



2024:DHC:8135



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

% *Reserved on: 02th September, 2024*
Pronounced on: 21st October, 2024

+ **CRL.M.C. 3585/2024, CRL.M.A. 13760/2024**
RAJESH KHANNA

.....Petitioner

Through: Mr. Neeraj Gupta, Mr. Kamal Gupta,
Advocates.

versus

M/S OLAM AGRO INDIA LTD

.....Respondent

Through: Mr. Anuj Jain, Advocate for R-2 to R-
5.

+ **CRL.M.C. 3610/2024, CRL.M.A. 13843/2024**
RAJESH KHANNA

.....Petitioner

Through: Mr. Neeraj Gupta, Mr. Kamal Gupta,
Advocates.

versus

M/S OLAM AGRO INDIA LTD

.....Respondent

Through: Mr. Anuj Jain, Advocate for R-2 to R-
5.

+ **CRL.M.C. 3620/2024, CRL.M.A. 13886/2024**
RAJESH KHANNA

.....Petitioner

Through: Mr. Neeraj Gupta, Mr. Kamal Gupta,
Advocates.

versus

M/S OLAM AGRO INDIA LTD

.....Respondent

Through: Mr. Anuj Jain, Advocate for R-2 to R-
5.

+ **CRL.M.C. 3621/2024, CRL.M.A. 13892/2024**



2024:DHC:8135



RAJESH KHANNA

.....Petitioner

Through: Mr. Neeraj Gupta, Mr. Kamal Gupta,
Advocates.

versus

M/S OLAM AGRO INDIA LTD

.....Respondent

Through: Mr. Anuj Jain, Advocate for R-2 to R-
5.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The above four petitions under Section 482 Cr.P.C have been filed against the Orders dated 07.03.2024 of learned Addl. Sessions Judge *vide* which while admitting the Appeal against the conviction under Section 138 N.I Act, the learned Addl. Sessions Judge directed 20% of the fine amount to be deposited in 60 days.
2. The Petitioner was convicted under Section 138 N.I. Act by Id. M.M. against which he preferred the aforesaid four Appeals. The learned Addl. Sessions Judge considered the Application of the Petitioner under Section 389 Cr.P.C. and while directing suspension of sentence, also directed the petitioner to deposit 20% of the fine amount in terms of Section 148 of N.I Act, within 60 days, *vide* impugned Orders dated 07.03.2024
3. Aggrieved by the said Orders, these Petitions have been filed wherein it is submitted that on 07.03.2024 pursuant to the Orders of the Ld. Trial Court, he had furnished his bail and surety bond, but subsequently, when the Order got uploaded, he noticed the further directions for deposit of 20% of



the fine amount has been made.

4. It is claimed that Order of deposit of 20% of fine/compensation has been made against him without giving him any Notice or an opportunity of being heard. On 25.04.2024, the submissions were heard on the application under Section 391 Cr.P.C. and the petitioner was directed to comply with the impugned Order. The petitioner has asserted that there exist exceptional circumstances entitling him from exemption from depositing any fine amount. These exceptional circumstances are:

- (i.) *He was merely an employee in M/s Mother V Impex Private Limited at the time when the cheques were issued and he was not in charge and responsible for the conduct of the business of the Company;*
- (ii.) *He does not have the financial capacity to pay the deposit amount as he is unemployed since 2018;*
- (iii.) *He is a senior citizen and suffers from chronic diabetes, blood pressure, cholesterol and high uric acid levels since 2004;*
- (iv.) *The respondent has already filed winding up proceedings against M/s Mother V Impex Private Limited to claim the outstanding dues in relation to which the cheques in question were issued; and*
- (v.) *The petitioner had resigned from the Directorship of M/s Mother V Impex Private Limited on 18.11.2009 while the cheques have been issued in 2011. The resignation was accepted and duly notified to ROC.*

5. The petitioner has relied upon Jamboo Bhandari vs. M.P. SIDC Ltd. (2023) 10 SCC 446, wherein it has been held that where the Appellate court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition would amount to deprivation of a right to Appeal, the exception can be made for the reasons to be specifically recorded. The petitioner fell in this exceptional case and is entitled to waiver of deposit.



6. *Learned counsel on behalf of the respondent* has relied upon the CO. Pet.(CO)33/2014 and CO. Appl.708/2018 filed by M/s Olam Agro India Ltd. against the appellant Rajesh Khanna wherein he has moved an Application for revival of his Company which is in liquidation. The Report of the Official Liquidator was taken on record and directions were passed by the Company Court in its Order dated 30.01.2024 directing the EOW, Crime Branch, Mandir Marg, Delhi to provide the current status of criminal proceedings pending before the Court against the Company in liquidation and its ex-Directors in particular Rajesh Khanna, Ex-Managing Director with further directions to the Superintendent, Tihar Jail to facilitate examination of Rajesh Khanna by the Official Liquidator, through Video Conferencing.

7. The respondent has submitted that considering that the revival of Company has been sought, the petitioner has sufficient money and no waiver is warranted in the given circumstances.

8. **Submissions heard.**

9. The only grievance raised by the petitioner is that while admitting the Appeal and suspending the sentence under Section 389 of the Cr.P.C. the Court has directed deposit of 20% of fine amount without hearing the petitioner. He has exceptional circumstances which entitle him to an exemption from depositing the fine amount, which are essentially that he had already resigned from the Company at the time when the cheques were issued and that he has been unemployed since 2018 and that the Company is in liquidation.

10. The Apex Court in Surender Singh Deswal @ Col. S.S. Deswal & Ors. vs. Virender Gandhi, 2020 (2) SCC 514 had observed that considering the language of Section 148 N.I. Act with the Statement of Objects and Reasons



of the amended Section 148 of the N.I Act, the word used is “*may*” which generally is to be construed as *shall* and to exempt the deposit by the Appellate Court, is an exception for which special reasons are to be assigned.

11. In Jamboo Bhandari (Supra) after making a reference to *S.S. Deswal(supra)*, it was observed that the N.I Act has been amended from time to time so as to provide speedy disposal of cases relating to the offence of dishonour of cheques so as to ensure that due to delay tactics by the unscrupulous drawers of the dishonoured cheque because of easy filing of the Appeals and grant of stay in the proceedings, injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the Court proceedings to realize the value of the cheques. Such delay has compromised the sanctity of the cheque transaction, because of which the Parliament thought it fit to amend Section 148 of N.I. Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 and also Section 138 N.I. Act. It was further observed that while granting suspension of sentence under Section 389 Cr.P.C., it is done without any condition. Therefore, when a blanket Order is sought to be made by the Appellant, the Court has to consider whether the case falls in exception or not. It is an erroneous presumption that deposit of minimum 20% of the fine amount is an absolute rule which does not accommodate any exception.

12. From the aforesaid judgment, it is evident that directing the deposit of 20% rule, while admitting an Appeal against an Order under Section 138 N.I. Act is not an absolute rule but in exceptional circumstances, the Court may consider otherwise.

13. In view of the aforesaid law and also the contention of the Appellant



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that he was not heard to show his exceptional circumstances before directing deposit of 20% of the fine amount, the impugned Order to the extent of directing deposit of 20% of fine amount, is hereby set aside with one opportunity granted to the petitioner to submit about his exceptional circumstances before the learned ASJ who may reconsider the Order in regard to deposit of 20% of the fine amount.

14. The petitions are accordingly allowed.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 21, 2024

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