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

Reserved on: 29th July, 2025
% ***Pronounced on: 27th November, 2025***

\+ **CRL.M.C. 3456/2017, CRL.M.A. 14110/2017**

\+ **CRL.M.C. 3472/2017, CRL.M.A. 14145/2017**

\+ **CRL.M.C. 3476/2017, CRL.M.A. 14153/2017**

MANDAVA ASHAPRIYA

NSL Icon, Door No. 8-2-684/2/A, 4th Floor,
Road no. 12, Banjara Hills
Hyderabad-500034, Telangana .....Petitioner

Through: Mr. Pramod Kumar Dubey, Sr. Advocate with Mr. Abhishek Saket, Mr. Abhigyan, Mr. Nishaank Maitoo, Ms. Amrita Vatsa, Mr. Rupraj Banerjee, Mr. Rama Chanduin B. Siddhartha, Mr. Devrishi Tyagi and Mr. Manish Madhukar, Advocates.

versus

1. **STATE**
Through Senior Standing Counsel (Criminal)
Delhi High Court
New Delhi

2. **PTC INDIA FINANCIAL SERVICES LTD.**
Having its Registered Office at
7th Floor Telephone Exchange Building,
8, Bhikaji Cama Place,
New Delhi-110066

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.
Mr. Siddharth Agarwal, Sr. Advocate with Mr. Sidharth Sethi, Ms. Shreya

Sircar and Mr. Kunal Saini, Advocates for R-2.

\+ **CRL.M.C. 3469/2017, CRL.M.A. 14139/2017**

\+ **CRL.M.C. 3470/2017, CRL.M.A. 14141/2017**

\+ **CRL.M.C. 3483/2017, CRL.M.A. 14167/2017**

RAMAKOTESWARA RAO KOMMALAPATI
NSL Icon, Door No. 8-2-684/2/A, 4th Floor,
Road no. 12, Banjara Hills
Hyderabad-500034, Telangana .....Petitioner

Through: Mr. Pramod Kumar Dubey, Sr. Advocate with Mr. Abhishek Saket, Mr. Abhigyan, Mr. Nishaank Maitoo, Ms. Amrita Vatsa, Mr. Rupraj Banerjee, Mr. Rama Chanduin B. Siddhartha, Mr. Devrishi Tyagi and Mr. Manish Madhukar, Advocates.

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+ **<u>CRL.M.C. 3474/2017, CRL.M.A. 14149/2017</u>**

+ **<u>CRL.M.C. 3478/2017, CRL.M.A. 14157/2017</u>**

+ **<u>CRL.M.C. 3479/2017, CRL.M.A. 14159/2017</u>**

MANDAVA RAO PRABHAKAR

Plot No. 543, H No. 8-2-293/82/A543
Road No. 26, Jubilee Hills
Hyderabad-500034, Telangana .....Petitioner

Through: Mr. Pramod Kumar Dubey, Sr. Advocate with Mr. Abhishek Saket, Mr. Abhigyan, Mr. Nishaank Maitoo, Ms. Amrita Vatsa, Mr. Rupraj Banerjee, Mr. Rama Chanduin B. Siddhartha, Mr. Devrishi Tyagi and Mr. Manish Madhukar, Advocates.

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\+ **CRL.M.C. 3477/2017, CRL.M.A. 14155/2017**

\+ **CRL.M.C. 3480/2017, CRL.M.A. 14161/2017**

\+ **CRL.M.C. 3481/2017, CRL.M.A. 14163/2017**

NSL ENERGY VENTURES PRIVATE LIMITED

Through Authorised Representative
NSL Icon, Door No. 8-2-684/2/A, 4th Floor,
Road no. 12, Banjara Hills
Hyderabad-500034, Telangana

.....Petitioner

Through: Mr. Pramod Kumar Dubey, Sr. Advocate with Mr. Abhishek Saket, Mr. Abhigyan, Mr. Nishaank Maitoo, Ms. Amrita Vatsa, Mr. Rupraj Banerjee, Mr. Rama Chanduin B. Siddhartha, Mr. Devrishi Tyagi and Mr. Manish Madhukar, Advocates.

