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

\+ **BAIL APPLN. 1950/2020 & CRL.M.(BAIL) 7754/2020**

MR. ESSA MERCHANT & ANR. ..... Petitioners

Through Mr Vikas Pahwa, Senior Advocate with Ms Jaikriti S. Jadeja, Advocate.

versus

STATE OF NCT OF DELHI ..... Respondent

Through Mr Amit Gupta, APP for state with SI Nikhil Chaudhary, EOW Cell.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **08.09.2020**

[Hearing held through videoconferencing]

1. The petitioners have filed the present petition seeking anticipatory bail in FIR No. 0056/2020 under Section 420/406/120-B of the IPC registered with PS Economic Offence Wing, Mandir Marg, New Delhi.

2. Mr Pahwa, learned Senior Counsel appearing for the petitioners submits that the FIR in question has been filed in respect of a commercial transaction which was not satisfactorily performed by the petitioners.

3. The said FIR was registered at the instance of Gaurav Tyagi, (authorized representative of 'Clix Finance India Private Limited' – hereinafter 'the complainant'). The complainant alleges that in March-April,

2019, the petitioners (Directors of 'Advanced Computers and Mobiles India Private Limited') had approached the complainant for a loan facility for purchasing equipment for wrapping, strapping, sealing and packaging of mobile devices. The petitioners represented themselves to be directors of the said company and had sought funding for purchase of the said equipment. For the said purpose, they also submitted performa invoices regarding the machinery/equipments to be purchased from APL Global Logistics LLC (Dubai Based) for a total amount of USD$ 574,256.33 (Approximately INR four crores).

4. The complainant alleges that on the basis of the representation made by the petitioners it was induced to enter into the Facility cum Hypothecation Agreement dated 25.04.2019 with Advanced Computers & Mobile India Pvt. Ltd (the said company).

5. In terms of the agreement, the said company agreed to remit an amount equivalent to 25% of the total invoice value as margin money. Subject to furnishing the proof of remittance of margin money, the complainant agreed to disburse the balance amount as loan.

6. It is alleged that thereafter the said company furnished proof that it had remitted an amount of USD$ 1,43,564,08 (₹1,00,71,379/-) to APL Global Logistics towards advance payment against said performa invoices. On the basis of the said confirmation, the complainant disbursed the balance amount of ₹3,01,48,457/- to the account of the said company maintained with State Bank of India, Mumbai.

7. It now transpires that the said company did not remit the amount so

disbursed for purchasing the machinery but transferred the said amount to its another bank account and from there to its bank account maintained with YES Bank. The said company had already availed financial assistance from YES Bank and therefore, the said amount was appropriated by YES Bank against the dues recoverable from the said company.

8. It is also alleged that subsequently the said company recovered the advance amount paid to APL Global Logistics. The said amount was also not remitted to the complainant company.

9. Mr Tyagi, at whose instance the complaint was registered has joined the proceedings through video conferencing. He submitted that the loan advanced by the complainant company was secured against the machinery that was to be purchased from the said funds. However, the petitioners have in a surreptitious manner deprived the complainant company of its security. He also submits that this transaction was entered into by the petitioners with the intention to defraud the complainant company. He further stated that although the petitioners have stood as sureties against the aforesaid loan but they too have failed to fufil their obligations.

10. At this stage, this Court is not called upon to examine the disputes in any further detail. The FIR has been registered and the investigations are being conducted. By an order dated 29.07.2020, this Court had granted interim protection to the petitioners in view of their undertaking that they will pay a sum of ₹30 lakhs to the complainant company. Admittedly, the said amount has since been paid, albeit after a delay of more than a week.

11. Mr Pahwa, learned counsel appearing for the petitioners submits that

the delay in making the payment was unintentional as the petitioner had been diagnosed as suffering from COVID-19. He drew the attention of this Court to the medical documents disclosing the same. He also states that there was a breavement in the family of petitioner no.1 as his father expired on 17.08.2020.

12. In view of the above, this Court is satisfied that the delay in performing the undertaking given to this Court ought not to be held against the petitioners.

13. It is not disputed that the petitioners have joined the investigation and are co-operating with the investigating agency. In view of the above, this Court considers it apposite to allow the present petition.

14. The petitioners are granted anticipatory bail on each of them furnishing personal bonds in the sum of ₹25,000/- with one surety of the like amount to the satisfaction of the IO/SHO/Concerned Officer of the EOW, Mandir Marg, New Delhi. This is also subject to the following further conditions:-

(a) that the petitioners shall provide their contact number to the concerned IO and ensure that they are reachable at all times;

(b) that the petitioners shall fully co-operate with the investigating agency and appear before the concerned IO as and when required;

(c) that the petitioner shall not leave this country without the prior approval of this Court.

15. It is clarified that this order shall continue to operate till the charge

sheet is filed. The petitioners' prayer for bail subsequent threto shall be considered by the concerned Court as and when an application to the aforesaid effect is filed.

16. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

SEPTEMBER 8, 2020
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