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

Date of decision: 29.02.2024

+ CRL.M.C. 2452/2022 & CRL.M.A. 10307/2022
GARHWAL JEMS AND JEWELLERY PVT. LTD. & ORS.

..... Petitioners

Through: Mr.Somesh Chandra Jha &
Mr.Uttam Singh, Advs.

versus

RMI STEELS LTD. THROUGH ITS AUHTORIZED
REPRESENTATIVE Respondent

Through: Ms.Tejasvini Puri, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') read with Article 227 of the Constitution of India, praying for quashing of the complaint filed by respondent under Sections 138 read with Section 142 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'), being CC No. 5840/2019, titled as *M/s RMI Steels Ltd. v. M/s Garhwal Jems & Jewellery Pvt. Ltd. & Ors.*, pending before the Court of the learned Metropolitan Magistrate, NI Act-06, Central-District, Tis



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Hazari Courts, Delhi.

Averments in the Complaint:

2. The above complaint has been filed by the respondent alleging that the respondent entered into an Agreement to Sell dated 31.03.2018 with the petitioner no.1 for sale of its movables and immovable property of its factory situated at Plot No. A-1 and B-1 measuring 32926.20 sq. mtr. (Comprising 24406.73 sq mtr. of A-1 and 8519.47 sq. mtr of B-1) at Village Dhalwala, Muni-ki-Reti Industrial Area, District Tehri Garhwal, Uttarakhand, for a total consideration of Rs.9.30 crores.

3. That in terms of the said Agreement to Sell, the petitioners, after paying sale consideration to the tune of Rs.5,73,64,050/-, were liable to pay the balance sale consideration of Rs.3,47,05,950/-, which they undertook to pay in form of discharge of liabilities / dues of the respondent on or before 30.09.2018. The complaint further alleges that it was agreed between the parties that on failure on the part of the accused to discharge the said dues, it would entitle the respondent to recover the same from the petitioners / accused. In order to secure the payment of the aforesaid dues, a cheque bearing no.079173 for a sum of Rs.75,00,000/- drawn on the Punjab National Bank, Rishikesh, was issued by the petitioner in favour of the respondent as a security deposit.

4. It is further alleged that the debt that the petitioners had undertaken to discharge, became due and payable in October



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2018, however, as the petitioners failed to discharge the same, on 09.01.2019, an Addendum to the aforementioned Agreement to Sell was executed between the parties.

5. It is further alleged that as the accused failed to discharge the debt by 29.04.2019 as well, in terms of the Addendum, the respondent presented the above-mentioned cheque, which was returned dishonoured by the bank with the remarks '*funds insufficient*'. A legal Notice dated 30.04.2019 was sent by the respondent to the petitioners, to which the petitioners replied vide reply dated 18.05.2019, denying their liability to pay the said amount. The respondent, therefore, filed the above complaint.

Submissions of the learned counsel for the petitioners

6. The learned counsel for the petitioner, drawing my attention to the terms of the Agreement to Sell dated 31.03.2018 and the Addendum dated 09.01.2019 executed between the petitioner no.1 and the respondent, submits that the cheque of Rs.75 lakhs could be encashed by the respondent only when the petitioners fail to make the payment in discharge of the liabilities of the respondent and the respondent is forced to make the payment for the same.

7. The learned counsel for the petitioners submits that in the present case, the complaint does not state that the respondent had to make any payment to its own debtors for discharge of the



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liability, therefore, to its own showing, there was no debt owed by the petitioners to the respondent for which the security cheque of Rs.75 lakhs could have been presented by the respondent for encashment. He submits that, in the absence of these averments in the complaint, the complaint is not maintainable and is liable to be dismissed.

Submissions of the learned counsel for the Respondent

8. On the other hand, the learned counsel for the respondent submits that the plea raised by the petitioner is a disputed question of fact, which can be best determined by the learned Trial Court on evidence being led by the parties. She submits that the petitioners have also obtained a Lease Deed from SIDCUL based on misrepresentations.

9. She submits that the Agreement to Sell and the Addendum were executed by the petitioners only to discharge its liabilities owed to such institutions and others, as is also recorded in the Agreement to Sell. She submits that the petitioners failed to make the payment of the dues to such institutions and others, thereby entitling the respondent to present the cheque for encashment. She submits that in any case, these are matters to be considered by the learned Trial Court and cannot be a ground for quashing the complaint at this stage.



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Submissions in rejoinder by the learned counsel for the petitioner:

10. In rejoinder, the learned counsel for the petitioner submits that the plea of the respondent that the lease deed has been obtained by misrepresentation is totally false and, in fact, it is the respondent who is trying to make an unjustified gain by encashing the cheque.

