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

\+ **CRL.M.C. 7221/2023 & CRL.M.A. 26940/2023**

OZONE SPA PVT. LTD. .....Petitioner

Through: Ms. Beenashaw Soni, Mr. Rajesh Mahendru, Ms. Mansi Jain & Ms. Anu Joseph.

versus

THE INDIA FITNESS CONNECT PVT LTD & ORS. .....Respondents

Through: Mr. Ankur Mittal, Mr. Abhay Gupta, Mr. Sanjivan Chakraborty & Mr. Shikhar Prakash, Advs.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **14.11.2024**

1. The present petition is filed against the order dated 12.07.2023 (hereafter '**impugned order**') passed by the learned Principal District and Sessions Judge ('**PDSJ**'), Saket Courts, Delhi.

2. By the impugned order, the learned PDSJ set aside the order dated 17.01.2023 passed by the learned Metropolitan Magistrate ('**MM**') and remanded the matter to the learned Trial Court to decide the application under Section 143A of the Negotiable Instruments Act, 1881 ('**NI Act**') filed by the petitioner seeking interim compensation from the respondents.

3. The learned MM *vide* order dated 17.01.2023 had allowed the application filed by the petitioner under Section 143A of the NI Act and directed the respondents to pay 20% of the cheques amount to the petitioner within a period of 60 days from the date of the order.

4. The petitioner is engaged in the business of providing health care and fitness products under the brand of "*Ozone*". It is the case of the petitioner/complainant that the petitioner was approached by the respondents with the desire to display their "*Precor*" brand products at the premises of the petitioner. It is averred that the respondents offered to pay charges for displaying their products. The petitioner was already using the said product in its premises where the health club and fitness centre was being run. Consequently, an agreement dated 21.04.2016 was executed between the respondents and the petitioner whereby it was agreed that the respondents would use the aforesaid premises of the petitioner for advertising its equipments till 01.09.2020 and will pay a total sum of ₹2,51,23,590/- to the petitioner as expense for the usage of the said premises for 53 months.

5. Accordingly, it is the case of the petitioner that in consonance with the agreement, the respondents advertised their equipments, and used the space at the said premises of the petitioner for the purpose of advertisement, and allegedly as on the date of the filing of the complaint, the respondents were still advertising their equipments. Cheques given by the respondents for the period May 2016 to October 2016 were honoured and credited.

6. In accordance with Clause D of the agreement dated 21.04.2016, the agreement can neither be terminated nor revoked till the entire contract amount is paid. It is the case of the petitioner

that the cheques after October 2016 started getting dishonoured for the reasons *"payment stopped by the drawer", "funds insufficient"* and *"account blocked"*.

7. Subsequently, on the failure of the respondents to make payment despite the issuance of demand notice, complaint under Section 138 of the NI Act was filed, and notice under Section 251 of the CrPC were framed against the respondents.

8. During the course of the trial, the petitioner moved an application under Section 143A of the NI Act claiming interim compensation. The learned MM *vide* order dated 17.01.2023 allowed the application filed by the petitioner thereby directing the respondents to pay interim compensation @20% of the cheques amount to the petitioner.

9. Ms. Beenashaw Soni, learned counsel for the petitioner submits that the learned PDSJ erred in setting aside the order passed by the learned MM directing the respondents to pay 20% of the cheques amount to the petitioner. She submits that the order of the learned MM was set aside solely because the learned MM did not record reasons for directing the payment of interim compensation. She further submits that while deciding an application under Section 143A of the NI Act, it is not imperative for the Court to record reasons while directing the payment of interim compensation.

10. Section 143A of the NI Act is reproduced hereunder:

> *"143-A. Power to direct interim compensation.—*
> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant—*
>> *(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and*
>> *(b) in any other case, upon framing of charge.*

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.
(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.
(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.
(5) The interim compensation payable under this section may be recovered as if it were a fine under Section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).
(6) The amount of fine imposed under Section 138 or the amount of compensation awarded under Section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section."

11. Recently, the Hon'ble Apex Court in ***Rakesh Ranjan Shrivastava v. The State of Jharkhand & Anr.*** **: 2024 INSC 205** clarified the position in respect of the factors to be considered while exercising the discretion to direct the accused to pay interim compensation under Section 143A of the NI Act as under:

*16. **When the court deals with an application under Section 143A of the N.I. Act, the Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application under sub-section (1) of Section 143A. The presumption under Section 139 of the N.I. Act, by itself, is no ground to direct the payment of interim compensation.** The reason is that the presumption is rebuttable. The question of applying the presumption will arise at the trial**. Only if the complainant makes out a prima facie case, a direction can be issued to pay interim compensation.** At this stage, the fact that the accused is in financial distress can also be a consideration. Even if the Court concludes that a case is made out for grant of interim compensation, the Court will have to apply its mind to the quantum of interim compensation to be granted. **Even at this stage, the Court will have to consider various factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant and the paying***

capacity of the accused. If the defence of the accused is found to be prima facie a plausible defence, the Court may exercise discretion in refusing to grant interim compensation. *We may note that the factors required to be considered, which we have set out above, are not exhaustive. There could be several other factors in the facts of a given case, such as, the pendency of a civil suit, etc.* ***<u>While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all the relevant factors</u>****.*

17. In the present case, the Trial Court has mechanically passed an order of deposit of Rs.10,00,000/- without considering the issue of prima facie case and other relevant factors. It is true that the sum of Rs.10,00,000/- represents less than 5 per cent of the cheque amount, but the direction has been issued to pay the amount without application of mind. Even the High Court has not applied its mind. We, therefore, propose to direct the Trial Court to consider the application for grant of interim compensation afresh. In the meanwhile, the amount of Rs. 10,00,000/- deposited by the appellant will continue to remain deposited with the Trial Court.

