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

Date of Decision: 29.05.2024

+ **CRL.M.C. 4562/2024**

SBI GLOBAL FACTORS LTD Petitioner
Through: Mr.Saurabh Shandilya, Adv.

versus

STATE (GOVT. OF NCT OF DELHI & ANR. Respondents
Through: Mr.Shoaib Haider, APP.
Mr.Pushkar Sood, Mr.Satya
Prakash Singh & Ms.Shikha
Sood, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 17166/2024 (Exemption)

1. Allowed, subject to all just exceptions.

CRL.M.C. 4562/2024 & CRL.M.A. 17167/2024

2. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the order dated 02.04.2024 passed by the learned Additional Sessions Judge, Special Judge, NDPS, Patiala House Courts, New Delhi in CA No. 174/2019 titled *Puneet Saluja v. SBI Global Factors Ltd.*, by which the learned Additional Sessions Judge has held that, for the reasons stated therein, the



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respondent no.2 shall stand exempted from depositing any amount under Section 148 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'); and 20% of compensation amount, which the respondent no.2 was directed to pay *vide* order dated 20.01.2020 of the said Court, shall stand waived. The appeal itself was listed for final arguments on 03.05.2024.

3. The above appeal has been filed by respondent no.2, challenging the order of conviction dated 17.07.2019 whereby the respondent no.2 has been convicted under Section 138 of the NI Act; and the order dated 27.07.2019; whereby the respondent no.2 has been sentenced to undergo simple imprisonment of six months and to pay compensation of Rs.6,00,00,000/- under Section 357(3) of the Cr.P.C., passed by the learned Metropolitan Magistrate-04, Patiala House Courts, New Delhi.

4. In the said appeal, the learned Appellate Court, *vide* an order dated 20.01.2020, directed the respondent no.2 to deposit a sum of Rs.1,20,00,000/-, that is, 20% of the compensation amount, within one month from the date of the said order. The respondent no.2 challenged the said order by way of a petition before this Court, being CRL.M.C. 766/2020, titled ***Puneet Saluja v. State & Anr.*** This Court by its order dated 03.01.2024 disposed of the said challenge by, *inter alia*, observing and directing as under:-

“17. Having considered the overall facts and circumstances of the cases, the contents of the impugned order and the judicial precedents, this Court is of the opinion that the present



case be remanded back to the learned Sessions Court/Appellate Court for deciding afresh, as to whether the three exceptional circumstances being raised by the petitioner herein fall within the category of exceptional circumstances so as to warrant waiver of condition to deposit 20% of fine amount during the pendency of appeal against conviction under Section 138 of NI Act. The petitioner shall also be at liberty to bring any other exceptional circumstance to the notice of the learned Sessions Court.

18. It is directed that the learned Sessions Court/Appellate Court shall decide the issue in question within a period of two months from date of receipt of this order, after hearing arguments from both the parties. It is also clarified that the issue shall be decided on its merits as per law, and without being influenced by any of the observations made in this judgment.”

5. The respondent no.2 then filed a further application under Section 148 of the NI Act, seeking waiver of deposit of the amount of 20% of the compensation amount. The said application has now been allowed by the Impugned Order, observing as under:-

“The Hon'ble High Court of Delhi has directed the Appellate Court to look into the three grounds and liberty was also granted to appellant to raise any exceptional circumstance. The appellant has taken plea that she is now 62 years old and suffering from multiple Sclerosis from 1998 i.e. brain related diseases which affects brain and it is also submitted that due to said condition, the petitioner gets attack of semi paralysis and needs nursing care and injections everyday. The documents of the treatment of the appellant for the said disease is already on record consisting of all the previous history in



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which the appellant was getting treatment from the Apollo hospital. No contrary submission or medical document has been furnished by the respondent to counter the said disease of appellant therefore, it is on record now that appellant is suffering from multiple Sclerosis. It is also admitted position that the transaction in question was insured by New India Assurance Company and two consumer complaints against the insurance company have been filed by respondent before NCDRC. Accordingly, it is on record that the transaction for which the cheque was given was covered by insurance of New India Assurance company. The next plea taken by the appellant is that insolvency petition has been filed by the appellant to declare appellant as insolvent and the appellant has not earning any income which is assessable as per income tax after 2010-2011 as she suffered a loss of Rs 10,66,82,746/- due to economic depression in the year 2009. Appellant has also filed her ITR of 2010-11 in which the loss has been shown as Rs 10,66,82,746/- and no income has been shown. No document contrary to the said ITR showing that the appellant has any income has been filed by the respondent despite the fact that ITR is having PAN number of the appellant. In Jamboo Bhandari judgment (supra), it was held by Hon'ble Supreme Court of India that:

'6. What is held by this Court is that a purposive interpretation should be made of Section 148 of NI Act. Hence, normally, Appellate court will be justified in imposing the condition of deposit as provided in Section 148. however, in a case where the Appellate court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.'



