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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 500/2022 & CRL.M.A. 2195/2022
BURDWAN IRON AND STEEL COMPANY PRIVATE LIMITED
& ANR. Petitioners

Through: Mr.Sanjay Bannerjee, Adv.
versus

IFCI FACTORS LIMITED & ANR. Respondents
Through: Mr.Harshal Arora, Adv. for R-1.
Mr.Rana S. Biswas, Mr.Kartik &
Mr.Yash Tripathi, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **07.02.2024**

1. This petition has been filed by the petitioners under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'CrPC') challenging the order dated 01.12.2020 (hereinafter referred to as the 'Impugned Order'), passed by the learned District and Sessions Judge, South-East District, Saket Courts, New Delhi (hereinafter referred to as the 'Revision Court') in CR REV No.820/2019 titled as *M/s Burdwan Iron & Steel Co. Pvt. Ltd. & Anr. v. IFCI Factors Limited*, dismissing the Revision Petition filed by the petitioners herein.

2. By the said Revision Petition, the petitioners had challenged the order dated 14.10.2019 by which the learned Metropolitan Magistrate-04 (NI Act), South-East District, Saket Court, Delhi, (hereinafter referred to as the 'Metropolitan Magistrate') had dismissed an application filed by the petitioners seeking discharge in the complaint, that is, CC No. 11752/2017 titled *IFCI Factors Ltd v M/s Burdwan Iron & Steel Co. (P) Limited.*, a complaint filed by the respondent no.1 herein under Section 138 of the Negotiable Instrument Act, 1881



(hereinafter referred to as the 'NI Act').

3. It is the case of the petitioners that the complaint filed by respondent no.1 does not disclose any offence having been committed by the petitioners under Section 138 of the NI Act.

4. The learned counsel for the petitioners submits that the respondent no.1 had entered into a Domestic Sales Bill Factoring Agreement (hereinafter referred to as the 'Agreement') dated 20.01.2012 for an amount of Rs.10 crores (Rupees Ten Crores Only) with Concast Exim Limited (in short, 'Concast'). The arrangement between the parties was that against the sales made by the Concast to the petitioners, the respondent no.1 was to make a stipulated payment to Concast. Concast had issued a Notice of Assignment of debt dated 24.01.2012 to the petitioners, which was duly acknowledged vide letter dated 25.01.2012 thereby making the petitioners liable to make the payment of the dues against the invoices raised by Concast and factored by the respondent no.1.

5. He submits that in terms of Clause 11 of the Agreement, however, in case the petitioners are unable to pay the amount claimed by the respondent no.1 under the invoices, the respondent no.1 had a right to take recourse to recover the said amount from Concast. He submits that, in the present case, the respondent no.1 has duly exercised the said right and has also proceeded against Concast for recovering the same amount as has been claimed against the petitioners by way of the above-mentioned complaint. He submits that, therefore, the complaint against the petitioners would not be maintainable, there being no enforceable legal debt of the petitioners



owed to the respondent no.1.

6. The above submission is disputed by the learned counsel for the respondent no.1, who submits that in terms of the Agreement as also the Letter of Assignment, the petitioners is equally liable to pay the amount to the respondent no.1. He submits that, in any case, these would be matters of defence, which shall be considered by the learned Metropolitan Magistrate on evidence being lead before the said Court.

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

8. At the stage of issuing process, the learned Trial Court is mainly concerned with the allegations made in the complaint and the evidence led in support of the same. The learned Trial Court is only to be prima facie satisfied that there are sufficient grounds for proceeding against the accused person(s). The learned Trial Court is not even required to record the reasons while issuing the process. At this stage, it is not the province of the learned Trial Court to enter into a detailed discussion/analysis on the merits or demerits of the case. Reference in this regard is made to the judgments of the Supreme Court in **UP Pollution Control Board v. Mohan Meakins Ltd. & Ors.** (2000) 3 SCC 745 and **Bhushan Kumar & Another v. State (NCT of Delhi) & Another** (2012) 5 SCC 424.

9. As has been rightly observed by the learned Metropolitan Magistrate and upheld by the learned Revision Court, the submissions raised by the petitioners are matters of defence, which needs to be considered by the parties leading their defence on the same. At the present stage, it cannot be said that the complaint discloses no offence



being committed. This court is not sitting in appeal against the Impugned Order.

10. In *State of Kerala v. Puttumana Illath Jathavedan Namboodiri*, (1999) 2 SCC 452, the Supreme Court has held as under:

“5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice...”

11. Accordingly, I find no merit in the present petition. The same is dismissed along with the pending application. There shall be no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 7, 2024/rv/ss

[Click here to check corrigendum, if any](#)