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

\+ CRL.M.C. 3153/2024 & CRL.M.A. 12204/2024

KEW PRECISION PARTS PVT. LTD. & ANR. ..... Petitioners

Through: Mr.Mohit Chaudhary and Ms.Vaishali Shukla, Advocates.

versus

STATE OF NCT OF DELHI & ORS. ..... Respondents

Through: Ms. Kiran Bairwa, APP.
Mr. Ravi Gupta, Sr. Advocate with Ms. Somya Lamba, Mr. Shrey Sharma and Ms. Muskaan Mehra, Advocates for R-2 / Kotak Mahindra Bank.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

O R D E R

% **22.05.2024**

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioners (accused before learned Trial Court in proceedings under Section 138 of NI Act) for quashing of summoning order dated 26.11.2016 passed by learned MM-09 (NI Act), Dwarka Courts, New Delhi in Complaint Case No. 5006390/2016 alongwith proceedings emanating therefrom.

2. In brief, as per case of respondent No. 2 (complainant in proceedings under Section 138 NI Act), petitioners availed the loan for a sum of Rs. 22,46,00,000/- (Rupees Twenty Two Crore Forty Six Lakhs Only) and requisite documents were executed in this regard. Thereafter, petitioners defaulted in payment of loan amount and 10 cheques dated 02.09.2016, total amounting to Rs. 19,34,00,000/- (Rupees Ninety Crore Thirty Four Lakhs Only) were issued on behalf of petitioners. The aforesaid cheques on presentation were dishonoured vide Cheque Return Memo dated 06.09.2016 with the endorsement 'Account Closed'. A legal notice dated 29.09.2016 was accordingly issued to the petitioners by respondent No. 2 followed by filing of complaint under Section 138 of NI Act.

3. In response to aforesaid legal notice, a reply dated 28.10.2016 was forwarded on behalf of respondent No. 3 / Mohit Kumar Bhunsali s/o Munish Kumar Bhunsali and Mrs. Kumud Jain w/o Munish Kumar Bhunsali, taking the following stand:

"*Dear Sir,*

My clients (1) Mrs. Kkumud Jain, B-384 2nd Floor, New Delhi 110065 and (2) Mr. Mohit Kumar Bhunsali, B-34 2nd Floor, New Friends Colony, New Delhi - 110065, have placed your above referred Notice in my hands for reply. As Husband of my client No.1 and father of my client No.2 was not well for last few days, thus they could not instruct to issue this reply. Now on instructions of my clients instead of giving parawise reply, the short reply is submitted is under:-

1. *At the out set it must be informed to you that my clients are not responsible for day to day affairs of M/s KEW Precision Parts Pvt. Ltd., thus your Client has not briefed you correctly. Therefore, wrong, incorrect and false factual submission are made in the Notice under reply.*

2. *That your Client issued a Demand Notice dated 19-11-2015 after classifying account of my client M/s KEW Precision Parts Pvt. Ltd., as non performing assets on 30-9-2015. The Demand Notice was replied by other Director Shri Munish Kumar Bhansali vide his objection dated 22-1-2016, the contents stated therein are not repeated herein for the sake of brevity, however the same*

may be read as part of this reply.

3. *That a Petition bearing No. 250/2016 was filed before the Hon'ble DRT Lucknow and the same is pending adjudication before the Hon'ble Tribunal. Please note that the Hon'ble DRT vide its order dated 26-4-2016 was pleased to pass a restraint order against your client.*

4. *That my clients never approached your client and no question of having discussions, as alleged or otherwise.*

5. *That the contents of your notice dated 29-09-2016 are denied in to and it is emphatically denied that in discharge of aforesaid legally enforceable debt and liability and by way of part payment towards the facilities availed above. It is categorically denied that subsequent to several discussions KMBL presented all 10 at par cheques dated 02-09- 2016 for the part payment of the liability amount of Rs. 19,34,00,000/- (Nineteen crores. thirty four lakhs only) in its Bank account maintained with Kotak Mahindra Bank Ltd., having its branch at Sector 5 Dwarka Branch, New Delhi 75 and the aforesaid at par cheques were returned dishonoured with a Cheque Return Memo dated 06-09-2016 with the endorsement 'ACCOUNT CLOSED'. It is stated after no discussions have taken place between your Client and my client and there was no occasions and reasons for my clients to issue the cheques under reference.*

6. *That the cheques under reference were not issued by my Clients in part payments of the alleged part liability Rs.19,34,00,000/- (Nineteen crores thirty four lakhs only).*

7. *That my client has instructed to inform you that any ill advise action initiated on the basis of Notice under reply shall be contested at the cost, risk and consequences of your client and my clients reserve their rights to initiate appropriate legal proceedings against your client before Appropriate Forum.*"

4. Learned counsel for petitioner submits that aforesaid 10 cheques were taken by respondent No. 2 against sanction letter dated 23.11.2012, which stipulated a condition that Kotak Mahindra Bank shall be the sole banker and the account of petitioners with Punjab National Bank shall be closed and reported to them by petitioners. The said accounts in Punjab National Bank are stated to have been accordingly closed on behalf of petitioners on 22.01.2013 under intimation to respondent No. 2 / Kotak Mahindra Bank. Further, vide revised sanction letter dated 07.02.2014, the aforesaid conditions were met by petitioners by closing of bank account and handing over of cheques.

It is emphasized by learned counsel for petitioners that aforesaid cheques were not given against any liability with respondent No. 2 / Kotak Mahindra Bank, since account with Punjab National Bank had been closed on 22.01.2013. It is also urged that all the cheques have been subsequently filled up by respondent No. 2 and they were not drawn in favour of respondent No.2.

5. On the other hand, the petition is vehemently opposed by Sh. Ravi Gupta, learned Senior Advocate on behalf of respondent No. 2, since the cheques were returned dishonoured on account of closure of bank account and no such correspondence was earlier made on behalf of petitioners in this regard. It is pointed out that complaint is pending since 2016 and case is still at initial stages, since notice is yet to be framed and case is being delayed on behalf of petitioners by adopting dilatory tactics.

6. It may be observed that defence taken on behalf of petitioners that the cheques were not given as consideration, needs to be tested in cross-examination, since aforesaid stand is strongly disputed on behalf of respondent No. 2. Further, it is pertinent to note that the cheques were returned on account of closure of account by petitioners. In case, there was any such dispute that cheques were not given against the liability of Rs. 19,34,00,000/- (Rupees Ninety Crore Thirty Four Lakhs Only), the correspondence in this regard would have been undertaken and the payment of cheques would have been stopped than closing the account. The defence can appropriately be looked into after the witnesses are examined in D.E.

For the foregoing reasons, no grounds are made out for recalling the summoning order at this stage. Further without expressing any final opinion on the defence taken by the petitioner, petition is dismissed. Pending applications, if any, also stand disposed of. Learned Trial Court is directed to make an endeavour to conclude the trial in a time bound manner, since the complaint proceedings are pending since 2016.

A copy of this order be forwarded to learned Trial Court for information and compliance.

ANOOP KUMAR MENDIRATTA, J.

MAY 22, 2024/*R*