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

\+ **<u>CRL.M.C. 1286/2024&CRL.M.A. 5063/2024</u>**

SMART AIR SEA LOGISTICS PVT LTD & ORS. .....Petitioners

Through: Mr. S Muthu Krishnan, Adv.

versus

STATE THROUGH SHO & ANR. .....Respondents

Through: Mr. Manoj Pant, APP for the State
SI Gajender Singh, PS-Connaught Place
Mr. PC Patnaik, Adv. with Mr. Vikas Gupta, Authorised Representative

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

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

% **14.11.2024**

1. The petitioner has challenged the issuance of process under Section 82 of the Code of Criminal Procedure, 1973 ('**CrPC**') and the consequent registration of FIR being FIR No. 199/2023 under Section 174A of the Indian Penal Code, 1860 ('**IPC**').

2. The learned counsel for the petitioner submits that the process was issued during the proceedings under Section 138 of the Negotiable Instruments Act, 1881 which was initiated by Respondent No. 2. He submits that the petitioner and Respondent No. 2 have settled the disputes. He submits that the entire settlement amount has been deposited with the Registry of this Court and requests that the proceedings in complaint be compounded.

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3. He submits that even though no specific prayer has been made but requests that the proceedings in complaint case bearing CC No. 28449/2016 be also closed in terms of the settlement between the parties.

4. The process under Section 82 of the CrPC was issued on the petitioner not appearing before the learned Trial Court. Thus, no fault can be found in the registration of the FIR under Section 174A of the IPC.

5. However, since the parties have settled their disputes and decided to move on in life and the entire settlement amount has already been deposited before this Court, this Court considers it apposite to put a quietus to the dispute between the parties.

6. Offence under Section 138 of the NI Act is compoundable in nature.

7. The Hon'ble Apex Court in the case of ***Damodar S. Prabhu v. Sayed Babalal H.*** **: (2010) 5 SCC 663** had highlighted that the compensatory aspect of the proceedings under the NI Act take precedence over the punitive aspect and stipulated certain guidelines for compounding the offences under the NI Act. The relevant portion of the judgment is reproduced hereunder:

> *"**4…** What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions.*
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> ***18. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect.*** *There is also some support for the apprehensions raised by the learned Attorney General that a majority of cheque bounce cases are indeed being compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice delivery.* ***The problem herein is with the tendency of litigants***

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to belatedly choose compounding as a means to resolve their dispute…

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21. *With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:*

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the court deems fit.

(c) ***Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.***

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

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25. *The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the court is spent on the trial of these cases and the parties are not liable to pay any court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale*

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of costs has been suggested in the interest of uniformity. The competent court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end."

(emphasis supplied)

8. In terms of ***Damodar S. Prabhu v. Sayed Babalal H.*** *(supra)*, when the application for compounding is made in revision or appeal, a cost of 15% of the total cheque amount can be imposed. The learned counsel for the petitioner submits that the petitioner is not in a position to arrange any more money to be paid as cost and requests that no cost be imposed.

9. Considering the above, the present petition is allowed and the subject complaint is compounded. The petitioner is directed to pay cost of ₹20,000/- out of which ₹10,000/- to be deposited with the Delhi Police Welfare Society and ₹10,000/- to be deposited with the Delhi High Court Legal Services Committee within a period of four weeks from today.

10. The amount of ₹1,40,000/- deposited by the petitioner by way of demand draft bearing no. 833701 dated 18.03.2024 in favour of Registrar General, Delhi High Court is directed to be released forthwith in favour of the respondent on the strength of the present order along with the accrued interest, if any.

11. Consequently, FIR No. 199/2023 and all proceedings arising therefrom are quashed and Complaint Case No. 28449/2016 is compounded.

12. The petition is disposed of with the aforesaid observations.

AMIT MAHAJAN, J

NOVEMBER 14, 2024/*"SS"*

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