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CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Aforesaid twelve Petitions have been filed by the Petitioners under Section 482 Criminal Procedure Code, 1973 (Cr.P.C) seeking quashing of the criminal proceedings and the impugned Summoning orders, dated 31.01.2017, and 01.03.2017, of the Learned Metropolitan Magistrate, for offences under Section 138 read with 142 NI Act.

2. At the core of this dispute are three main entities namely; PTC India Financial Services Ltd. (PFS), the *Complainant and lender;* NSL Nagapatnam Power & Infratech Ltd. (NNPIL), *the borrower*; and NSL Energy Ventures Private Limited (NEVPL), *the accused group Company linked to NNPIL.*

3. ***Briefly stated***, NNPIL got engaged in setting up a 1320 MW Thermal Power Project in Odisha and required immediate capital for the Project. PFS/*Complainant* stepped in and sanctioned a **bridge loan of Rs. 125 Crores** on 10.03.2014. This was intended as an advance to be converted into a larger **term loan of Rs. 150 Crores** once the Project met certain milestones. The initial Agreement dated 10.03.2014 established a clear lender-borrower relationship and a repayment schedule.

4. NNPIL/*Borrower* found it difficult to adhere to the original repayment terms and approached PFS/*Complainant* to renegotiate the Bridge Loan, in September 2015.

5. This led to the **Amendment Agreement of 28.12.2015,** which altered the security structure. A key condition by PFS*/Complainant* for rescheduling the Loan was a series of post-dated cheques (PDCs) from NEVPL*/Accused*. These cheques were not for any debt owed by NEVPL*/Accused* itself, but as **a guarantee** for the principal and interest repayments of NNPIL/*Borrower*.

6. By August 2016, the Project was still facing hurdles and NNPIL/*Borrower* proposed a more permanent solution. In letters dated 25.08.2016 and 26.08.2016, NNPIL/*Borrower* formally requested PFS*/Complainant* to convert the outstanding Bridge Loan into a regular Project Finance Term Loan. In its proposal, NNPIL/*Borrower* explicitly stated that upon such conversion, the Bridge Loan would "extinguish."

7. PFS*/Complainant* responded with a Letter dated **30.08.2016** wherein they stated ***that they would consider the request for conversion, but only after NNPIL/Borrower cleared all outstanding dues as of 31.08.2016.*** Consequently, NNPIL made a substantial payment of Rs. 11,53,93,648 *via* RTGS, on 23.09.2016.

8. However, despite having received over Rs 11.5 crores to clear the debt up to **31.08.2016**, PFS*/Complainant* presented the post-dated security cheques furnished by NEVPL*/Accused* for the installments that fell due after the 31.08.2016 cut-off date.

9. **Two cheques** No. 024419, for Rs. 1.69 Crores, and No. 024420, for Rs. 31.25 Crores**,** both dated 01.10.2016, were presented on 17.12.2016 and were dishonored for reason "*Funds insufficient*" *vide* Return Memo dated 20.12.2016. Following the dishonor, PFS/*Complainant* sent statutory Legal Notice dated 27.12.2016 and upon non-payment, filed the Criminal Complaints under S.138 NI Act.

10. ***Third cheque*** No. 024421 for Rs. 31.25 Crores was presented on 03.01.2017 which got dishonored for reason "*Funds insufficient*" *vide* Return Memo dated 06.01.2017. Following the dishonor, PFS/*Complainant* sent statutory Legal Notice dated 13.01.2017 and upon non-payment, filed the Criminal Complaints under S.138 NI Act.

11. In the Letter dated 13.02.2017, while addressing the overall dispute, PFS/*Complainant* acknowledged the payment made on 23.09.2016, and stated that in light of this payment, all previous Notices issued by them had become "redundant," and proceedings related thereto were being withdrawn. PFS/*Complainant* contended that this referred only to Notices for defaults given *before* 31.08.2016. However, the Petitioners asserted that it is an admission that the payment made on 23.09.2016, which fundamentally altered the Agreement, rendering the entire basis for the old claims obsolete.

12. PFS/*Complainant* also initiated parallel proceedings for the recovery of the same loan under the SARFAESI Act, 2002, against the NNPIL/*Borrower*.

13. **The Petitioners have challenged the Complaints on the grounds** that the Criminal Complaints under Section 138 NI Act, are maintainable if there is an *existence of a legally enforceable debt*, which is absent in this case.

