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

\+ CRL.M.C. 2654/2024, CRL.M.A. 10111/2024 & CRL.M.A. 10113/2024

M/S SHREE LUXMI GREENTECH PVT LTD .....Petitioner

Through: Mr. Durga Dutt & Mr. Pradeep Yadav, Advocates (Through V.C.).

versus

NORTH EAST CENTER FOR TECHNOLOGY APPLICATION AND REACH (NECTAR) .....Respondent

Through: Mr. Rajesh Kumar (Through V.C.).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **16.12.2024**

1. The present petition is filed essentially seeking quashing of the Complaint Case No. 39221/2016 filed by the respondent for the offence under Sections 138 read with Sections 141 and 142 of the Negotiable Instruments Act, 1881 (‘**NI Act**’).

2. The petitioner has also challenged summoning order dated 21.03.2016 wherein summons have been issued against the petitioners.

3. It is the case of the complainant that the petitioner company had obtained financial assistance in the form of a loan of ₹45 lakhs from National Mission on Bamboo Applications (‘**NMBA**’), which was merged and absorbed into the complainant, for setting up of Bamboo Mats and Stick

Manufacturing Unit. A Technology Development Assistance Agreement dated 12.01.2010 was also signed for the said purpose between the petitioner company and Technology Information Forecasting and Assessment Council, through NMBA, whereby the loaned amount was to be repaid in 10 equal installments. Petitioner No. 2 (that is, the Managing Director of the petitioner company) issued post-dated cheques for repayment of each installment. One such cheque was presented on 10.12.2015, however, the same got dishonored and was returned unpaid with the remark– 'Funds Insufficient'. This led to the filing of the subject complaint.

4. The learned counsel for the petitioners submits that the complaint is based on merely conjectures and no material has been brought on record to show any jural relationship between the parties.

5. He submits that the respondent is not the holder in due course of the cheque in question and it is evident from the documents that the petitioner company never entered into any agreement with the respondent.

6. He submits that the cheque in dispute was issued as a surety in favour of NMBA towards its investment and the same has no relation with a legally enforceable debt.

7. He further submits that NMBA has not merged with the respondent and there have been proceedings pending in different Courts in the name of NMBA.

8. *Per contra*, the learned counsel for the respondent submits that the arguments as raised by the petitioners cannot be delved into at this stage.

9. He further submits that the NMBA had been subsumed into the respondent in the year 2012 and

10. At the outset, it is relevant to note that it is open to the Court to quash the complaint and summoning order in exercise of inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973. However, the said power is to be exercised sparingly and only when the accused is able to bring forth such unimpeachable evidence that continuation of proceedings would cause abuse of process of law. This Court has to take caution so as to not stifle legitimate prosecution before the parties have had an opportunity to lead evidence.

11. In the present case, the main thrust of the petitioners is on the fact that the respondent is not the holder in due course of the cheques and that the cheques were issued as sureties.

12. It has been categorically pleaded in the complaint that NMBA has been merged and absorbed in the respondent. It is also pleaded that all the assets and liabilities of NMBA, including the right to recover debts owed to NMBA, have also been vested in and accrued to the respondent as the successor-interest of NMBA.

13. While it is argued on behalf of the petitioners that NMBA could not have merged with the respondent, however, this Court does not consider it apposite to consider a mini trial to adjudicate the said issue.

14. The arguments as raised in the present petition are in the nature of defence and will be adjudicated after the parties have led their evidence.

15. It is pertinent to note that it is not denied that the cheque in dispute had been issued by the petitioners. In such circumstances, quashing of the proceedings would frustrate the ends of justice.

16. It is also relevant to note that the petitioners had previously preferred a similar petition before this Court, being, CRL.M.C.

3389/2019, which was dismissed as withdrawn on 16.07.2019 with liberty to raise all issues before the learned Trial Court at an appropriate time.

17. It is stated that the petitioners had preferred an application seeking recall of the summoning order which has been dismissed by the learned Trial Court by order dated 27.06.2023 by noting that a Magistrate has no power to review its own order.

18. Although a successive petition under Section 482 of the CrPC can be maintained under changed circumstances, however, in the present case, the petitioners have failed to show any such change. Mere filing of an application seeking recall is not a changed circumstance.

19. In view of the aforesaid discussion, this Court finds no reason to quash the Complaint Case No. 39221/2016 or set aside the summoning order dated 21.03.2016.

20. Needless to say, the petitioners are at liberty to raise all arguments before the learned Trial Court.

21. The present petition is dismissed in the aforesaid terms.

22. It is made clear that nothing observed in the present order shall be construed to be an expression of opinion on the merits of the case or affect the proceedings in any matter whatsoever.

AMIT MAHAJAN, J

DECEMBER 16, 2024