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Therefore, in exceptional circumstances, the court can waive the 20% condition u/s 148 NI Act and in this matter, it is not a disputed fact that the appellant is suffering from multiple Sclerosis and getting treatment from Apollo hospital. It is also not a disputed fact that no ITR of the appellant is on record after the assessment year of 2010-11 in which the loss of Rs 10,66,82,746/- was shown and income of the appellant was zero. Even the respondent has not brought on record any of the property or bank account in the name of appellant having amount. The transaction in question was insured by New India Assurance Company and for recovery of the amount, the petitioner has filed two petitions before NCDRC. Accordingly, in view of the above-mentioned facts, the case of appellant falls within exceptional circumstance as normally business transaction is not covered by insurance and purpose of insurance is to secure the amount. Moreover, the appellant has zero income as per assessment year 2010-11 and neurological disorder of the appellant adds to the exceptional circumstance, therefore, the 20% of compensation amount which the appellant was directed to pay vide order dated 20.01.2020 is waived off and matter be listed for arguments on appeal on 03.05.2024.”

6. The learned counsel for the petitioner submits that the earlier application filed by the respondent no.2 invoked only the provisions of Section 29 of the Provincial Insolvency Act, 1920 as a ground for seeking waiver of the deposit under Section 148 of the NI Act. Placing reliance on the judgment of the Madras High Court in **B. Kannan v. B.C. Santhanam**, 1999 CRI.L.J. 2236, he submits that the Provincial Insolvency Act, 1920 does



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not in any manner bar the penal action against the accused for the offence already committed under Section 138 of the NI Act. He submits that as far as the additional grounds are concerned, they were only taken in the second application, which is not maintainable in law and was based on grounds and documents, which were not a part of the record of the learned Metropolitan Magistrate. He submits that in the garb of application under Section 148 of the NI Act, the grounds of the appeal itself cannot be decided.

7. On the other hand, the learned counsel for the respondent no.2, who appears on advance notice, submits that the appeal itself is listed for final hearing on 01.06.2024. He submits that this Court, in its order dated 03.01.2024, had not only allowed the respondent no.2 to raise the grounds that were urged in the said petition, but also the additional grounds. The second application was filed only to bring those grounds to the notice of the learned Appellate Court. He submits that the documents that have been filed along with the said application were filed only for the purpose of the said application and will have no effect on the hearing of the appeal. However, this shall be without prejudice to the application filed by the respondent no.2 before the learned Appellate Court to lead further evidence.

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

9. The Supreme Court in its judgment in ***Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd. & Ors.***,



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2023 SCC OnLine SC 1144, has held that the Appellate Court, in exceptional circumstances, where it is satisfied that the imposition of condition of deposit of 20% of the compensation amount on the accused/appellant will be unjust or would amount to deprivation of the right to appeal, can exempt the accused/appellant from making such deposit.

10. In the present case, by an order dated 20.01.2020, the learned Appellate Court had directed the respondent no.2 to make deposit of the 20% of the compensation amount. This order had been challenged by the respondent no.2 by way of a petition before this Court. This Court considering the submissions made before it, had remanded the matter back to the learned Appellate Court for taking a fresh decision and allowed the respondent no.2 to raise additional grounds in support of her application before the learned Appellate Court. Thereafter, the Respondent no.2 filed a fresh application only to bring the additional grounds to the notice of the learned Appellate Court, for seeking exemption from making the deposit of the 20% as required under Section 148 of the NI Act. Therefore, no fault can be found in the respondent no.2 filing an additional application and in the learned Appellate Court considering the same while passing the Impugned Order.

11. At the same time, the additional documents and plea that have been taken by the respondent no.2 will be confined only for the purpose of the said application and shall have no effect or be considered at the time of the adjudication of the appeal



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that is pending adjudication before the learned Appellate Court. The application filed by respondent no.2 seeking to place additional documents on record shall be determined by the learned Appellate Court on its own merits without being influenced by the adjudication of the application under Section 148 of the NI Act filed by respondent no.2 or the present order.

12. As far as the plea of the petitioner that while considering the said application, the learned Appellate Court has also considered the submissions on merits of the appeal, again cannot be accepted. The learned Appellate Court is to take a holistic view on the application filed by an accused/appellant for seeking exemption from making the deposit in terms of Section 148 of the NI Act. No fault can be found, therefore, in the learned Appellate Court also considering *prima facie* merits of the appeal while deciding on such an application.

13. In any event, the learned Appellate Court has given cogent reasons in the Impugned Order for granting exemption to the respondent no.2 from making the deposit. This Court is not sitting in Appellate jurisdiction to such order. The power of the learned Appellate Court being discretionary in nature, and such discretion having been exercised on valid and cogent grounds, cannot be interfered with by this Court in exercise of its power under Section 482 of the Cr.P.C.

14. I, therefore, find no merits in the present petition. The same is dismissed.



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15. It is further made clear that the Impugned Order or the order passed today by this Court, shall in no manner prejudice the adjudication of the appeal filed by respondent no.2, which would have to be decided by the learned Appellate Court on its own merits and in accordance with law.

16. I have been informed that the learned Appellate Court has fixed the hearing of the appeal on 01.06.2024. The learned Appellate Court is requested not to grant any unwarranted request for adjournment to either of the parties, and to hear the appeal finally on the said date.

17. *Dasti* under the signatures of the Court Master.

NAVIN CHAWLA, J

MAY 29, 2024/rv/RP

Click here to check corrigendum, if any