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

% ***Date of decision: 9th August, 2024***

\+ **CRL.M.C. 3892/2022, CRL.M.A. 16214/2022, CRL.M.A. 23700/2024**

ANIL JAIN .....Petitioner

Through: Counsel for petitioner (appearance not given)

versus

STATE (NCT OF DELHI) & ANR. .....Respondents

Through: Mr. Hemant Mehla, APP for the State.
Mr. Arun Sri Kumar, Advocate for R2 with Mr. Neeraj Matta.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT ***(oral)***

1. This petition is filed under Section 482 of the Cr.P.C, 1973, seeking quashing of Proceedings qua the Petitioner in CC No. 630320/2016, titled *"Pride Creations vs. M/s Great Coating Solutions & Ors.",* pending before the Ld. Metropolitan Magistrate (NI Act), Saket Courts, New Delhi.

2. The petitioner was working as a Non-executive Director of M/s Great Coating Solutions Private Limited, i.e. the Accused Company in CC No. 630320/2016. The Respondent No. 2 Company - *M/s Rajdarbar Herbal Private Limited*, formerly known as *M/s Pride Creation Private Limited*, (hereinafter Respondent No.2) is the Complainant before the Ld. Trial Court alleging dishonour of cheque, bearing No. 000003, issued in the name of

Respondent No.2 in discharge of a liability to the tune of Rs. 2,00,00,000/- against the Accused Company of which the Petitioner was an *erstwhile* non-executive Director.

3. The said cheque got dishonoured on 31.07.2014 for the first time due to *insufficient funds;* the same cheque again got dishonoured on its presentation for the second time on 29.08.2014. Finally, at the time of presentation for the third time on 29.10.2014, the said cheque was again dishonoured and returned unpaid for the reason *Insufficient Funds.*

4. It is submitted that the petitioner had *resigned* from the Directorship of Accused Company on 01.09.2014, and further that he did not sign the said cheque and didn't have the authority to sign the same being a non-executive Director of the Accused Company. The dishonoured cheque bears the signature of Sh. Anumod Sharma, other Director of the Accused Company.

5. It is submitted that the *CC No. 630320/2016 filed by the Complainant under S.138 NI Act, on account of dishonour of the cheque in the sum of Rs. 2,00,00,000(2 crores)* has been settled through court annexed Mediation between Respondent No. 2 and the other director Sh. Anumod Sharma *vide* mediation settlement agreement dated 04.06.2018 along with MoU dated 19.04.2018 containing the schedule of payment in the instalments as detailed therein. Pertinently, the petitioner was never made a party to the Settlement Agreement dated 04.06.2018.

6. However, the Accused Company along with its Director Sh. Anumod Sharma failed to abide by the terms and conditions of the Mediation Settlement as well as the MoU; consequently the Respondent No. 2 has filed fresh Complaints u/s 138 of the NI Act 1881 before the Ld. **MM, NI**

Act, Saket against Sh. Anumod Sharma; the details of the Complaints are as follows:

a. **CC No. 42036/2019** : Rajdarbar Herbal Pvt Ltd v. Anumod Sharma

b. **CC No. 15971/2019** : Rajdarbar Herbal Pvt Ltd. v. Anumod Sharma

7. The petitioner has sought quashing of the proceedings in CC No. 630320/2016 qua the petitioner in view of the judgement of the Hon'ble Supreme Court in ***Gimpex Private Limited vs. Manoj Goel 2021, SCC Online SC 925.*** The petitioner has further stated that the Complainant entered into a Settlement Agreement with Sh. Anumod Sharma, and that it overrides previous liability against which CC No. 630320/2016 was instituted, and gave rise to fresh liability and cause of action. It is further submitted that once there is a Settlement Agreement between parties in respect of Complaint u/s 138 of NI Act, then the original complaint does not survive and thus, it must be quashed.

8. The learned counsel for Petitioner has placed reliance on various orders of the coordinate benches of this Hon'ble Court in *M/s Tulsiani Constructions And Developers Ltd. & Ors. v. State of NCT of Delhi & Anr.,* in CRL. M.C. 1006/2023 dated 14.02.2023, *Maharashtra Bio Fertilizers (india) Private Limited Through its Director Mr. Kushal Nileash Thakker and Ors. v. Crystal Crop Protection Limited,* in CRL. M.C. 3136/2022 dated 14.07.2022, and *ECCL & Anr. v. National Small Industries Corporation NSIC Bhawan,* CRL.M.C. 737/2022 & CRL.M.A. 3085/2022(Stay) dated 16.02.2022.

