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

+ CRL.M.C. 3223/2024, CRL.M.A. 12418/2024 &
CRL.M.A. 12419/2024

APT INTERNATIONAL SHIPPING PVT. LTD
& ORS.

..... Petitioners

Through: Mr. Pran Krishna Jana,
Advocates.

versus

CLARE FREIGHT INDIA PVT. LTD

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

26.04.2024

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1. The present petition is filed under Section 482 of Code of Criminal Procedure, 1973 ('CrPC') challenging the order dated 22.12.2023 (hereafter '**impugned order**'), passed by the learned Metropolitan Magistrate ('MM'), South West District, Dwarka Courts, New Delhi, in CC No. 37996/2023, titled as '*M/s. Clare Freight India Pvt. Ltd. v. M/s. Apt International Shipping Pvt. Ltd.*'.

2. The learned MM, by the impugned order, issued summons against the petitioners for the offence under Section 138 of Negotiable Instruments Act, 1881 ('NI Act').

3. The learned counsel for the petitioner submits that it is an admitted case that notice in regard to the dishonour of cheque was sent on 25.08.2023 and no payment pursuant to the said notice was made by the petitioner.

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4. He submits that in terms of Section 142 (b) of the NI Act, the complaint is required to be filed within one month of the date on which the cause of action arises under Section 138 (c) of the NI Act.

5. He submits that the learned Trial Court while issuing the summons erroneously observed that the complaint is filed within the prescribed period of limitation.

6. Proviso to Section 142 (b) of the NI Act gives power to the learned Trial Court to condone the delay in case the complainant satisfies the Court that he had sufficient cause for not making the complaint within the prescribed limitation period.

7. It is seen that the complaint was duly supported with an application seeking condonation of delay in filing the complaint.

8. It appears that the learned Trial Court inadvertently did not address the said application for condonation of delay and proceeded to issue summons. Be that as it may, in the opinion of this Court, it is only a technical error.

9. The Hon'ble Apex Court in the case of ***Pawan Kumar Ralli v. Maninder Singh Narula : (2014) 15 SCC 245***, while considering an appeal against a judgment passed by a Coordinate Bench of this Court, whereby a complaint under Section 138 of the NI Act was quashed on the ground of limitation, had observed as under:

"19. However, when the issue of limitation had come up for the first time before the High Court, it ought to have dealt with the same on merits as per proviso to Section 142(b) of the Act. The said proviso appended to clause (b) of Section 142 of the Act was inserted by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and the legislative intent was, no doubt, in order to overcome the technicality of limitation period. The Statement of Objects and Reasons appended to the Amendment Bill,

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2002 suggests that the introduction of this proviso was to provide discretion to the court to take cognizance of offence even after expiry of the period of limitation (see *MSR Leathers v. S. Palaniappan* [*MSR Leathers v. S. Palaniappan*, (2013) 1 SCC 177 : (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458]). Only with a view to obviate the difficulties on the part of the complainant, Parliament inserted the proviso to clause (b) of Section 142 of the Act in the year 2002. It confers a jurisdiction upon the court to condone the delay (see *Subodh S. Salaskar v. Jayprakash M. Shah* [*Subodh S. Salaskar v. Jayprakash M. Shah*, (2008) 13 SCC 689 : (2009) 3 SCC (Cri) 834]).

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21. In the peculiar facts and circumstances of the case, while keeping in mind the legislative intent and the specific plea of the appellant raised in the grounds for the special leave petition that he should have been allowed to move an application for condonation of delay before the trial court as the respondent has not suffered any prejudice by reason of 25 days' delay, we strongly feel that the appellant should not have been deprived of the remedy provided by the legislature. In fact, the remedy so provided was to enable a genuine litigant to pursue his case against a defaulter by overcoming the technical difficulty of limitation. Hence, the High Court has committed an error by not considering the issue of limitation on merits.

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22. In view of the settled principles of law in *Rakesh Kumar Jain* [*Rakesh Kumar Jain v. State*, (2000) 7 SCC 656 : 2001 SCC (Cri) 208] , *MSR Leathers* [*MSR Leathers v. S. Palaniappan*, (2013) 1 SCC 177 : (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458] and *Subodh S. Salaskar* [*Subodh S. Salaskar v. Jayprakash M. Shah*, (2008) 13 SCC 689 : (2009) 3 SCC (Cri) 834] and in the peculiar facts and circumstances of the case, we are of the considered opinion that the High Court was not right in quashing the complaint merely on the ground that complaint is barred by limitation, that too a plea which was taken for the first time before the High Court. On the other hand, the High Court ought to have remanded the matter to the trial court for deciding the issue of limitation. At the same time, we want to make it very clear that by this observation we are not laying down a legal proposition



that without even filing an application seeking condonation of delay at an initial stage, the complainant can be given opportunity at any stage of the proceeding. As already discussed by us in the foregoing paragraphs, we have come to the irresistible conclusion, to afford an opportunity for the complainant to move an application seeking condonation of delay, under the peculiar facts and circumstances of the case."

