

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

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Reserved on: September 15 , 2016

Decided on: September 20, 2016

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CRL.M.C. 3838/2011 & Crl.M.A. 18210/2011 (stay)

NIMISH MAHESHWARI

..... Petitioner

Represented by: Mr. Manu Beri, Advocate.

versus

INDIAN RENEWABLE ENERGY
DEVELOPMENT AGENCY LTD.

..... Respondent

Represented by: Mr. Abhishek Anand,
Advocate.

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CRL.M.C. 3839/2011 & Crl.M.A. 18212/2011 (stay)

BRIJ MAHESHWARI

..... Petitioner

Represented by: Mr. Manu Beri, Advocate.

versus

INDIAN RENEWABLE ENERGY
DEVELOPMENT AGENCY LTD.

..... Respondent

Represented by: Mr. Abhishek Anand,
Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petitions the petitioners Nimish Maheshwari and Brij Maheshwari seek quashing of the proceedings in complaint case under Sections 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act') for dishonor of cheque No.003817 dated 31st December, 2003 for a sum of ₹49,75,641/- drawn at State Bank of Travancore, Congress Nagar, Nagpur-

440012 for the reason 'Funds Insufficient' vide memo dated 12th January, 2004.

2. The petitioners were the Directors of the Company M/s ENBEE Infrastructure Limited (in short 'the Company') when it entered into a loan agreement with the respondent company, that is, the complainant in the above noted complaint case and the petitioners' company agreed to repay the loan of ₹845.00 lakhs in equal quarterly installments of ₹26.40 lakhs for which an Escrow Account was opened in the State Bank of Travancore, Nagpur Main Branch and the company issued post dated cheques in favour of the respondent/complainant as per the repayment schedule. The complaint was filed for the dishonor of cheque No.003817 dated 31st December, 2003 for a sum of ₹29,75,641/-.

3. The case of the petitioners is that the petitioner Nimish Maheshwari resigned as the Director of the company on 30th March, 2000 and Brij Maheshwari w.e.f. 6th September, 2002 and thus they could not have been summoned as the accused.

4. When the matter came up before this Court for hearing on 22nd November, 2011, copy of the Form-32 submitted with the Registrar of Companies (ROC) was not filed. Later the petitioners filed certified copies of the Form-32 which were taken on record and this Court vide order dated 25th November, 2011 stayed the proceedings before the learned Trial Court. This Court on 22nd February, 2013 noting that though the certified copies of the Form-32 had been placed on record however, the same did not specifically state that Form-32 was received by ROC on 7th April, 2000 thus directed the petitioners to file a certificate in this regard from ROC.

5. The certified copy of the Form-32 notes having been received on 13th April, 2000 and registered on 23rd April, 2004 vide document Sr. No.33 in the case of Nimish Maheshwari and in the case of Brij Maheshwari the date of receiving is 5th December, 2002 and registered on 7th April, 2004 vide D. No.31. .

6. The contention of learned counsel for the respondent is that Forms-32 as placed on record were filed on 23rd April, 2004 and 7th April, 2004 showing an ante-dated resignation of the Directors w.e.f. 20th March, 2000 and 6th September, 2002 of Nimish Maheshwari and Brij Maheshwari respectively, thus it was not sufficient to absolve the liability under the Negotiable Instruments Act. The certificates filed do not prove conclusively that the petitioners actually resigned on 30th March, 2000 and 6th September, 2002 and this issue can be decided during trial only.

7. I find force in the contention of the learned counsel for the respondent that since the registration for resignation of the petitioners w.e.f. 30th March, 2000 and 6th September, 2002 is post the cause of action which arose after the legal notice dated 28th January, 2004 was issued. Thus only after the parties lead the evidence, it can be determined whether the petitioners actually resigned on 30th March, 2000 and 6th September, 2002 or not.

8. Considering the facts noted above, I find no ground to interfere in the order summoning the petitioners.

9. Petitions and applications are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 20, 2016
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