to, inter-change, additions, reduction, supplementing, revisions, enhancements, revolution/revolving, substitution, renewals, extensions, cancellations, restricting of any of the Facilities or new or additional*

Facilities from time to time including any limits/sub-limits thereof forming part of the Overall Limit from time to time; ***and the security/guarantee shall extend to any continue to cover the entire Overall Limit notwithstanding any such grant of totally new or otherwise limits/accounts/Facilities or otherwise, change, inter-change, enhancement, addition, reduction, modification, supplement, renewal, substitution (part or whole), revolution/revolving, cancellation, restructuring of any of the Facilities which form part of the Overall Limit from time to time,*** *without any further act, deed or writing on the part of any person, including in all cases of any such grant of totally new or otherwise limits/accounts/Facilities, change, Inter-change, enhancement, addition, reduction, modification, supplement, renewal, substitution (part of whole), revolution/revolving, substitution, cancellation, restructuring of any of the Facilities, limits or sub-limits thereof from time to time."*

"Clause 9: The Bank shall have full liberty, without notice to the Guarantor to exercise at any time and in any manner any power or powers reserved to the Bank under the Master Facility Agreement, to enforce or forbear to enforce payment of any amounts due to the Bank under the Master Facility Agreement or any of the remedies or securities available to the Bank, *to enter into any composition or compound with or to grant time or any other indulgence to the Borrower and the Guarantor shall not be released by the exercise by the Ban of its liberty in regard to the matters referred to above or by any act or omission on the part of the Bank or by any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of so releasing the Guarantor and the Guarantor hereby wives in favour of the Bank so far as may be necessary to give effect to any of the provisions of this Deed, all the suretyship and other rights which the*

Guarantor might otherwise be entitled to under Applicable law. The guarantor also agrees that he/it will not be entitled to the benefit of subrogation vis-a-vis securities or otherwise until the Secured Obligations have been discharged in full. In particular, the Guarantor hereby waives all the rights available to sureties under Sections 133, 134, 135, 139 and 141 of the Indian Contract Act, 1872."

***"Clause 11: The Deed shall be enforceable against the Guarantor notwithstanding that any post-date cheques**, negotiable instruments, security and/or securities comprised in any Instrument(s) executed or to be executed in favour of the Bank (including the Transaction Documents) shall, at the time when the proceedings are taken against the Guarantor on this Deed, be outstanding or unrealised or lost."*

*"**Clause 18.8:** Restructuring/ change/ modification/ renewal/ enhancement of any of the Facilities or by any change in the terms and conditions of the facility/sanction."*

43. From the meaningful reading of the Master Facility Agreement along with Deed of Guarantee, it is evident that there are various events listed, on the happening of which, it can be held that a default has occurred. ***Article 9 (XVIII)*** *specifically states that* ***Inability of the Borrower (or the security provider and/or the guarantor) to repay debts to any person or any steps being taken by any person accelerating the payment obligation of the Borrower/ security provider/ guarantor, would be one event of Default.*** However, there is nothing evident from the averments in the Complaint that there is a default by the Borrower as they are unable to pay the loan. The Security cheque, by its very definition, can be presented only when the

Principal borrower has defaulted in the Payment. The loan account is subsisting and re-structured the instalments by imposing a higher rate of interest and the Company has been following the financial discipline and the Default if any already stands rectified, as payments are being made by the Company, and is continuing to do so.

44. The Petitioners have explained that the substantial amount of Rs. 2,68,15,181/- was paid between 20.02.2024 to 03.06.2024. Moreover, the Complainant Bank unilaterally revised the EMIs and applied Compound Interest, thereby causing a double burden upon the Borrower, which has continued to make repayment under the revised terms. As reflected in the Statement of Account, a substantial amount of Rs.3,33,33,333.32/- between 05.05.2023 to 20.02.2024, has also been paid.

45. In the aforesaid circumstances, it cannot be said that there was default event, in terms of Clause ***Article 9 of the Master Facility Agreement, especially when the Bank has exercised the option of re-structuring of Loan.***

46. Another significant aspect is that the Bank was required to have issued a prior *Notice of Demand on the KRPM and on the Guarantors* to seek rectification of the alleged Default and should have thereafter, invoke the security cheques. *Clause 9.2 of the Master Facility Agreement* clearly encapsulates that "*If any Event of Default or any event which,* ***after the notice or lapse of time or both would constitute an Event of Default shall have happened. Borrower shall forthwith given the Bank notice thereof in writing clarifying such Event of Default, or such event."*** There is no averment that any prior Notice was given to the Borrower or to the Guarantors.

47. Considering the various terms of the Master Facility Agreement and the Deed of Guarantee, Equity and Principles of Natural Justice mandated that a prior Notice to the Borrower, to explain the default, was required to be given, before presentation of Security Cheques.

48. It is significant to note that Respondent Bank has failed to controvert the assertions made in the Petition, either by way of a Reply or Written or Oral Submissions, to explain if infact, there was a default.

49. Even if it is held that technically, there may have been an Outstanding Amount as on 20.02.2024, for which the Bank may have invoked the Security Cheques, considering that it is a business commercial venture, it is not even in the interest of either party if such Complaints under Section 138 NI Act is permitted to be continued, especially when the alleged Default of the Outstanding Amount has already been addressed along with enhanced Rate of Interest and the Agreement is subsisting.

50. Considering the totality of circumstances, to permit continuation of such a Complaint, would indeed be a process of law and not in the interest of Justice.

51. The Complaints are hereby, **quashed** and the Petitions are allowed. Pending Applications are disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 10, 2026
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