14. The correspondence in August, 2016 created a new, binding Agreement. PFS's letter dated 30.08.2016, was an unequivocal conditional offer stating that if NNIPL clears the outstanding dues as of 31.08.2016, then the conversion of the Bridge Loan to a Term Loan, would be considered. In fact, the Complainant's own Letter dated 13.02.2017 contains a critical admission and it acknowledged the payment made on 23.09.2016 and stated that as a consequence, *all previous Notices had become "redundant."* Since the Notices were redundant, the underlying basis for those Notices, the default itself, was cured in the manner agreed between the parties. *The legal consequence is that the repayment obligations under the amended Bridge Loan Agreement, ceased to exist.*

15. The cheques were furnished to secure the quarterly repayments of the Bridge Loan. Once the parties agreed to "*extinguish" the Bridge Loan* in favor of a Term Loan, the security specifically meant for the former, could not be used to prosecute the Petitioners.

16. The character of the security cheques was fundamentally altered. The post-dated cheques, which were given as security for *that specific repayment schedule*, became redundant. Their presentation for encashment was, therefore, *for a 'debt' that was no longer enforceable in its original form.*

17. It is thus, contended that NNPIL's payment of Rs. 11,53,93,648 on 23.09.2016, was not merely a repayment of arrears, but a direct acceptance *by conduct*, of this new offer. The original Bridge Loan Agreement for which the cheques were furnished as security, were substituted by a new understanding between the parties which tantamount to a *Novation of contract within the ambit of Section 62 of the Indian Contract Act, 1872.*

18. The Petitioners state that by accepting significant payment based on an understanding of loan conversion and then proceeding to prosecute based on the old arrangement, PFS has not acted in good faith.

19. Petitioner asserts further that a cheque issued as 'security' is not a *carte blanche* for the holder to present it at will. Its validity is linked to the underlying debt it is meant to secure. If the underlying debt is extinguished or altered, the security for it, cannot be enforced.

20. It is submitted that the initiation of parallel proceedings under the SARFAESI Act, 2002, for the same loan, further strengthens this contention. While parallel proceedings are not always barred, it demonstrates that the Criminal Complaint is being used as a lever for debt recovery rather than for its intended penal purpose. The criminal law is being weaponized to bypass the civil recovery process.

21. ***Finally, challenge is made on behalf of the individual Directors who are Petitioners***. It is contended that the Complaints contain only *bald, omnibus, and cursory statements that the Directors were "in charge of and responsible for the day-to-day affairs" of the Company*. The law requires specific averments detailing the role of each Director in the alleged offense. In the absence of specific allegations, Director cannot be held vicariously liable merely by virtue of their designation. The Complaints, therefore, are legally insufficient to proceed against the individual Directors.

22. ***Thus, it is prayed that the Criminal Complaints be quashed.***

23. ***Learned Counsel for the Respondent No. 2***/PFS/Complainant, has vehemently opposed the Petitions.

24. It is submitted that the Petitioners' entire case is built on a misinterpretation of preliminary negotiations, while ignoring the binding terms of the executed Contracts. The liability of the Petitioners arises directly from the *"Bridge Loan Agreement" dated 10.03.2014,* and more pertinently, the "*Amendment Agreement" dated 28.02.2015.* These documents were duly executed by the parties and provided a clear repayment schedule and the mechanism for providing security cheques.

25. At the time the dishonoured cheques were presented, the loan had not been repaid. The instalments for which the cheques were issued (Cheque

Nos. 024419, 024420, 024421) were due as per this binding, amended schedule. Therefore, a *"legally enforceable debt"* unequivocally existed on the date of presentation. The Petitioners are attempting to retrospectively nullify this clear, documented debt based on subsequent, inconclusive discussions.

26. The Respondent refutes the Petitioners' claim of *novation* and asserts that the discussions surrounding the conversion of the Bridge Loan into a Term Loan, never materialized into a concluded contract. PFS's letter dated 30.08.2016, merely stated that it would *"consider*" the proposal for conversion. The use of the word *"consider*" is legally significant; it indicates a willingness to negotiate, not a binding acceptance of an offer.

27. The law is well-settled that an *"agreement to agree"* or an agreement to enter into a future contract, is unenforceable. For a novation to occur, there must be a complete substitution of the old Contract with a new one, with a clear consensus on all essential terms. There was no agreement on the interest rate, the tenure, or other critical terms of the proposed Term Loan, nor was any new *"Term Loan Agreement"* ever executed.

