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

\+ CRL.M.C. 535/2023 and CRL.M.A. 2129/2023

M/S SERVOTECH POWER SYSTEMS LTD & ANR. ..... Petitioners
Through: Mr.Varun Dewan, Mr.Pranav Krishna and Mr.Abhishek Sharma, Advocates

versus

STATE OF NCT OF DELHI & ANR. ..... Respondents
Through: Mr. Nawal Kishore Jha, APP for State

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

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

% 07.05.2024

1. By way of present petition filed under Section 482 Cr.P.C., the petitioners seek quashing of complaint case being Ct. Case No.3893/2018 titled '<u>M/s Harey Krishna Corporation vs M/s Servotech Power Systems Ltd.</u>' pending before learned MM, Karkardooma Courts, Delhi and setting aside of order dated 03.12.2022 as well as summoning order dated 21.08.2018.

2. The present matter arises out of proceedings instituted under Section 138 of the Negotiable Instruments Act, 1881 (*'NI Act'*). In the complaint, it has been stated that the complainant/respondent No.2 is a partnership firm engaged in the business of trading of PVC insulated Copper (Cu) and Aluminium (Al) wires and cables. It has been alleged that the petitioners/accused approached respondent No.2, showing interest in buying its products and the same were purchased by them on multiple occasions. In partial discharge of the liability, a cheque bearing No.844930 dated

10.03.2018 for an amount of Rs.5,40,818/- drawn on Yes Bank came to be issued. Upon presentation, the cheque was returned dishonoured with the remark ‘insufficient funds’. Subsequently, respondent No.2 again presented the said cheque for encashment, which was again returned dishonoured with the remark ‘payment stopped by drawer’ vide return memo dated 08.06.2018. A legal demand notice dated 07.07.2018 was issued by respondent No.2 to the petitioners and upon their failure to pay the amount under the cheque, the subject criminal complaint came to be filed.

3. In the present proceedings, learned counsel for the petitioners has stated that no offence under Section 138 NI Act is made out against the petitioners inasmuch as the entire amount under the cheque i.e. Rs.5,40,818/- already stands paid. It is submitted that the cheque was presented twice and after it first got dishonoured on 13.03.2018, the petitioners made the entire payment on 20.03.2018. In this regard, reference is made to the bank statement of petitioner No.1/accused company, which shows an RTGS entry in favour of respondent No.2 of the aforesaid amount. It is submitted that in view of the aforesaid fact, dismissal of the discharge application filed by the petitioner vide order dated 03.12.2022 as well as the summoning order dated 21.08.2018 is liable to be set aside.

4. Learned counsel for respondent No.2, on the other hand, has opposed the present petition. In the reply filed by respondent No.2, the payment of Rs.5,40,818/- made by the petitioner through banking channels has been acknowledged. However, it has been alleged that subsequent to such payment, certain other transactions also took place between the parties whereafter in partial discharge of the liability of Rs.7,17,425/- and upon the instructions of the petitioners, respondent No.2 presented the subject cheque

for encashment. Thereafter, the subject cheque was dishonoured and the criminal complaint came to be filed. It is thus submitted that the summoning order dated 21.08.2018 was passed after due consideration of the facts and circumstances of the case.

5. I have heard learned counsels for the parties and have also perused the material placed on record.

6. The offence under Section 138 NI Act is complete when the conditions as stipulated in the proviso to Section 138 are satisfied. The first condition is that the cheque ought to be presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. The second condition is that the payee or the holder in due course of the cheque, as the case may be, must make a demand for the said money by giving a notice in writing to the drawer of the cheque within 30 days of receiving the information from the bank regarding the dishonour of the cheque. The third condition states that there should be a failure on the part of the drawer of cheque to make the payment of the amount under the cheque to the payee or the holder in due course, as the case may be, within 15 days of the receipt of the said notice. When all these three conditions are fulfilled, then only an offence under Section 138 of the NI Act can be said to have been committed by the person issuing the cheque [Ref: MSR Leathers *v.* S. Palaniappan & Anr. reported as **(2013) 1 SCC 117**, Charanjit Pal Jindal *v.* L.N. Metalics reported as **(2015) 15 SCC 768** and N. Harihara Krishnan *v.* J. Thomas reported as **(2018) 13 SCC 663**.]

7. A perusal of the material placed on record would show that the subject cheque was issued for a specific amount of Rs.5,40,818/-. Indisputably, equivalent amount was transferred by the petitioners vide

RTGS after the dishonour of subject cheque, on 20.03.2018.

Though respondent No.2 has argued that the subject cheque was re-presented for encashment towards partial discharge of some other outstanding liability of Rs. 7,17,425/-, a reading of the complaint would show that respondent No.2 has nowhere mentioned about the said outstanding liability or the presentation of the subject cheque in partial discharge of the said outstanding liability in its complaint.

8. In the facts of the present case, considering that after the first dishonour, an amount equivalent to the sum under the cheque came to be paid by the petitioners on 20.03.2018, which fact is acknowledged by respondent No.2, it can be concluded that the petitioners had fulfilled their liability under the cheque. The defence of respondent No.2 about the subject cheque being presented for some other outstanding liability seems to be an afterthought, especially in light of the fact that the same does not find mention in the subject complaint. Thus, petitioners' challenge to the complaint case and the consequent proceedings against them succeeds.

9. Consequently, the petition is allowed and the complaint case alongwith the consequent proceedings are quashed. As a necessary sequitur, the summoning order dated 21.08.2018 is also set aside.

10. The petition is disposed of in the above terms alongwith pending applications.

MANOJ KUMAR OHRI, J

MAY 7, 2024/*rd*