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

+ **CRL.L.P. 178/2023 & CRL.M.A. 9048/2023**

PARAS DYES AND CHEMICALS PVT LTDPetitioner

Through: Ms. Kirti Mewar, Advocate.

versus

PIONEER COLORS AND COATINGS PVT LTD AND ORS

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

03.02.2025

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A perusal of Order dated 25.09.2024 passed by the learned Joint Registrar records that respondents Nos.1, 2 and 3 have been served through email and on the WhatsApp Number of respondent No.2 and an Affidavit of service dated 30.04.2024 to the same effect has been filed on behalf of the petitioner.

2. On being queried, Ms. Kirti Mewar, learned counsel appearing on behalf of the petitioner/complainant confirms that the email ID mentioned in the affidavit of service is the official email ID of respondent No.1 company as appearing in the Master Data of the Ministry of Corporate Affairs, Government of India. Learned counsel has handed-up a copy of print-out dated 03.02.2025 of the relevant Master Data. The same is taken on record.



3. Furthermore, the company's Master Data shows respondents Nos. 2 and 3 as Directors of respondent No.1/company beginning 28.06.2000 and 23.10.2001 respectively, and there is no date reflecting that their tenures had ended.
4. In the circumstances, this court is satisfied that the respondents have been duly served. However, no one has appeared on behalf of the respondents even on or after 25.09.2024 *i.e.*, after the date of service on 30.04.2024.
5. Accordingly, respondents Nos.1, 2 and 3 are set *ex-parte*.
6. Ms. Mewar submits, that as detailed in the petition, the default in appearance before the learned Magistrate's court was on the part of lawyers representing the petitioner and the default happened by reason of the omission to record the next date of hearing in the matter, which happened to fall during the period of the then prevailing pandemic.
7. Learned counsel has drawn attention to a copy of the diary of the lawyers' office to show that by reason of inadvertence, the matter did not get noted in the diary on 24.04.2020, which mistake led to the petitioner omitting to appear or be represented before the learned Magistrate on 03 dates of hearing namely, 03.03.2021, 11.01.2022 and 02.08.2022. It is submitted that this omission continued until a representative of the petitioner was following-up on some other cases and discovered that this case had not been followed-up; but in the meantime, the petitioner had failed to appear or be represented before the learned Magistrate on 03 dates of hearing namely, 03.03.2021, 11.01.2022 and 02.08.2022.



8. The record shows that the complaint before the learned Magistrate relates to 03 cheques dated 05.08.2019, 07.08.2019 and 08.08.2019 respectively, in the aggregate sum of Rs. 70,694/-, which cheques were dishonoured and returned *vide* cheque return memos all dated 15.10.2019, citing the reason '*Payment stopped by drawer*'.
9. Considering the fact that the respondents have been proceeded *ex-parte* in the present proceedings; and that the complaint before the learned Magistrate was dismissed only for non-prosecution; and the fact that the respondents ought to be answerable in the matter on merits, this court is persuaded to allow the present petition, thereby setting-aside order dated 02.08.2022 made by the learned Magistrate and consequently restoring the Complaint Case No. 15 of 2020 to the file of the learned Magistrate, to the same stage at which the matter was dismissed for non-prosecution.
10. The learned Magistrate is directed to proceed with the matter from the stage that it was left off, in accordance with law.
11. A copy of this order be sent by the Registry to the registered address and email ID of the respondent No. 1 company expeditiously.
12. This order shall however be subject to the petitioner paying costs of Rs.10,000/ to Friendicoes SECA, No.271 & 273, Defence Colony Flyover Market, Jungpura, New Delhi within 04 weeks.
13. Petitioner is directed to place on record the proof of payment of costs within 01 week thereafter.
14. The Registry is directed to re-list the matter if costs are not paid as directed.



15. The petition stands disposed-of.
16. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 3, 2025/ak