28. The payment of past arrears by NNPIL, was not a consideration for a new contract, but merely the fulfilment of its existing obligation to clear overdue payments. It did not by itself; extinguish the original contract or the liabilities that had already accrued.

29. The Respondent asserts that the cheques, though issued for security, remained valid and enforceable instruments. The purpose of a security cheque is precisely to provide a remedy to the lender, in case of a default in the future. The liability to honour the cheque crystallizes on the date mentioned on the cheque, if the debt for which it was given as security, has not been paid.

30. Since the loan was not paid off and the conversion to a Term Loan never happened, the original liability under the Bridge Loan continued. The *Security Cheques*, therefore, remained perfectly valid and were lawfully presented upon the default of the instalments, they were meant to secure.

31. The Respondent contends that the Petitioners have selectively and misleadingly interpreted the Letter dated 13.02.2017. It is clarified that the use of the word "*redundant"* in that letter pertained specifically to the Legal Notices issued for defaults that occurred 'prior' to the payment made on 23.09.2016. Since those arrears were cleared, the Notices for those specific defaults became redundant. This admission in no way implies that the entire Loan Agreement was cancelled or that PFS had waived its right to recover future instalments. It did not extinguish the underlying debt or invalidate the security cheques furnished for subsequent payments.

32. In regards to proceedings initiated under the SARFAESI Act, it is asserted that there is no legal bar to the simultaneous initiation of civil and criminal proceedings for the recovery of a loan and the dishonour of a cheque, respectively. The SARFAESI Act provides a mechanism for the recovery of debt by enforcing security interests, whereas Section 138 of the N.I. Act provides a penal remedy for the statutory offense of issuing a cheque that is dishonoured. The two proceedings operate in distinct legal spheres, and one does not preclude the other. The remedies are not mutually exclusive.

33. In answer to the challenge under Section 141 of the N.I. Act, the Respondent maintains that the Complaints contain sufficient averments to proceed against the Directors. The Complaints state that the accused Directors, namely ***Mandava Ashapriya, Ramakoteswara Rao Kommalapati, and Mandava Rao Prabhakar***, were responsible for the conduct of the business of the Company at the time of the commission of the offense, which is sufficient to establish a *prima facie* case to establish vicarious liability. The specific role of each Director is a matter of trial, and the proceedings cannot be quashed at this nascent stage on the hyper-technical ground of insufficient details in the Complaint.

34. In conclusion, the Respondent submits that the Petitions are a premature attempt to stifle a legitimate criminal prosecution. The facts clearly show the existence of a debt; the issuance of cheques for its discharge; the dishonour of those cheques and the failure to make payment despite a statutory Notice. All the ingredients of an offense under Section 138 of the N.I. Act are present, and there is no legal or factual basis to warrant the exercise of this Court's extraordinary jurisdiction under Section 482 Cr.P.C.

35. Thus, it is stated that the Petitions be dismissed.

Submissions heard and record perused.

36. From the rival contentions of the parties, two issues arise for consideration, which are:

i. *whether, there was a **novation of the contract** within the scope of Section 62 Indian Contract Act and consequent extinguishment of a "**legally enforceable debt or other liability"** or? and*

ii. *whether the averments made in the Criminal Complaints are sufficient to fasten **vicarious liability** upon the individual Directors (the Petitioners) under Section 141 of the N.I. Act?*

I. Novation of the Contract: Legally Enforceable Debt:

37. The primary question before this Court is whether a legally enforceable debt existed at the time of presentation of the cheques in question, for encashment or was it extinguished by a subsequent understanding between the parties, leading to novation *of the contract*.

38. The Petitioners, who are the Guarantors, have contended that the debt, originally under the Bridge Loan Agreement, got extinguished as the Parties agreed to convert it into a Term Loan. On the other hand, the Respondent argues that the original agreement remained fully in force as there was no concluded conversion of Bridge Loan into Term Loan.

39. Admittedly, the Parties (borrower NNPIL and respondent PFS) had entered into Bridge Loan Agreement dated ***10.03.2014*** which got amended on **28.12.2015** and cheques for securing the Payments and the interest, were issued. The parties were governed by the amended Bridge Loan Agreement dated 28.12.2015.