9. The Respondent No.2 has vehemently opposed the petition, though there is no reply filed on behalf of Respondent No. 2.

10. **Submissions heard and record perused.**

11. The respondent No.2 had filed a Criminal Complaint No.630320/2016 titled "*Pride Creations vs. M/s Great Coating Solutions & Ors.*" under Section 138 N.I Act in regard to dishonour of the cheque in the sum of Rs. 2,00,00,000/- against three accused persons namely M/s Great Coating Solutions, Sh. Anil Sharma(*the petitioner*) and Sh. Anumod Sharma both being the Directors of accused No.1.

12. During the pendency of the said complaint the parties arrived at a mediated Settlement dated 04.06.2018, wherein they agreed to settle all their disputes on payment of the amounts in accordance with the MOU dated 19.04.2018 which was annexed as Annexure-A with the Settlement. The mediated Settlement was duly signed by the A/R of the Complainant as well as by the A/R and the counsel for the accused Company. It was agreed that Rs.4,50,00,000/- along with simple interest @ 12% per annum from 31.01.2014 till the date of realization shall be paid by the Company to the petitioner(This included other complaints between the parties). Furthermore, the total amount was agreed to be paid in 15 instalments commencing from 30.06.2018 in the manner as was detailed therein.

13. The matter was taken up by the learned M.M on 25.09.2018, wherein the counsel for the accused confirmed that the matter has been settled in the Mediation Centre and that the accused had communicated to the complainant that it shall be making the payment within two months. Thereafter, on account of default by the accused Company to make the payments as per the Agreement, a request was made again for referring the matter to Mediation, but the request was declined on 19.02.2019.

14. The statement of the parties confirming the mediated Settlement was recorded by the learned M.M on 09.04.2019 and a Demand Draft bearing

No.002390 in the sum of Rs.30 lakhs was paid by Anumod Sharma (accused No.3)/Direction of the accused Company to the A/R of the complainant on 09.04.2019.

15. It is pertinent to observe that the mediated Settlement was duly endorsed by both the parties in the Court after it was effected and it was also submitted that the accused had paid a sum of Rs. 30,00,000/- as part payment and had undertaken to pay the further instalment as agreed in the Settlement. It is evident that this Settlement had been endorsed in the Court.

16. The basis submission made by the petitioner in the present petition is that the said C.C No. 630320/2016 cannot be continued since the Complaint Case under Section 138 N. I. Act got subsumed in the mediated Settlement; however, the petition is still being continued.

17. The *first aspect* which needs consideration is what is the fate of the mediated Settlement on the case in which it is effected and whether after such Settlement, the original Complaint Case can be continued in case of default. Once, the Settlement is endorsed and acted upon by the parties, the complaint gets subsumed in the Settlement, as has been held in the case of Gimpex Private Limited vs. Manoj Goel 2021 SCC OnLine SC 925, wherein it is observed as under :

> *"38. When a complainant party enters into a compromise agreement with the accused it may be for a multitude of reasons - higher compensation, faster recovery of money, uncertainty of trial and strength of the complaint, among others. A complainant enters into a settlement with open eyes and undertakes the risk of the accused failing to honour the cheques issued pursuant to the settlement, based on certain benefits that the settlement agreement postulates.* ***Once parties have voluntarily entered into such an agreement and agree to abide by the***

consequences of non-compliance of the settlement agreement, they cannot be allowed to reverse the effects of the agreement by pursuing both the original complaint and the subsequent complaint arising from such non-compliance. The settlement agreement subsumes the original complaint."

