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

% Judgment delivered on: 14.08.2023

+ CRL.L.P. 411/2023

BIPIN GUJRAL

..... Petitioners

versus

CE PROJECTS PRIVATE LIMITED & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Sameer Bansal and Mr. Madhav Gupta,
Advocates

versus

For the Respondent : None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CRL.M.A. 21707/2023 (Exemption)

1. Exemption allowed subject to just exceptions.

2. The applications stand disposed of.

CRL.M.A. 21708/2023 (Delay of 361 days in re-filing the petition)

3. This is an application seeking condonation of delay of 361 days in re-filing the present petition.

4. For the reasons stated in the application, the application is allowed. The delay of 361 days in re-filing the present petition is condoned.



5. Application stands disposed of.

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6. This is an appeal under Section 378 (4) Cr.P.C., 1973 filed on behalf of the appellant assailing the order dated 09.02.2022 passed by the MM (NI Act), Digital Court-03, District South East, Saket Courts, New Delhi in CC NI ACT No. 3524/2021 along with affidavit of the appellant.

7. The leave petitioner has filed the present petition seeking to assail the aforesaid impugned order passed by the learned Trial Court in a case arising out of the provisions under Section 138 of the N.I. Act, 1881.

8. For the reasons stated therein in the application, the leave is granted.

9. Learned counsel appearing for the petitioner challenges the impugned order on the ground that though the detailed break up of eight cheques were mentioned in the legal notice as also the complaint as laid before the Magistrate, the learned MM had only for the reason that the statutory legal notice demanded a sum of Rs.46,00,000/- in place of Rs.45,00,000/-, held that the said legal notice does not qualify under the requirement of Sub Section (b) of Section 138 of the N.I. Act, 1881 as a valid legal notice and dismissed the complaint.

10. Learned counsel has taken this Court to the legal notice, appended at the page 98 of the present appeal and the relevant paragraphs showing the detailed break ups of the said cheques as also the amount mentioned therein and the date of representation as well as the return memo totalling Rs.45,00,000/-.

11. The learned Trial Court has passed the impugned order on the



premise that no detailed break up was given in the legal notice and merely because the appellant has indicated a sum of Rs.46,00,000/- in the paragraph 12 of its legal notice in place of Rs.45,00,000/- held the legal notice as deficient of provisions of Section 138 of the N.I. Act, 1881 and dismissed the complaint.

12. This Court has considered the submissions and perused the impugned order and the legal notice.

13. This Court has also considered the complaint as placed before the learned Trial Court wherein in paragraph 9 of the said complaint, the detailed break up was also given. The complaint itself reflects reference of Rs.45,00,00/- the amount demanded arising out of eight cheques, coupled with the fact that the legal notice itself contained the same details.

14. Though it was held by the learned MM that the legal notice under Section 138 (b) of the N.I. Act. 1881 is *sine qua non* to any legal proceedings initiated subsequent thereto for the purpose of under Section 138 of the N.I. Act, 1881, however, the said aspect cannot be considered mechanically without considering the entire statement or the allegations contained therein.

15. The plain reading of the legal notice brings to fore that the complete, details in respect of the cheques as also the amount and the date of return memo, specifically, is mentioned totalling Rs. 45,00,000/-, there could be no doubt that the actual demand is Rs.45,00,000/- and not Rs.46,00,000/- and the same appears to be a typographical error.

16. That apart, even the reply given by the respondent appears to have not been considered by the learned Trial Court. A holistic reading of the



reply confirms that there was no doubt in the mind of respondent No.2 himself, as to what was the amount demanded from it.

17. Since the appeal is at pre summoning stage and no summons were issued to the respondent by the learned MM, this Court does not consider it fit enough for issuing notice at this stage, since no prejudice of any nature whatsoever will be caused to the respondent by the present order.

18. In view of above, the impugned order dated 09.02.2022 passed by the learned Trial Court in CC NI ACT No. 3524/2021 is set aside.

19. The original complaint of the petitioner shall be restored to its original number and the learned Trial Court shall proceed in accordance with law.

20. The appeal is allowed.

TUSHAR RAO GEDELA, J .

AUGUST 14, 2023/ms