40. However, events took a turn in August, 2016. Even though the Complaints were filed in December, 2016 and January, 2017 but the reference to Letter dated 13.02.2017, written by the Complainant to the borrower/NNPIL, is relevant. In this Letter, the Complainant has given the details of all the transactions which had taken place between the parties since 2012 and it was further stated that in terms of the Bridge Loan, 16 post-dated cheques were issued by the NSL Energy Ventures Private Limited (NEVPL) i.e. the Petitioners/Guarantors, towards quarterly principal repayment obligations and the balance 12 cheques, towards one year interest payment obligations. On the request and on the basis of undertaking relating to deposit of PDCs *vide* Letter dated 06.11.2015, PFS/Complainant rescheduled the repayment period by pushing the date of first quarterly repayment from 01.07.2015 to 01.10.2016 along with the shift in the targeted commercial operation date of the project from July, 2016 to March, 2019.

41. Pursuant thereto, Bridge Loan Agreement was amended on 28.12.2015 and the schedule for Bridge Loan Agreement was consequently amended reflecting the aforesaid understanding. The Complainant further narrated that despite the above PDCs deposited with the Complainant, were dishonored for insufficient funds. Owing to this, PFS had issued Notices between April, 2016 to July, 2016 including the Loan Recall Notice dated 03.06.2016 upon the borrowers and the corporate guarantors under the deeds of pledge. The PFS also initiated the proceedings under Section 138 of the NI Act in respect of the dishonoured cheques.

42. The borrower wrote Letters dated 25.08.2016 and 26.08.2016 requesting PFS "*to convert the Bridge Loan by disbursing the regular project finance terms loan of 150 Crores which were sanctioned vide Loan No.DN0401002 dated 07.06.2013". It further sought certain concessions with the terms and conditions in relation to security pledge of shares, moratorium period etc.

43. The Respondent/PFS, responded *vide* its **letter dated 30.08.2016,** stating that it would consider the request for conversion, only upon the payment of outstanding dues. The relevant part of the Letter read as below:

> *"This has reference to your letter mentioned above on the subject matter. Your request for conversion of Bridge debt*

into term Debt has been perused and in this regard we would like to mention that ***PFS could consider your request without any dilution of security /co-lateral presently available w.r.t. bridge debt*** *except creation of DSRA and the ROI Of the term debt would be in line with PFS's sanction letter dated 7.06.2013 with* ***suitable amendment*** *in other T&Cs of sanction. The present ROI would be 13.50% p.a. on monthly rest basis after taking into account revision that has taken place in the PFSRR since the sanction of the term debt. Further, please note that your request* ***would be considered subject to payment of outstanding dues and would be subject to approval of the competent authority of PFS".***

44. The PFS thus, clarified that *vide* its Letter dated 30.08.2016, it was conveyed to the borrowers that the proposed conversion ***would be converted only after obtaining the approval from the competent authority of PFS.*** It was clarified that there was no assurance given by the Complainant that the proposed conversion shall necessarily be approved. Furthermore, PFS for the purpose for considering the proposal of conversion had requested the borrower to pay the entire amount due till 31.08.2016, towards the interest over due and other charges under the Bridge Loan Agreement excluding principal amount to the Complainant.

45. From the bare perusal of this Letter, it is evident that it is a mere expression of willingness to evaluate the proposal, and was not a conditional offer to enter into the Term Loan on payment of outstanding dues.

46. The Petitioners acted upon this negotiation between PFS and NNPIL and paid a substantial sum of Rs. 11,53,93,648/- via RTGS on 23.9.2016, which was towards the outstanding dues till the said date. This act of payment of the amount was only a pre-curser for the PFS/Complainant, to consider the conversation of Bridge Loan into a Term Loan. This is further evident from the Letter dated 17.02.2017, written by PFS to the borrower wherein the entire details of the transactions and the Agreements entered between the parties till then, have been elaborated.

