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

\+ CRL.M.C. 2404/2016 & Crl.M.A. 10287/2016

RAJBUILDCON CONSTRUCTIONS LTD & ORS ..... Petitioner
Represented by: Mr. Vikas Gupta and Mr. Shankar, Advs.

versus

STATE & ANR ..... Respondent
Represented by: Mr. Ashok Kumar Garg, APP. Mr. M.S. Rohilla and Mr. Dinesh Rohilla, Advs. for R-2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

<u>O R D E R</u>

% **30.01.2017**

1. Respondent No.2 M/s Radhika Steel Enterprises filed four complaints before the learned Metropolitan Magistrate under Section 138 of Negotiable Instruments Act (in short 'NI Act') being CC Nos. 6480/2012, 6481/2012, 6483/2012 and 6490/2012 titled <u>*M/s Radhika Steel Enterprises Vs. Raj Buildcon Cons. Ltd. & Ors.*</u>

2. Summons were issued to M/s Raj Buildcon Cons. Ltd., petitioner No.1 herein and Kishan Kumar Bansal, petitioner No.2 herein besides two other accused i.e. Rajinder Bansal and Deepak Bansal.

3. Notice under Section 251 Cr.P.C. was framed against Deepak Bansal on 5th November, 2012 and against Kishan Kumar Bansal and Rajinder Bansal on 12th November, 2012. An application was filed by the company and the accused persons under Section 145(2) NI Act. On joint request on

5th January, 2013 the learned Metropolitan Magistrate referred the matter to mediation centre for settlement.

4. On 14th January, 2014 a settlement was arrived at duly signed on behalf of respondent No.2 the complainant and Mr. Kishan Bansal one of the directors of the accused company. It was also signed by the legal officer of the company M/s Rajbuildcon Cons. Ltd.

5. On 28th January, 2013 authorised representative of the accused persons appeared before the Court along with the counsel and sought for an adjournment. On adjourned date i.e. 5th April, 2013, some time was sought by the counsel for the accused persons to pay first instalment of ₹40 lakhs. Learned Trial Court adjourned the matter granting the company and its directors last opportunity to adhere to the mediation settlement, subject to costs of ₹50,000/-.

6. On the next adjourned date i.e. 30th April, 2013 neither counsel nor accused appeared thus non-bailable warrants were issued against them. On 30th May, 2013, applications were filed for cancellation of the non-bailable warrants wherein the pleas taken by the different accused were that they did not agree to the settlement and it was without the approval of other accused. On 17th December, 2013, learned Metropolitan Magistrate held that the accused persons cannot defy and nullify the mediation settlement and claim trial.

7. Challenging the said order dated 17th December, 2013 passed by the learned Metropolitan Magistrate, four petitions under Sections 482 Cr.P.C. were filed before this Court being Crl.M.C. Nos. 431/2014, 448/2014, 449/2014 and 450/2014 which were disposed of by this Court vide order dated 27th January, 2014 noting that since the applications under Section

145(2) NI Act were pending, learned Trial Court was required to hear and dispose of the same. Pursuant to order dated 27th January, 2014 passed by this Court, learned Metropolitan Magistrate on 16th April, 2014 dismissed the applications under Sections 145(2) NI Act filed by accused persons.

8. Challenging the order dated 16th April, 2014, two directors of petitioner No.1 company Rajinder Bansal and Deepak Bansal filed a petition under Section 482 Cr.P.C. being Crl.M.C. No. 2315/2014 which was allowed vide order dated 10th April, 2015 and consequently the application of Rajinder Bansal and Deepak Bansal under Section 145(2) NI Act was also allowed. The order dated 10th April, 2015 passed in Crl.M.C. No.2315/2014 is reproduced as under:-

> *"In proceedings under Section 138 of The Negotiable Instruments Act, 1881, impugned order of 16th April, 2014 rejects petitioners' application under Section 145 (2) of The Negotiable Instruments Act, 1881 while observing as under: -*
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> > *"Even though the accused persons cannot maintain the application, on hypothetical basis, I am deciding the merits of application also. In the application, accused are claiming that complainant has misused the blank cheques. The said ground is clearly frivolous as the Krishan Bansal has accepted that the bills of complainant company are correct. In such circumstances, it would be hard to believe that there was no liability on the part of accused persons. Even it would further be hard to believe that no action has been taken by the accused persons against this complainant in respect of so called misuse of their cheques. The averments in the application are clearly an afterthought to somehow avoid the prosecution. Even further if the accused persons were not having any liability, there was nothing for them in settlement in Mediation. But it is clear that the Mediation Settlement was arrived at between the parties. In such circumstances, even on merits, the*

application is liable to be rejected."

Upon hearing and on perusal of the impugned order, I find that the observations made by the trial court in the impugned order are indeed premature.

In the considered opinion of this Court, it is a fit case for allowing the application under Section 145 (2) of The Negotiable Instruments Act, 1881. Accordingly, the impugned order is quashed and petitioners' application under Section 145 (2) of The Negotiable Instruments Act, 1881 is allowed. The parties to appear before trial court on the date fixed for proceeding in accordance with law. Needless to say, petitioners will be only have the benefit of this order and not the co-accused. Since the complaint is stated to be pending for the last four years, therefore, trial court directed to make all endeavours to expedite the trial of this case.

With aforesaid directions, this petition and the applications are disposed of."

9. A perusal of the order itself reveals that this Court clarified that the benefit of the order dated 10th April, 2015 would inure to Rajinder Bansal and Deepak Bansal and not to any other co-accused. The reason being one of the grounds taken in the petition by Rajinder Bansal and Deepak Bansal was that Kishan Bansal i.e. petitioner No.2 herein entered into a settlement before the mediation centre without any consultation with Rajinder Bansal and Deepak Bansal.

10. Now the petitioners i.e. the company M/s Raj Buildcon Cons. Ltd. and K.K. Bansal seek an order on parity with the order dated 10th April, 2015 passed in Crl.M.C. 2315/2014.

11. Learned counsel for respondent No.2 points out though petitioner No.2 herein is K.K. Bansal, in para (v) of the present petition at page No.4

to mislead the Court, the petitioners have stated that one of the directors Shri Kishan Bansal of M/s Raj Buildcon Cons. Ltd appeared before the mediation centre and without any consultations with the other directors entered into a settlement. Learned counsel for respondent No.2 states that even in this petition, the petitioners does not clarify that Kishan Bansal who appeared before the mediation centre is in fact petitioner No.2.

12. Learned counsel for the petitioners clarifies that in para (v) at page 4 of this petition, Kishan Bansal, the director of M/s Raj Buildcon Cons. Ltd mentioned is none other than petitioner No.2.

13. Be that as it may, in view of the specific plea in Crl.M.C. 2315/2014 that Kishan Bansal entered into a settlement without the knowledge and concurrence of Rajinder Bansal and Deepak Bansal, this Court had clearly stated that the benefit of the order dated 10th April, 2015 would inure to the petitioners therein and will not be available to the co-accused. By allowing the present petition, this Court would be in fact reviewing the order dated 10th April, 2015 passed in Crl.M.C. 2315/2014 which is impermissible.

14. Petition and application are dismissed.

MUKTA GUPTA, J.

JANUARY 30, 2017
'v mittal'