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

% *Date of decision: 23rd November, 2023*

+ **CRL.M.C. 5931/2023 & CRL.M.A. 22290/2023 (Delay)**

NEWTON ENGINEERING AND CHEMICALS LIMITED AND
ORS. Petitioners

Through: Mr. Rajiv Kumar and Mr. Sanjeev
Gupta, Advocates.

versus

UEM INDIA PVT LTD Respondent

Through: Mr. Ravi Prakash and Mr. Astu
Khandelwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

CRL.M.C. 5931/2023

1. The present petition has been filed seeking quashing of complaint under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) filed by the respondent company/complainant against the petitioners/accused.

2. Brief facts resulting in the filing of the present petition are set out below:-

i. The Memorandum of Understanding (MoU) dated 19th June, 2014 was signed between the petitioners and the respondent company towards work

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for Modernization of ETP Plant at the ONGC Urban Plant.

ii. The respondent company was to participate as a technical collaborator and provide its expertise to the petitioner, if the bid and contract of the aforesaid work was awarded by ONGC to the petitioner in pursuance of a tender.

iii. The contract was awarded by the ONGC to the petitioners.

iv. A post-dated cheque dated 23rd June, 2017 of Rs.7,00,000/- was given by the petitioners to the respondent company pursuant to meetings between the representatives of the petitioner no.1 and the respondent company on 17th May and 18th May, 2017.

v. Subsequently, the ONGC terminated contract with the petitioners *vide* letter of termination dated 15th June, 2017.

vi. The petitioners *vide* e-mail dated 21st June, 2017 asked the respondent company not to deposit the aforesaid cheque. However, the respondent company deposited the said cheque.

vi. Since the aforesaid cheque was dishonoured, a complaint under Section 138 of the NI Act was filed by the respondent company in which summons were issued to the petitioners by the learned Magistrate.

3. The main submission of the counsel for the petitioners is that the MoU between the parties contained an arbitration clause, pursuant to which arbitration proceedings have been initiated, the complaint under Section 138 NI Act is not maintainable. It is further submitted that the amount due from the petitioners to the respondent company will be crystalised only upon conclusion of the arbitration proceedings and therefore, the deposit of the cheque by the respondent company was premature.

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4. Counsel appearing on behalf of the respondent company has placed reliance on the judgment of the Supreme Court in *Sri Krishna Agencies v. State of A.P. & Anr.*, (2009) 1 SCC 69, to submit that the arbitration proceedings and proceedings under Section 138 of the NI Act are separate and independent proceedings and both can proceed simultaneously.

5. I have heard the counsels for the parties.

6. The relevant part of the Supreme Court judgment in *Sri Krishna Agencies* (supra) is set out below:-

“4. Mr Adhyaru, learned Senior Counsel appearing in support of the appeal, submitted that the High Court has apparently confused the issue relating to the continuance of the arbitration proceedings as also the criminal proceedings, since when the cheques were dishonoured, a separate liability arose in terms of Section 138 of the Act, whereas the arbitration proceedings were under the agreement signed between the parties. It was submitted by him that the commencement and the continuance of the arbitration proceedings could in no way affect the criminal proceedings taken separately.

*5. In support of his submissions, Mr Adhyaru referred to the decision of this Court in *Trisuns Chemical Industry v. Rajesh Agarwal* where the same question arose in relation to arbitration proceedings taken during the continuance of a complaint filed under Sections 415 and 420 of the Code of Criminal Procedure. In the said decision, it was held that merely because arbitration proceedings have been undertaken, the criminal proceedings could not be thwarted.*

6. On behalf of Respondent 2, the submissions which had been urged before the High Court were reiterated which however appear to be unacceptable having regard to the decision cited by Mr Adhyaru.

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7. *We are also of the view that there can be no bar to the simultaneous continuance of a criminal proceeding and a civil proceeding if the two arise from separate causes of action. The decision in Trisuns Chemical Industry case appears to squarely cover this case as well.*”

7. It is clear from the above that the arbitration proceedings as well as the proceedings under Section 138 of the NI Act arise from separate causes of action and the pendency of the arbitration proceedings would not affect the proceedings under Section 138 of the NI Act. There is no merit in the contention of the petitioners that the complaint under Section 138 of the NI Act is not maintainable in view of the ongoing arbitration proceedings between the parties. Additionally, whether the aforesaid cheque was given as a security or not is something which can only be proved as a matter of defence during trial.

8. There is no merit in the present petition.

9. Accordingly, the present petition is dismissed.

10. All pending application/s stand disposed of.

AMIT BANSAL, J.

NOVEMBER 23, 2023

at

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