47. Once, those payments got made, the PFS withdrew its Loan Recall Notice w.e.f. 23.09.2016 *vide* its Letter dated 28.10.2016. Furthermore, PFS started to withdraw its proceedings against the borrower under Section 138 of N.I. Act, for the PDCs that were dishonoured upto 31.08.2016. The withdrawal of the Recall Notice and the proceedings under N.I. Act, were clarified to be in respect of dues till 31.08.2016. In the Letter, it was asserted that such withdrawal of Recall Notice and the proceedings under N.I. Act, cannot be construed either as an assurance or an acceptance of the proposed conversion. The payment of the outstanding dues till 31.08.2016 was only one of the pre-condition for *"considering the proposal of conversion.*" There was no acceptance of terms and conditions of the proposed conversion much less regarding the moratorium or in the interest rate etc. It was thus clarified that there was no concluded Agreement of conversion of Bridge Loan into a Term Loan.

48. The PFS has further referred to the Letter dated 06.12.2016, issued by it to the borrower wherein it was conveyed "*this has reference to various communications from your side on the subject matter; in this regard we would like to mention that your request for conversion for bridge debt into long term debt and further disbursement from long term debt is under consideration as per the relevant norms and regulatory requirements. In the meantime, the demand notices would be raised as per the existing loan agreement of your company with us….*

Please also recall that as there is shortfall in the pledge of shares of NSL Energy Ventures Private Ltd. (as against 26.0% only 14.98% is pledged). It was agreed during the discussions in August/September, 2016 that shortfall in pledge would be met in three months. We request you to ensure the compliance of commitment at earliest."

49. It was thus asserted that the allegations contained in the Letter dated 30.12.2016, in regard to demand notices and legal notices initiating proceedings under Section 138 of N.I. Act, are untenable.

50. In this Letter, it is, therefore, clarified that the Recall Notice, as well as, the withdrawal of Complaint under Section 138 of N.I. Act, did not pertain to the cheques, which got dishonoured subsequent to August, 2016 and that there is a legally reinforceable debt for which the Complaint under Section 138 of N.I. Act, is maintainable.

51. The aforesaid narration also reflects that there was only a proposal for conversion of the Bridge Loan into a Term Loan and there was no final concluded Agreement. NNPIL cleared the past dues as part of its ongoing obligations, but PFS did not commit to any conversion of the Bridge loan into a Term Loan, beyond mere consideration.

52. Thus, the contention of the Petitioners that there was novation of the contract is clearly not made out from the communication exchanged through various letters and from the circumstances as narrated herein.

53. This sequence of events does not bring the matter within the ambit of Section 62 of the ICA, which deals with **novation**. Section 62 reads as under:

> *"62. **Effect of novation, rescission, and alteration of contract***

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.
Illustrations:
(a) A owes money to B under a contract. It is agreed between A, B and C, that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.
(b) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.
(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees, B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into."

54. Novation occurs when the parties to a Contract agree to substitute a new contract or to rescind or alter it. *The original contract need not be fulfilled, once it is novated.*

55. While the Petitioners contend that a contract can be novated by the conduct of the parties, which demonstrates a clear and mutual intention to be bound by new terms, the law requires an actual offer and acceptance to form such an agreement. The payment of over Rs. 11 crores was a fulfilment of existing obligations and cannot be treated as evidence of a new contract, as there was no standing offer from PFS to novate.

56. NNPIL made the payment as per its existing duties under the original arrangement, for which the post-dated cheques were furnished as security, remained intact. The earlier cheques aimed at securing the quarterly instalments of the Bridge Loan, retained their validity.

57. The Respondent's central argument is that the discussion around conversion was merely a "proposal" or, at best, an "agreement to agree," which never culminated in a formally executed Term Loan agreement. They contend that in the absence of a new signed contract, the original amended Bridge Loan Agreement remained in full force, and the cheques remained valid.

58. This argument is well-founded, as it correctly interprets the nature of novation. *A novation does not occur without a clear offer; it cannot be inferred from vague or conditional communications that lack the certainty of an enforceable promise.*

59. The question is whether the parties, by their words and actions, mutually intended to replace the old set of obligations with a new one.

60. Let us examine the sequence of events, which is undisputed: the Proposal was made on 25.08.2016 & 26.08.2016 by NNPIL to convert the Bridge loan into a Term loan. This was not an offer in the contractual sense but a request for consideration.

61. The Letter dated 30.08.2016 of PFS/Complainant is the most critical document. It did not make an offer; it simply said "*we could consider*" the request, subject to conditions. This was not a clear offer or counteroffer. It implicitly communicated that *we may evaluate your request if you pay the outstanding dues, but no commitment is made*.