Analysis and Conclusion

11. I have considered the submissions made by the learned counsels for the parties.

12. The averments made in the complaint, so far as they are relevant to the present petition, are as under-

“B. That as per the terms of the Agreement to Sell dated 31.03.2018, the Accused, after paying sale consideration to the tune of Rs 5,73,64,050/-, was liable to pay balance sale consideration of Rs. 3,47,05,950/-. That as per the terms of the business transaction between the Complainant and the Accused, the Accused undertook to discharge the liabilities/dues of the Complainant which were agreed to be settled/ paid before 30.09.2012 by the Accused. It was agreed that any failure on part of the Accused to discharge the said dues would entitle the Complainant to recover the same from the Accused. That in order to secure the payment of the aforesaid dues, a cheque bearing no. 079173 for Rs. 75,00,000/- (Rupees Seventy Five Lakhs only) drawn on Punjab National Bank, Rishikesh was issued by the Accused in the favour of the Complainant as a security deposit.



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C. The Accused evidently failed to discharge its liability in terms of Agreement to Sell dated 31.03.2018 and the debt became due and payable in October, 2018.

D. Thereafter, on 09.01.2019, an Addendum to the above-mentioned Agreement to Sell dated 31.03.2018 was executed between the parties. The Addendum recorded the debt due and payable by the Accused and further stipulated discharge of the same by or before 29.03.2019. True Copy of the said Addendum dated 09.01.2019 is annexed herewith as Annexure B.

E. That the Accused failed to discharge the debt by 29.03.2019 and in view of the same the Complainant presented the cheque bearing no. 079173 for clearance to Corporation Bank, Avenue Club Road, Punjabi Bagh, Delhi-110026 on 22.04.2019. The Complainant on 23.04.2019 received the 'Return Memo Receipt' stating that the presented cheque could not be realised due to "Funds Insufficient".

True Copy of the cheque bearing no 079173 for Rs. 75,00,000/-issued in the favour of the Complainant is annexed herewith and marked as Annexure C.

True copy of the Return Memo Receipt dated 23.04.2019 issued by Corporation Bank is annexed herewith and marked as Annexure D."

(Emphasis supplied)

13. A reading of the above averments would show that the respondent claims that the liability for which the cheque has been presented is under the Agreement to Sell dated 31.03.2018 read with the Addendum dated 09.01.2019, and that the cheque had been presented for encashment as the petitioners failed to



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discharge their debt by 29.03.2019. In the Complaint, there is no averment that the respondent had to pay the debt due to the default of the petitioners.

14. The agreement dated 31.03.2018, so far as the cheque of Rs.75 lakhs is concerned, reads as under:-

“It is further agreed between the buyer and seller that if purchaser fails to pay the above amount to the parties/authorities and the Seller had to pay due to any reason whatsoever, the seller will debit the account of purchaser with those payments along with interest and penalty, if any, imposed and shall be entitled to recover the amount as if the purchase consideration of this Agreement to Sell has not been fully paid off to the Seller and to secure this payments, the Purchaser has agreed to Issue Undated Cheque No. 079173 of Punjab National Bank., Rishikesh for Rs 75,00,000/- (Rupees Seventy Five Lakhs only) and in case of delay on part of the Third party in making payment of above dues excluding SIIDCUL before 31st Oct, 2018, the Purchaser has agreed to pay a penalty of Rs. 25,00,000/- for which a Cheque No. 079174 for Rs. 25,00,000/-(Rupees Twenty Five Lakhs Only) drawn on Punjab National Bank, Rishikesh is given in favour of Seller towards security deposits which will be returned to buyer upon settlement of above dues.”

(Emphasis supplied)

15. The above condition in Agreement to Sell was reiterated in the Addendum in Clause 5 thereof, which is reproduced hereinunder:-

“5. It is further agreed between the buyer and seller that if purchaser fails to pay the amount of Labour Dues, VAT and SIDCUL before the