18. In the present case, after the settlement was endorsed by the parties in the Court, it was thereafter, listed for reporting of further payments. The Application was filed on behalf of Sh. Anumod Sharma seeking extension of time as provided in MOU dated 19.04.2018 for payment, which was opposed by the complainant. It was further recorded that in terms of the Settlement only Rs.45 lakhs had been paid. Three month's time was further granted for making the payment of the balance amount. Further extension of time was sought on 16.11.2019 before learned M.M., who declined to give any further extension by observing that the matter stands settled in terms of the MOU. The complainant was given an opportunity to move appropriate application as per the judgment of <u>*Dayawati vs. Yogesh Kumar Gosain*</u> Crl. Ref. No.1/2016 decided on 07.10.2017 which gives the answer to the further course of action in case of breached Mediated Settlement. It was observed as below:

"Question IV: If the settlement in Mediation is not complied with – is the court required to proceed with the case for a trial on merits, or hold such a settlement agreement to be executable as a decree?

In case the mediation settlement accepted by the court as above is not complied with, the following procedure is required to be followed:

(i) In the event of default or non-compliance or breach of the settlement agreement by the accused person, the magistrate ***would pass an order under Section 431 read***

with Section 421 of the Cr.P.C. to recover the amount *agreed to be paid by the accused in the same manner as a fine would be recovered.*

(ii) Additionally, for breach of the undertaking given to the magistrate/court, the court would take appropriate action permissible in law to enforce compliance with the undertaking as well as the orders of the court based thereon, including proceeding under ***Section 2(b) of the Contempt of Courts Act, 1971 for violation thereof.****"*

19. Thus, the two remedies available to the complainant in case a mediated Settlement is violated, are:

(i) *to file an Application under Contempt of Courts Act; and*

(ii) to seek the execution of the mediated Settlement by resorting to Section 431 read with Section 421 of Cr.P.C.

20. It is quite evident from the narration of the aforesaid sequence of events that the Ld. M.M. has not continued the Complaint which got subsumed in the Settlement as held in the case of *Gimpex Private Limited(supra).*

21. Ld. M.M. has proceeded with the Execution of the Settlement as laid down in the case of *Dayawati (supra)* and is evident from Order dated 16.11.2019,wherein the learned M.M. has clearly observed that since the parties have already entered into the Settlement, the only option in case of violation of its terms is to file a Contempt of Courts Act Application, which in fact had been filed which is pending consideration before the learned M.M. Thereafter, the matter was not taken up because of the pendency of the Revision Petition before this Court. The matter, is pending for consideration of the Application under Contempt of Courts Act, for execution of the mediated Settlement.

22. The contention of the ld. counsel for the petitioner is correct that the

Complaint has culminated into mediated Settlement. The ongoing proceedings pertain only to the Contempt of Court Act to ensure the *execution of the mediated Settlement*. In case the petitioner had resigned way back in 2014 as claimed by him and is not bound by the terms of the Settlement, he may agitate the same in the Contempt proceeding to seek his discharge. It is reiterated that it is not the Complaint Case which is being continued by the learned M.M but only the Contempt proceedings for non-compliance of the mediated Settlement.

23. The petitioner had further contended that there are two subsequent complaints namely (a) CC No. 42036/2019 : *Rajdarbar Herbal Pvt Ltd v. Anumod Sharma* ; and (b) CC No. 15971/2019 : *Rajdarbar Herbal Pvt Ltd. v. Anumod Sharma* that have been instituted by the complainant against Sh. Anumod Sharma, Director of the accused Company. However, he was unable to explain the contents of those Complaint case or to show that they have been filed in respect of the earlier obligations for which the Complaint Case No. 630320/2016 was filed. Without knowing the contents of the subsequent Complaints, the petitioner has no basis for challenging the subsequent complaints. Moreover, it has been observed in the case of *Gimpex Private Limited (supra)* *that non-compliance of the terms of the settlement agreement or dishonour of cheques issued subsequent to it, would then give rise to a fresh cause of action attracting liability under Section 138 of the NI Act and other remedies under civil law and criminal law.* If the Complainant has taken such a route, then that too is within the mandate of law. The Petitioner's grievance that he is being roped in again though he had resigned way back in 2014 and that he was not a privy to the mediated settlement, is answered by himself in so much as per his own submissions,

he is not a party in the subsequent complaint. He, therefore, also does not have any *locus standi* to challenge any subsequent Complaints that may have been initiated against his erstwhile Company.

24. ***To conclude,*** the Complaint Case No. 630320/2016 has already got subsumed in the mediated Settlement, as is evident from the aforesaid discussion. The Complaint itself is not pending trial and therefore, there is no question of quashing the same.

25. The petition along with pending applications, if any are accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 9, 2024
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