62. On 23.09.2016, NNPIL paid the entire sum of Rs. 11,53,93,648 *via* RTGS. This act was not an acceptance of any offer, as no offer existed. It was a partial payment against the total loan under the existing Bridge Loan Agreement, fulfilling overdue obligations but not creating novation.

63. There was no consideration for a purported new agreement, as the payment was merely the discharge of existing arrears. For NNPIL, there was no binding promise from PFS to "extinguish" the Bridge Loan, as stated in their original proposal, since PFS only expressed conditional willingness to consider.

64. Therefore, this argument of the Petitioners that a new contract was formed is untenable. No agreement was concluded, as there was no offer at all - neither from NNPIL's proposal, which was a mere request, nor from PFS's response, which was non-committal. There was no offer and acceptance.

65. Once no novation took place, the original amended Bridge Loan Agreement, and its corresponding repayment schedule, remained in effect. The security cheques, which were provided specifically to secure the instalments under that schedule, remained valid for an existing liability which accrued after October 2015. They were valid and enforceable.

66. The Complainant's own letter of 13.02.2017, stating that prior Notices had become "redundant" post this payment, does not alter this conclusion. It demonstrates only that the Complainant acknowledged the payment cured specific past defaults, but it in no way implied that the entire agreement was novated or that future obligations were extinguished.

67. This Court thus, finds that no novation of the contract occurred. The original Agreement remained in force and the security cheques represented a legally enforceable debt. The cheques issued as security for the original Bridge Loan Agreement remained valid instruments for that debt.

68. *Consequently, their subsequent presentation for encashment was towards a liability which was legally enforceable at the time of presentation of Cheques.*

69. **The Complaints under S.138 NI Act are maintainable**.

II. The Vicarious Liability of the Directors under Section 141 N.I. Act:

70. Since the Complaint is not liable to be quashed, it becomes imperative that the *prima facie* evidence qua the Accused Petitioners may be referred to, in order to ascertain the specific role of the Accused persons. There are total 10 Accused persons in the Complaint, of which only 4 have been summoned. They are ***Accused No. 2/ Mandava Rao Prabhalkara, Accused No. 3/Mr. Ramakoteswara Rao Kommalapati, Accused No. 7/Ms. Mandava Ashapriya and Accused No. 10 /Company***.

71. It is now imperative to address the challenge raised by the three Petitioners, Directors regarding their vicarious liability.

72. The Petitioners have argued that the Complaints, in *a "bald and cursory"* manner, rope them into the proceedings without any specific allegations of their role, which is a prerequisite for invoking Section 141 of the N.I. Act. The Respondent, in opposition, has maintained that the averments are sufficient for the summoning stage.

73. Section 141 of the N.I. Act is a penal provision that creates a constructive, or vicarious, liability. It extends the liability of the Company the principal offender, to its directors and officers, who, **at the time the offence was committed**, were *in charge of and responsible to the company* for the conduct of its business.

74. Section 141(2) is a deeming provision that holds other officers, such as directors, liable if it is proved that the offense was committed with their consent, connivance, or is attributable to any neglect on their part.

75. For a prosecution to be sustained under Section 141(1), the Complaint must contain **specific averments** that the accused Director was, in fact, responsible for the company's day-to-day affairs. A mere statement that a person is a Director is insufficient. The Complainant must plead **how** and **in what manner** the director was responsible for the conduct of the business.

76. The averment for fastening vicarious liability is identical in all cases (Complaint Case No. 3474/17, 1659/17, and 1660/17), which are as under:

> *"That the above named Accused Nos. 2 to 9 are the Directors of the Accused No.1 Company and all of them are responsible for the day-to-day affairs of the Accused No.1 Company.*
>
> *...*
>
> *The above named Accused Nos.2, 3 and 7 are also the Directors of the Accused No.10 Company and all of them are responsible for the day-to-day affairs of the Accused No.10 Company."*

77. The Complainant has pleaded facts showing the individuals' involvement as Directors responsible for the Company's business, which led to the issuance and dishonour of the cheques. Such averments are legally sufficient to summon the Directors to face trial. The learned MM applied judicial mind in issuing the summoning orders, as the averments meet the threshold of Section 141.