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date of 29th March 2019 to the parties/authorities and the Seller had to pay due to any reason whatsoever, the seller will debit the account of purchaser with those payments along with interest and penalty, if any, imposed and shall be entitled to recover the amount as if the purchase consideration of this Agreement to Sell has not been fully paid off to the Seller and to secure this payments, the Purchaser has agreed to Issue Undated Cheque No. 079173 of Punjab National Bank., Rishikesh for Rs 75,00,000/- (Rupees Seventy Five Lakhs Only) and in case of delay on part of the Third party in making payment of above dues excluding SIIDCUL before 29th March 2019, the Purchaser has agreed to pay a penalty of Rs. 25,00,000/- for which a Cheque No. 079174 for Rs. 25,00,000/-(Rupees Twenty Five Lakhs Only) drawn on Punjab National Bank, Rishikesh is given In favour of Seller towards security deposits which will be returned to buyer upon settlement, of dues. In addition to the above cheques, for compliance of all the terms and conditions of the Agreement to Sell dated 31st March 2018 Including Addendum thereto, the party of the third Part has deposited Original Sale deed no. 5284 dated 9th August, 2011 for 1090 Sq Mtr land at Rishikesh in the name of Smt Parul Shekhar which will be returned to the party of the Third Part upon settlement of dues pursuant to Agreement to Sell.”

(Emphasis supplied)

16. A reading of the above terms/clauses would clearly show that it is only where the petitioners, as a purchaser, fail to pay the dues owed to the workers, the State Industrial Development Corporation of Uttarakhand Limited (SIDCUL), Service Tax dues, and the VAT dues, owed by the respondent, and the



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respondent, as a seller, has to pay the same, that the respondent would debit the account of the petitioner/purchaser, making the petitioner liable to pay the said amount, and thereafter proceed to encash the security cheque of Rs.75 lakhs.

17. For the liability to arise for the presentation of the cheque for encashment, therefore, it is essential that the respondent is forced to make the payment to the workers/above-mentioned authorities, which liability, otherwise, the petitioners had undertaken to pay in terms of the Agreement to Sell and the Addendum.

18. In the present case, the Complaint does not state that the respondent had to make any payment to any of the above-mentioned workers/authorities. Therefore, the liability for which the cheque of Rs.75 lakhs was given by the petitioners as security to the respondent, had not arisen and the cheque could not have been presented for encashment by the respondent.

19. Section 138 of the NI Act reads as under:-

“Section 138. Dishonour of cheque for insufficiency, etc., of funds in the account.

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have



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committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless--

(a) the cheque has been 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;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.”

(Emphasis supplied)

20. One of the conditions which has to be satisfied by the complainant for making out an offence under Section 138 of the NI Act against the drawer of the cheque, is that the cheque in question has been issued for the discharge, in whole or in part, of any debt or any liability of the accused. In ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel***, (2023) 1



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SCC 578, the Supreme Court has held as under:

“34. In view of the discussion above, we summarise our findings below:

34.1. For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation.”

21. In the present case, as the debt or liability in terms of the Agreement to Sell and/or the Addendum itself had not arisen, Section 138 of the NI Act was not attracted and the ingredients of the offence were not satisfied.

22. Though, the learned counsel for the respondent has placed reliance on Section 139 of the NI Act to submit that there shall be a presumption that a cheque issued is for discharge of any debt or other liability, however, the presumption in the present case stands negated by the very terms of the Agreement to Sell and the Addendum.

23. Though the power under Section 482 of the Cr.P.C. is to be exercised sparingly and in the rarest of rare cases, at the same time, where, from a bare reading of the complaint, the offence is not made out, the power must be exercised to quash such a complaint.

24. In *State of Haryana & Ors. v. Bhajan Lal & Ors.* 1992 Supp (1) SCC 335, the Supreme Court has laid down the following illustrative cases where the Court can exercise power to quash a complaint. It is quoted as under:-



“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as



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contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”
(Emphasis supplied)

25. In ***S.P. Mani & Mohan Dairy v. Snehalatha Elangovan***,
(2023) 10 SCC 685, the Supreme Court has held as under:

“42. Thus, the legal principles discernible from the aforesaid decision of this Court may be summarised as under:

Xxxx

42.8. The Court concerned would owe a duty to discharge the accused if taking everything stated in the complaint is correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking.”



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26. Applying the abovementioned principles enunciated by the Supreme Court to the facts of the present case, as the Complaint filed by the respondent lacks the necessary averments that would give rise to the debt and/or liability of the petitioners for which the cheque had been issued, the complaint filed by the respondent deserves to be quashed.

27. Accordingly, the petition is allowed. Complaint, being CC No. 5840/2019, titled as *M/s RMI Steels Ltd. v. M/s Garhwal Jems & Jewellery Pvt. Ltd. & Ors.*, pending before the Court of the learned Metropolitan Magistrate - 06, NI Act, Central District, Tis Hazari Courts, Delhi is hereby quashed.

28. There shall be no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 29, 2024/rv/ss

[Click here to check corrigendum, if any](#)