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

+ **W.P.(CRL) 3047/2024 & CRL.M.A. 29607/2024**

SUMAJ JAIN & ANR.

.....Petitioners

Through: Mr. Chandan Bhati and Mr. Banke
Bihari, Advocates.

versus

STATE NCT OF DELHI AND ANR.

.....Respondents

Through: Mr. Anand V. Khatri, ASC (Crl.) for
State with SI Suresh, P.S.: Tilak
Marg.
Mr. Gurpreet Singh, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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22.10.2024

1. Writ Petition under Article 226 of the Constitution of India read with Section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of petitioners for modification of order dated 06.09.2024 and to reduce the deposit of compensation amount directed to be paid in CA No. 96/2024.
2. Issue notice. Learned ASC for the State and learned counsel for respondent No.2 appear on advance notice and accept notice.
3. In brief, as per the case of petitioners, vide order on sentence dated 21.03.2024 passed by learned MM-04 (NI Act), Patiala House Courts, New Delhi (Premium International Finance Company Ltd. through official liquidator (OL)), Sumaj Jain, Managing Director (petitioner No.1) and



Praveen Jain, General Manager (petitioner No.2) convicts in proceedings under Section 138 NI Act, were sentenced to pay a fine of Rs.1,00,00,000/- (One Crore) jointly and severally. Further, the aforesaid amount on realization was directed to be paid to the complainant (respondent No.2), as compensation in proceedings under Section 138 NI Act, failing which the petitioners were sentenced to Simple Imprisonment (SI) for a period of 03 months.

4. Aggrieved against the conviction and order on sentence, an appeal was preferred by the petitioners before the learned Additional Sessions Judge-04, Patiala House Courts, New Delhi, wherein vide order dated 22.04.2024, the sentence of the petitioners was directed to be suspended, subject to deposit of 20% of the compensation amount by way of FDR within sixty days from the date of passing of the aforesaid order. An application to reduce the compensation amount preferred on behalf of petitioners was further dismissed vide order dated 06.09.2024 observing that the said application has already been dismissed as withdrawn.

5. Learned counsel for the petitioners submits that an FDR for a sum of Rs.10 lakh has already been submitted by the petitioners before the learned Appellate Court and since the assets of the convict Company are in possession of the Official Liquidator, as the liquidation proceedings have been commenced against the Company, petitioners are not in a position to deposit 20% of the compensation amount as directed by the learned Appellate Court.

Reliance is further placed on ***Surinder Singh Deswal @ Colonel S.S. Deswal & Ors. v. Virender Gandhi***, 2019 (11) SCC 341 and ***Jamboo***



Bhandari vs. Madhya Pradesh State Industrial Development Corporation Ltd. & Ors., 2023 (10) SCC 446.

6. On the other hand, learned counsel for respondent No.2 opposes the petition and submits that the petition is not maintainable since the deposit of 20% of the compensation amount has been directed by the learned Appellate Court in terms of Section 148 NI Act.

7. The observations made by the Hon'ble Apex Court in para 6 in ***Jamboo Bhandari vs. Madhya Pradesh State Industrial Development Corporation Ltd. & Ors. (supra)*** are apt to be noticed and may be beneficially reproduced:

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I. 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.”

In view of above, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposition of the condition of deposit of 20% of fine amount or lesser amount may be directed if the case so warrants. The deposit of minimum of 20% of the compensation amount as such is not an absolute rule which does not accommodate any exception.

8. A mere perusal of the application preferred on behalf of petitioners for reduction of deposit of the compensation amount reflects that it is pleaded before the Appellate Court that the assets of the company are under



liquidation and in possession of the Official Liquidator. As such, the case of the petitioners falls within an exceptional circumstance and in case the prayer is not accepted, the right of appeal would be negated.

9. This Court is of considered opinion that an exceptional circumstance is carved out by the petitioners for reduction of deposit of compensation amount. Order dated 22.04.2024 and 06.09.2024 passed by the learned Appellate Court insisting upon deposit of 20% of the compensation amount is accordingly set aside and appeal is directed to be taken up for hearing, subject to deposit of 10% (i.e. Rs.10 lacs) of the compensation amount, which is stated to have already been deposited by petitioners, before the learned Appellate Court.

In the facts and circumstances, to ensure the disposal of appeal within a reasonable period, petitioners shall not seek an adjournment before the learned Appellate Court.

Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to the learned Trial Court for information and compliance.

ANOOP KUMAR MENDIRATTA, J

OCTOBER 22, 2024/v