18. Hence, impugned orders are set aside, and the application made by the complainant in Complaint Petition No. 1103/2018 under Section 143A (1) of the N.I. Act is restored to the file of Judicial Magistrate First Class, Bokaro. The learned Judge will hear and decide the application for the grant of interim compensation afresh in the light of what is held in this judgment. The amount deposited by the appellant of Rs. 10,00,000/- shall be invested in a fixed deposit till the disposal of the said application. At the time of disposing of the application, the Trial Court will pass an appropriate order regarding refund and/or withdrawal and/or investment of the said amount.

19. Subject to what is held earlier, the main conclusions can be summarised as follows:

> *a. The exercise of power under sub-section (1) of Section 143A is discretionary. The provision is directory and not mandatory. The word "may" used in the provision cannot be construed as "shall."*
>
> *b.* ***<u>While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors.</u>***
>
> *c. The broad parameters for exercising the discretion under Section 143A are as follows:*
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> > *i. The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.*

ii. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.
iii. If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.
iv. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.
v. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive."

(emphasis supplied)

12. In line with the dictum of the Hon'ble Apex Court in ***Rakesh Ranjan Shrivastava v. The State of Jharkhand & Anr*** *(supra),* while dealing with an application under Section 143A of the NI Act, the Court would have to *prima facie* evaluate the merits of the case as made out by the complainant. A direction to pay interim compensation ought to be issued only if the complainant makes out a *prima facie* case. If the Court is of the opinion that interim compensation ought to be granted, the Court has to take into account various factors such as the nature of the transaction, relationship between the parties, the paying capacity of the accused, the pendency of civil suit etcetera.

13. For this reason, it was observed that while deciding the prayer under Section 143A of the NI Act, the Court must record brief reasons indicating the consideration of all the relevant factors. It was further observed that the presumption under Section 139 of the NI Act, by itself, is no ground to direct the payment of interim compensation since the presumption under Section 139 of the NI Act is rebuttable in nature.

14. In the present case, the learned MM *vide* order dated 17.01.2023 directed the respondents to pay @20% of the cheque amount as interim compensation to the petitioner. It was noted that the perusal of the record showed that notice under Section 251 of the CrPC was framed, and in the statement under Section 251 of the CrPC, Respondent No. 2 admitted that the cheques in question bear the signature of Respondent No. 2, and that the cheques in question were issued by Respondent Nos. 1-2. The learned MM, noting that the defence taken by the accused persons under Section 251 of the CrPC was a matter of trial, allowed the application filed by the petitioner under Section 143A of the NI Act.

15. The learned PDSJ *vide* impugned order set aside the order dated 17.01.2023 and remanded the matter to the learned Trial Court to decide the application under Section 143A of the NI Act filed by the petitioner seeking interim compensation from the respondents.

16. It was noted that the learned MM observed that the defence taken by the accused persons is a matter of trial and cannot be looked into.

17. Merely because the defences raised by the accused persons is a matter of trial, cannot be a ground to direct the payment of interim compensation. In line with the dictum of the Hon'ble Apex Court in ***Rakesh Ranjan Shrivastava v. The State of Jharkhand & Anr*** *(supra),* the learned MM ought to have *prima facie* evaluated the merits of the case as made out by the petitioner. Further, after a consideration of the relevant factors, brief reasons indicating the consideration of all the relevant factors ought to have been recorded.

18. In the present case, the learned PDSJ noted that since civil proceedings between both the parties was going on and the

petitioner had already filed a suit for specific performance against the respondents before this Court, the same itself *prima facie* show that the agreement was executed between the parties but it had not been acted upon completely. It was noted that in the civil suit filed by the respondents before this Court, a prayer was made that the petitioner be directed to return and destroy the post-dated cheques given by the respondents.

19. The learned PDSJ noted that the prayers sought by both the parties before this Court clearly showed that as per the petitioner himself the agreement was not fully acted upon by the parties, and the petitioner was in possession of some post dated cheques which the respondents requested to return and destroy. In that light, the learned PDSJ rightly noted that such factors cannot be ignored by the learned Trial Court while deciding the application under Section 143A of the NI Act by merely observing that the defence taken by the accused persons is a matter of trial. This is more so because the presumption under Section 139 and 118 of the NI Act is rebuttable in nature.

20. In view of the aforesaid, this Court does not find any infirmity in the impugned order, and the same cannot be faulted with.

21. The learned counsel for the petitioner, at this stage, however, expresses her apprehension and submits that even though the matter has been remanded back to the learned Trial Court to decide the application under Section 143A of NI Act, the learned PDSJ has made certain observations on the merits.

22. The application of the petitioner under Section 143A of the NI Act is restored. The learned Trial Court is directed to pass a fresh order uninfluenced by the observations made by the learned PDSJ on the merits of the case, and keeping in view the law laid

down by the Hon'ble Apex Court in ***Rakesh Ranjan Shrivastava v. The State of Jharkhand & Anr*** *(supra)*.

23. The present petition is accordingly dismissed. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

NOVEMBER 14, 2024