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

+ **CRL.M.C. 4387/2016**

AMARDEEP SINGH DAHIYA

..... Petitioner

Represented by: **Mr. S.K. Bhattacharya, Mr.
Mimanshu Gambhir, Advs.**

versus

EMPEROR INTERNATIONAL P.LTD.

..... Respondent

Represented by:

**CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA**

ORDER

24.11.2016

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Crl.M.A. 18312/2016

Exemption allowed subject to just exceptions.

CRL.M.C. 4387/2016 & Crl.M.A. 18311/2016 (stay)

1. A complaint was filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (in short the NI Act) alleging that the respondent/ complainant entered into a Memorandum of Understanding dated 2nd April, 2012 with the petitioner/ accused to acquire, consolidate and offer to the complainant land measuring 100 acres in R-Zone in and around Sonapat, Haryana. In terms of the MOU the petitioner received a sum of ₹50 lakhs towards commitment advance for the purchase of the said land. However, the petitioner failed to fulfil the commitment. Subsequently a settlement agreement was entered into between the parties on 7th June, 2012

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whereby the petitioner agreed to pay a sum of ₹5 crores to the complainant towards liquidated damages and settlement of the entire amount due from the petitioner. The said amount of ₹5 crores was to be paid in two installments of ₹25 lakhs each and the third of ₹4.5 crores and cheques in this regard were issued. Thus the complainant contended that from the cheques issued, the petitioner admitted due liability of ₹5 crores. It was also assured that on presentation the cheques would be honoured. When the cheques were presented they were dishonoured with the remarks 'Insufficient Funds'.

2. As per the settlement the petitioner assured that the third installment of ₹4.5 crores would be honoured and it was the discretion of the complainant to extend the time for payment subject to an interest @ 18 % per annum. At the request of the petitioner the time was extended, however when the cheque was finally presented the same was dishonoured. Despite legal notice dated 1st May, 2013 having been served and 15 days elapsing after receipt of the notice, no payment was made and hence the complaint. Summons in the complaint were issued to the petitioner, hence the present petition.

3. The contention of learned counsel for the petitioner is that for a liability of ₹50 lakhs the petitioner could not have agreed to pay a sum of ₹5 crores and thus the settlement/ agreement dated 7th June, 2013 was clearly unconscionable and hence could not be acted upon. ₹50 lakhs were paid by the petitioner on 24th February, 2012 by RTGS and thus there was no liability of the petitioner to pay a sum of ₹4.5 crores.

4. The petitioner does not dispute entering into a settlement agreement with the complainant on 7th June, 2012. Hence whether the agreement could have been acted upon or not cannot be gone into in a petition under Section 482 Cr.P.C. as the same requires trial and can be appreciated only after parties adduce their respective evidence. This Court finds no reason to quash the Criminal Complaint No.99/13/2013 under Section 138 NI Act titled as 'Emperor International Private Ltd. vs. Amardeep S. Dahiya' pending at Rohini Courts.

5. Petition and application are dismissed.

MUKTA GUPTA, J.

NOVEMBER 24, 2016
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