(i) ***Mr. Ramakoteswara Rao Kommalapati* and *Accused No. 7/Ms. Mandava Ashapriya: Co-Signatories to the Cheque:***

78. *Accused No. 3/ Mr. Ramakoteswara Rao Kommalapati*, as per the FORM DIR-12 is categorised as a "Whole-time Director" within the class of "Executive Directors".

79. Moreover, Accused No. 7/Ms. Mandava Ashapriya though is categorised as a "Professional Director" within the class of "*Non-executive Directors*" as per FORM DIR-12.

80. Both these Accused persons, one being a Whole time Executive Director and the other being a Non-Executive Director, are signatories to the impugned cheque, reflecting their role in the day-to-day affairs of the Company.

81. The *Accused/Ms. Mandava Ashapriya* may be a "*Non-Executive Director*", but her role as a signatory of the Cheques, is sufficient to establish her involvement in the day-to-day affairs of the Company. A principle recognised by the Apex Court in *National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another*, (2010) 3 SCC 330, wherein it was held that:

> *"39. From the above discussion, the following principles emerge:*
> ...
> *(vi)* ***If the accused*** *is a Director or an officer of a company who* ***signed the cheques*** *on behalf of the company then also* ***it is not necessary to make specific averment in the complaint.***
> ..."

82. This is a principle recently noted in *Kamalkishor Shrigopal Taparia vs. India Ener-gen Private Limited & Anr.*, 2025 INSC 223 as well.

83. Therefore, it cannot be said that they were not in-charge or responsible for the day-to-day working of the Accused Company and are consequently, are ***not entitled to be discharged***.

(ii)***<u>Accused No. 2/ Mandava Rao Prabhalkara- Non-Executive Directors:</u>***

84. ***Accused No. 2/ Mandava Rao Prabhalkara,*** however, as per FORM DIR-12 is categorised as a "***Professional Director***" which is the class of ***"Non-Executive Directors".*** He is neither a signatory to the Cheque nor is there any averment from where his involvement and control over the affairs of the Company can be established.

85. In the judgment of Apex Court in *<u>Pooja Ravinder Devidasani vs. State of Maharashtra,</u>* (2014) 16 SCC 1 it was observed that *"while taking into consideration that a non-executive director plays a governance role and are not involved in the daily operations or financial management of the Company, held that to attract liability under section 141 of the NI Act, the accused must have been actively in-charge of the company's business at the relevant time. Mere directorship does not create automatic liability under the Act. The law has consistently held that only those who are responsible for the day-to-day conduct of business can be held accountable."*

86. The Apex Court in the case of *<u>Chitalapati Srinivasa Raju vs. Securities and Exchange Board of India,</u>* AIR 2018 SC 2411, held that *"non-executive directors are, therefore, persons who are not involved in the day-to-day affairs of the running of the company and are not in charge and are not responsible for the conduct of the business of the company."*

87. These observations made in the case of *Pooja Ravinder Devidasani* (supra) have been endorsed by the Apex Court in the recent case of *Kamal Kishor Shrigopal Taparia,* (supra).

88. Therefore, in the absence of any averments defining his role in the Complaint, it cannot be said that he was in-charge or responsible for the day-to-day working of the Accused Company and **is entitled to be discharged**.

Relief:

89. The **Petitions *bearing no. CRL.M.C. 3477/2017, 3480/2017, & 3481/2017*, filed by *Accused No. 10/ NSL Energy Ventures Private Limited*** are held to be without merit and the same are dismissed.

90. The ***Petitions bearing No. CRL.M.C. 3456/2017, 3472/2017, & 3476/2017*** filed by ***Accused No. 7/Mandava Ashapriya*** and ***Petitions bearing No. CRL.M.C. 3474/2017, 3478/2017, & 3479/2017*** filed by ***Accused No. 3/Mr. Ramakoteswara Rao Kommalapati,*** are also **dismissed, as being without merit**.

91. The **Petitions** bearing No. CRL.M.C. 3474/2017, 3478/2017, & 3479/2017 **filed by *Accused No. 2/Mandava Rao Prabhakara,*** are **allowed and discharged in the** Criminal Complaints No. 1659/2017, No. 1660/2017, No. 3474/2017.

92. All pending Applications stand disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 27, 2025
RS/va