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

% ***Date of Decision: 20th March, 2025***

\+ W.P.(C) 5211/2019

G S C INDUSTRIES .....Petitioner

Through: Mr. Ashim, Advocate.

versus

NORTH DELHI MUNICIPAL CORPORATION .....Respondent

Through: Ms. Sunieta Ojha with Ms. Vasudha, Ms. Priyanka and Ms. Divita, Advocates for MCD
Mr. Dinesh Chandra Tripathi, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

<u>J U D G M E N T</u> ***(oral)***

1. The issue raised in the present petition is very short and precise.

2. The grievance raised in the present petition is with respect to a letter dated 28.09.2018 issued by MCD.

3. The above letter, described as *warrant of distress,* has been issued under Section 156 (1) of Delhi Municipal Corporation Act, 1957 and a demand of Rs. 6,51,256/- has been raised towards Property Tax for the period ending 31.03.2018. It is, also, brought to the notice of the Court by the petitioner that, without prejudice to its rights and contentions, the above said amount was deposited by the petitioner, *albeit*, under protest *vide*

communication dated 20.12.2018 sent to MCD.

4. Let me give a very brief factual matrix of the case.

5. The MCD had come up with a *Property Tax Amnesty Scheme (2016-2017)* and the relief provided under the Scheme, *inter alia,* as under:-

- *"Waiver of 100% Penalty and interest, if up to date payment is made by 28.02.2017.*
- *Waiver of 100% Penalty of 50% Interest, if up to date payment is made by 31.03.2017."*

6. Petitioner company, being owner of Property No. 20 (Palace Cinema), Roshanara Road, wanted to avail the above said *Amnesty Scheme* and issued a cheque for a sum of Rs. 9,89,152/-. Such cheque was duly received by MCD and they, even, issued an acknowledgement, in this regard, on 20.02.2017.

7. Thus, the payment had been made by the petitioner by issuing a cheque drawn on one of its account which it maintained with Oriental Bank of Commerce (now merged with Punjab National Bank) and such cheque No. 093259 was bearing date as 16.02.2017.

8. The above said cheque was sent for realization but it returned unpaid for reason *"refer to drawer"*.

9. As per the communication issued by *Oriental Bank of Commerce* on 05.04.2017 (Annexure A-7), the abovesaid cheque was returned back on 23.03.2017 *due to some technical problem on their part*. Mr. Tripathi, who represents the abovesaid Bank, however, submits that the cheque was, actually, returned on 23.02.2017 instead of on 23.03.2017.

10. It also needs to be highlighted right here that the petitioner, admittedly, deposited the above said amount of Rs. 9,89,152/- with MCD on 02.08.2017 and due acknowledgement, in this regard, was also issued *vide* Receipt No. 89724 by MCD. Thus, admittedly, the amount under said cheque has already been duly deposited with the MCD, *albeit*, on 02.08.2017.

11. Since the above said cheque returned unpaid, the MCD declined the benefit of *Amnesty Scheme* to the petitioner and it was in the abovesaid background that MCD issued the abovesaid *warrant of distress* dated 28.09.2018, thereby asking the petitioner to deposit further sum of Rs. 6,51,256/-, which is towards interest and penalty. Naturally, since MCD did not receive the payment by 28.02.2017, it levied interest and penalty.

12. The grievance of the petitioner is merely to the effect that in order to avail the abovesaid *Amnesty Scheme*, he had, well-in-advance, submitted a cheque with MCD and MCD had even sent the above said cheque for encashment to the Bank and due to some technical reasons, the cheque could not be honoured and was returned and, therefore, in such a situation, the benefit of *Amnesty Scheme*, could not have been denied to him.

13. It also needs to be highlighted that the Bank has filed affidavit and as per the contents mentioned in the affidavit, the cheque was returned unpaid on 23.02.2017. It is also mentioned in the affidavit that the account was freezed on 13.02.2017 on account of non-submission of KYC documents by the concerned account-holder.

14. However, few things need to be noted here.

15. There is no dispute to the fact that on the relevant date i.e. 23.02.2017, when the cheque was presented for encashment, there was sufficient balance in the above said account for honouring the above said cheque. Mr. Tripathi also confirms the same and the petitioner has also submitted a statement of account of its said account which has been duly certified by the Bank as well.

16. When asked, Mr. Tripathi, could not show any communication which might have been sent to the petitioner prior to 13.02.2017 asking the petitioner to make the account KYC-compliant. This Court, cannot, also be unmindful of the fact that, initially, when the communication was sent by the same Bank, it had rather claimed that the cheque was not honoured *on account of technical fault on the part of the bank*.

17. Thus, it is quite obvious that there is nothing to indicate any *malafide* on the part of the petitioner. In order to avail the benefit of the above said *Amnesty scheme*, it issued a cheque which was duly received by MCD on 20.02.2017. The cheque was also, immediately, sent for encashment by MCD and returned dishonoured on account of some technical defect on the part of the Bank.

18. It is also admitted case that the account was having sufficient balance and, therefore, from that angle, the petitioner cannot be blamed for the dishonourment of the cheque.

19. Learned counsel for MCD submits that once the cheque had returned dishonoured, it was rather for the petitioner to have followed up the matter.

20. This Court, though, does find merit in such contention but at the same

time, there does not seem to be any fault on part of the petitioner, either. Moreover, in order to show forth its *bonafide,* it not only deposited the cheque amount of Rs.9,89,152/- with the MCD on 22.02.2017 but also the amount of Rs.6,51,256/-, as sought under *warrant of distress,* on 20.12.2018.

21. Learned counsel for MCD does admit that if the abovesaid cheque had been duly encashed, there was no question of levying any penalty or interest. She submits that, in case, Rs. 9,89,152/- had come to their account, as per the offer given by the MCD under *Amnesty Scheme,* the *warrant of distress,* which is towards interest and penalty, would not have been issued and there was no reason to deny, the benefit of the *Amnesty Scheme*.

22. Keeping in mind the overall facts and circumstances of the present case, this Court, while allowing the petition, orders that instead of directing MCD to return the abovesaid amount of Rs. 6,51,256/-, same be adjusted towards future Property Tax.

23. Since the present order has been passed keeping in mind the peculiar circumstances of the present case, the fact that petitioner had done whatever he could have and the cheque bounced for some technical reasons and the fact that the petitioner deposited the amount with respect to the cheque as well *warrant of distress* of his own, this order shall not be taken as precedent.

24. The petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

MARCH 20, 2025/*sw/SS*