

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

+ **CRL.M.C. 710/2010 & CrI.M.A. 2592/2010 (stay)**

% Reserved on: 12th March, 2012
Decided on: 15th March, 2012

BRAINOBRAIN KIDS ACADEMY P. LTD & ANR.

..... Petitioners

Through Mr. Trideep Pais and Mr. Shivam
Sharma, Advs.

versus

CONTINENTAL ADVERTISING P.LTD. Respondent

Through Mr. D.R. Bhatia, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The present petition seeks quashing and return of the complaint No. 7431/2007 dated 12th March, 2007 pending in the Court of Shri Ajay Garg, Metropolitan Magistrate, Tis Hazari Court, New Delhi on the ground that essential ingredient of Section 138 Negotiable Instruments Act, 1981 (in short N.I. Act) are not fulfilled and the learned Trial Court has no territorial jurisdiction to try the complaint.

2. At the time of hearing learned counsel for the Petitioner confined his prayer to the first issue only as the issue of territorial jurisdiction is pending before the Division Bench of this Court for consideration. Learned counsel for the Petitioner contends that in terms of proviso (b) to Section 138 N.I.

Act, the amount demanded should be specified. However, the legal notice in the present case does not specify the amount demanded and thus the same is not a valid legal notice. Reliance in this regard is placed on *Rahul Builders Vs. Arihant Fertilizers & Chemicals & Anr. (2008) 2 SCC 321*.

3. Learned counsel for the Respondent on the other hand states that the legal notice was not drafted by an advocate and it is not essential that the amount should be specified in the legal notice. Reliance is placed on *Metlon India Pvt. Ltd. Vs. Ester Industries Ltd. MANU/DE/1839/2010*.

4. Heard learned counsel for the parties. Briefly the facts of the case are that the Respondent, a company dealing in Marketing, Advertising and Promotion, raised a bill No. 551/06-07 dated 31st October, 2006 for a sum of Rs. 1,10,904/- in respect of advertisement published in the 'Hindustan Times' in Delhi, Mumbai and Chandigarh and sent the same to the Petitioners along with a covering letter dated 9th November, 2006. Towards payment of the aforementioned bill the Petitioners herein purportedly issued a cheque No. 153998 dated 31st January, 2007 for an amount of Rs. 1,09,662/- drawn on UTI Bank, Branch T-Nagar, Chennai. The same was presented by the Respondent to its bankers Punjab National Bank, Rajender Nagar Branch, Delhi for payment on 1st February, 2007. However, the said cheque was returned by the Petitioner's bank on 3rd February, 2007 for the reason "payment stopped by the drawer". Pursuant thereto the Respondent issued a legal notice dated 5th February, 2007 to the Petitioner demanding to pay the amount within a week from the date of receipt of the notice. However, the Petitioners failed to make payment. Hence, the complaint under Section 138 NI Act.

5. The legal notice dated 5th February, 2007 reads as under:

“RK:JK:4838/07

5th February, 07

Mr. Anand Subramaniam,
Managing Director,
Brainobrain Kids Academy Pvt. Ltd.
36, Melony Road, T.Nagar,
Chennai-17

Dr. Mr. Anand,

This is in reference to your post-dated cheque No. 153988 dated 31st January, 07 in settlement of our bill no P-551/06-07 given to us at the time of release on your behalf.

I have received the intimation from the bank along with the cheque having been stopped the payment by you, which is illegal, professionally unethical, against INS Rules. You have not only violated the terms of the working but also have not issued us the TDS certificates since the beginning of working together.

Before we initiate further action on the matter with INS and file legal proceedings against you I shall request you to immediately send us your Draft for the amount within week from the date of receipt of this letter. This is clear case of cheating and as such all damages and legal charges shall be at your cost. This may be considered as legal notice as per the law.

Thanking you,

Yours faithfully,
For Continental Advertising Pvt. Ltd.
P.K. Mehta
Managing Director.”

6. Section 138 Negotiable Instruments Act provides for penalties in case of dishonor of cheques for insufficiency of funds in the Account provided the cheque is presented to the bank within six months from the date on which it is drawn or within its validity, whichever is earlier, the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of the information by him from the bank regarding the return of cheque as unpaid, and 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 15 days of the receipt of the said notice.

7. A perusal of the legal notice dated 5th February, 2007 shows that the first para talks about the post-dated cheque No. 153988 dated 31st January, 2007 and the bill No. P-551/06-07. As stated above the amounts in the bill and cheque were different. Para 3 of the legal notice does not specify the amount as stated in the cheque nor does it specify the amount to be paid to the complainant within a week from the date of receipt of the letter. The demand for return of the amount is an essential ingredient to constitute an offence punishable under Section 138 N.I. Act. Thus, if the amount is not specified, the same cannot be said to be a valid demand made. This issue came up for consideration before the Hon'ble Supreme Court in *Rahul Builders* (supra) wherein their Lordships held as under:

“10. Service of a notice, it is trite, is imperative in character for maintaining a complaint. It creates a legal fiction. Operation of Section 138 of the Act is limited by the proviso. When the proviso applies, the main Section would not. Unless a notice is

served in conformity with Proviso (b) appended to Section 138 of the Act, the complaint petition would not be maintainable. The Parliament while enacting the said provision consciously imposed certain conditions. 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". Such a notice has to be issued within a period of 30 days from the date of receipt of information from the bank in regard to the return of the cheque as unpaid. The statute envisages application of the penal provisions. A penal provision should be construed strictly; the condition precedent where for is service of notice. 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 No. 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 notice 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 30.04.2000. What was, therefore, demanded was the entire sum and not a part of it."

8. Thus, issuance of an omnibus notice without specifying the amount due under the dishonoured cheque, not even calling upon the alleged accused to pay the amount of cheque issued will not serve the requirement of law. The reliance of the Respondent on *Metlon India Pvt. Ltd.* (supra) is misconceived. In *Metlon India* this Court was dealing with an issue where the demand notice under Section 138 N.I. Act did not specify that the cheque amount should be paid within 15 days of the receipt of the notice. This

Court held that merely because the complainant demanded payment of the dishonoured cheque amount from the Petitioners within 30 days instead of 15 days the notice sent by the complainant would not become illegal.

9. In view of the facts and circumstances of the case, the complaint case No. 7431/2007 filed by the Respondent is hereby quashed. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

MARCH 15, 2012
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