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

\+ CRL.M.C. 1193/2023 and CRL.M.A. 4590/2023

M/S ADIVA HOSPITAL PVT. LTD. AND ORS. ..... Petitioners
Through: Mr.Mohsin Sarwar, Advocate

versus

DEEPINDER SINGH ..... Respondent
Through: Ms.Sonia Madan, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

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

% **09.04.2024**

1. By way of present petition filed under 482 Cr.P.C., the petitioners, who have been impleaded as accused in proceedings initiated under Section 138 read with Sections 141/142 of the Negotiable Instruments Act, 1881 (*'NI Act'*) and Section 420 IPC, are aggrieved by the order dated 06.06.2022 vide which the learned MM had directed them to pay 10% compensation to the respondent under Section 143A of the NI Act. The said order was challenged by way of revision petition being Crl. Rev. No. 359/2022, which came to be dismissed vide order dated 27.08.2022.

2. Briefly the facts, as discernible from the record, are that in the complaint, the respondent/complainant has alleged that petitioner Nos.2 and 3 being the Managing Director and Director respectively of petitioner No.1/accused company requested the complainant for financial help for the said company. Acceding to the petitioners' request, the complainant transferred the following sums between 21.03.2018 to 03.04.2018:-

> *'(i) a sum of Rs. 40,00,000/- paid via Cheque issued in favour of Accused No. 1.*

(ii) a sum of Rs.8,50,000/- transferred via RTGS to accused No.1.

(iii) a sum of Rs. 10,00,000/- transferred via RTGS to accused No. 1.'

3. Again on 20.06.2018, petitioner Nos.2 and 3 sought more financial help and accordingly, the following sums were transferred between the period 27.06.2018 to 02.07.2018:-

"(i) a sum of Rs. 11,00,000/- transferred via RTGS to Accused No. 1.

(ii) a sum of Rs. 27,00,000/- transferred via RTGS to Accused No. 1.

(iii) a sum of Rs. 50,00,000/- transferred via RTGS to Accused No. 1."

4. It was thus claimed that a total sum of Rs.1,46,50,000/- was paid to the petitioners. It was alleged that the petitioner Nos. 2 and 3 had agreed to pay the said sums positively on or before 31.12.2018 and had further agreed to pay a sum of Rs. 14,00,000/- towards the interest. A cheque for an amount of Rs.10 lacs was issued towards part-payment of the liability, however, when the same was presented for encashment, the same was dishonoured. Later two cheques for amounts of Rs.10,00,000/- and Rs.5,00,000/- were issued towards payment of interest of Rs.14,00,000/- and Rs.1,00,000/- towards part-payment of the principal loan amount of Rs.1,46,50,000/-, which were encashed. On 15.12.2018, the complainant requested the accused persons to pay back the outstanding loan amount of Rs.1,45,50,000/-. At this point, petitioner No.2 issued 5 cheques for amounts of Rs.10,00,000/-, Rs.50,00,000/-, Rs.27,00,000/-, Rs.8,50,000/- and Rs.40,00,000/-. The said cheques, alongwith earlier cheque of

Rs.10,00,000/-, when presented were returned dishonoured. Consequently, a demand notice dated 04.02.2019 was issued qua the dishonour of the said six cheques, and upon failure to repay the amount under the cheques, the subject criminal complaint came to be filed.

5. During the proceedings of the complaint case, an application under Section 143A of NI Act came to be filed by the respondent seeking 20% of the amount under the cheques towards interim compensation. After due consideration of the said application, the same was partly allowed and the petitioners were directed to pay interim compensation to the tune of 10% of the cheque amount. As noted above, the revision petition against the order directing payment of such interim compensation was also dismissed.

8. The scope of Section 143A NI Act came to be analysed by the Supreme Court in its decision dated 15.03.2024 passed in CRL.A. 741/2024 titled '<u>Rakesh Ranjan Shrivastava v. The State of Jharkhand and Anr.</u>', wherein it was observed that:-

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> *19. Subject to what is held earlier, the main conclusions can be summarised as follows:*
>
> *a. The exercise of power under sub-section (1) of Section 143A is discretionary. The provision is directory and not mandatory. The word "may" used in the provision cannot be construed as "shall."*
>
> *b. While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors.*
>
> *c. The broad parameters for exercising the discretion under Section 143A are as follows:*
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> *i. The Court will have to prima facie evaluate the merits of the*

case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

ii. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.

iii. If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.

iv. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.

v. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.

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9. A perusal of the facts would show that a total of 8 cheques are claimed to have been issued by the petitioners in favour of the respondent. Out of the said cheques, two cheques dated 29.11.2018 and 12.12.2018 for a sum of Rs.10,00,000/- and Rs.5,00,000/- were encashed, upon presentation. The cheque dated 21.11.2018 bearing No. 278120 for Rs.10,00,000/- and 5 other cheques, all dated 09.01.2019, when presented for encashment, were dishonoured. The cheque bearing No. 278120 for Rs.10,00,000/- has been dishonoured twice. While the reason given for dishonour of 5 cheques was insufficiency of funds, the 6th cheque was dishonour due to drawer signature mismatch.

10. Both the parties have made varied contentions. While the petitioners

contend that the subject cheques were stolen by respondent's son while he was an Additional Director in the petitioner No.1 company, the respondent has denied the factum of his son being ever so appointed. There is, however, no denial that the two cheques issued by petitioner No.2 for Rs.10,00,000/- and Rs.5,00,000/- were encashed upon presentation. The said cheques are of dates near the dates of the dishonoured cheques. The respondent has contended that the petitioners' defence of cheques being stolen by the respondent's son is an afterthought and the complaint filed by them qua the stolen cheques was also subsequent to the demand notice issued by the respondent.

10. On a prima facie consideration of the aforesaid facts as well as the decision of the Supreme Court in Rakesh Ranjan (Supra), this Court finds no ground to interfere with the impugned order. Accordingly, the same is dismissed alongwith the pending application.

11. A copy of this order be sent to the learned trial court.

MANOJ KUMAR OHRI, J

APRIL 9, 2024

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