(emphasis supplied)

10. It is relevant to note that in the above case, no application for condonation of delay had been preferred by the complainant therein due to dispute over when the notice had been issued. Considering the spirit of the NI Act, the Hon'ble Apex Court held that the High Court ought to have dealt with the issue of limitation on merits in terms of the proviso to Section 142(b) of the NI Act as no purpose would be served by remanding the matter back to the learned Trial Court for consideration of the application of condonation of delay.

11. This Court has gone through the contents of the application for condonation of delay filed by the complainant. It is stated that the accused/ petitioners after receiving the legal notice had requested the complainant company/respondent for some time to clear the dues through telephonic conversation and by way of the mail sent to the complainant company on 04.10.2023.

12. It is further stated that pursuant to the said requests, the complainant company waited till 30.10.2022, and then provided all the documents to their appointed counsel on 09.11.2023. When no payment was received, the complaint was thereafter prepared and filed on 23.11.2023.

13. This Court is satisfied with the reasons given by the
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complainant for condonation of delay in filing the complaint. The delay in filing the complaint is condoned.

14. The learned counsel for the petitioner states that no Board Resolution authorising any person to represent the complainant company was filed in support of the complaint. It is stated that Mr. Rajendra Singh Rawat, who is the Director of the respondent company, is individually representing the respondent company. A bare perusal of the complaint shows that it is mentioned in Paragraph 1 itself that Mr. Rajendra Singh Rawat is the Director of the respondent company and he is competent to file the complaint. In such circumstances, the lack of the Board Resolution, in the opinion of this Court, is not a ground for quashing the complaint. It is merely a technical defect which can be rectified at any stage of the case.

15. The Hon'ble Apex Court in the case of ***Bhupesh Rathod v. Dayashankar Prasad Chaurasia*** : (2022) 2 SCC 355 had observed as under:

“19. In the conspectus of the aforesaid principles we have to deal with the plea of the respondent that the complaint was not filed by the competent complainant as it is the case that the loan was advanced by the Company. As to what would be the governing principles in respect of a corporate entity which seeks to file the complaint, an elucidation can be found in the judgment of this Court in Associated Cement Co. Ltd. v. Keshvanand [Associated Cement Co. Ltd. v. Keshvanand, (1998) 1 SCC 687 : 1998 SCC (Cri) 475] . If a complaint was made in the name of the Company, it is necessary that a natural person represents such juristic person in the court and the court looks upon the natural person for all practical purposes. It is in this context that observations were made that the body corporate is a de jure complainant while the human being is a de facto complainant to represent the former in the court proceedings. Thus, no Magistrate could insist that the particular person



whose statement was taken on oath alone can continue to represent the Company till the end of the proceedings. Not only that, even if there was initially no authority the Company can at any stage rectify that defect by sending a competent person. The aforesaid judgment was also taken note of in a subsequent judgment of this Court in M.M.T.C. Ltd. v. Medchl Chemicals & Pharma (P) Ltd. [M.M.T.C. Ltd. v. Medchl Chemicals & Pharma (P) Ltd., (2002) 1 SCC 234 : 2002 SCC (Cri) 121]

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22. It is also relevant to note that a copy of the Board Resolution was filed along with the complaint. An affidavit had been brought on record in the trial court by the Company, affirming to the factum of authorisation in favour of the Managing Director. **A Manager or a Managing Director ordinarily by the very nomenclature can be taken to be the person in-charge of the affairs of the Company for its day-to-day management and within the activity would certainly be calling the act of approaching the court either under civil law or criminal law for setting the trial in motion [Credentia Finance Ltd. v. State of Maharashtra, 1998 SCC OnLine Bom 515 : (1998) 3 Mah LJ 805] . It would be too technical a view to take to defeat the complaint merely because the body of the complaint does not elaborate upon the authorisation. The artificial person being the Company had to act through a person/official, which logically would include the Chairman or Managing Director. Only the existence of authorisation could be verified.”**

(emphasis supplied)

16. In view of the above, this Court finds no reason to interfere with the impugned order.

17. The present petition is dismissed.

AMIT MAHAJAN, J

APRIL 26, 2024

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