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

\+ CRL.M.C. 2038/2022

CAPSTECH NETWORK PVT LTD & ORS. ..... Petitioners

Through: Mr. A. M. Sinha, Adv.

versus

STATE GOVT. OF NCT OF DELHI AND ANR. ..... Respondents

Through: Mr. Amit Sahni, APP for the State with SI Ashish Kumar, PS Okhla Indus. Area.
Mr. Rajeev Aggarwal, Mr. Pratik Badhwar, Advs.
Mr. Yogender Pal Singh, Officail Liquidator for R-2.

% ***Date of Decision: 12th December, 2022***

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. This is a petition under Section 482 Cr. PC for quashing of FIR No. 173/2017 PS Okhla Industrial Area, New Delhi under Section 420/406/120-B/34 IPC.

2. The complaint-FIR was lodged by M/s Global Infonet Distribution Pvt. Ltd alleging therein that accused persons represented themselves as Director of CAPSTECH Network Pvt. Ltd. and offered to purchase Samsung Mobile Phone from the complainant company and agreed to make prompt payment as per the terms of the company and also assured interest on delayed payments.

3. The commercial transactions took place between the complainant company and the accused persons against the invoices. It was alleged that initially the accused persons made the payments and gained faith of the company. However later on an order for purchase of 2000 pieces of Samsung Mobile Handset S-Duos-2 amounting to Rs.1,56, 96,000/- was placed. The complainant's company alleged that the supplies were made vide two invoices dated 26th June, 2014 and 30th June, 2014 as per purchase order. It was further alleged that the accused persons did not comply with the terms and conditions and after persistent demand, a cheque of Rs.48,82,147/- was issued towards settlement of dues and interest. However, this cheque was dishonored with the remarks "Payment Stopped by Drawer".

4. The complainant alleged that the said cheque was issued with *mala fide*, fraudulent and dishonest intention. A compliant under Section 138 NI Act was also filed. On this compliant an FIR No. 173/2017 was lodged PS Okhla Industrial Area, New Delhi under Section 420/406/120-B/34 IPC.

5. Learned counsel for the petitioner submits that subsequently, the complainant company went into liquidation through NCLT in

company petition No. 712(ND)/2019 titled as IBM India Pvt. Ltd. v. Global Infonet Distribution Pvt. Ltd. The said application was admitted by Tribunal on 3rd March, 2020 initiating corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and therein, appointed Mr. Yogender Pal Singhal as the Interim Resolution Professional (IRP) as a liquidator in terms of the Section 32 (1) The Insolvency and Bankruptcy Code, 2016.

6. Learned counsel for the petitioner further submits that subsequently, a settlement agreement was entered into at Delhi High Court Mediation and Conciliation Centre dated 7th March, 2022. The complainant company was represented by Sh. Yogender Pal Singhal, Liquidator. In the said agreement it was *inter alia* settled as under:

> *1. The First Party and Second Party have agreed to amicably settle all their disputes for a full and final settlement amount of Rs.31,64,100/- (Rupees Thirty One Lakh Sixty Four Thousand One Hundred only) i.e. approximately 70% of principal amount of Rs. 45,20,147/-which will be paid by First Party to the Second Party, in the following manner.*
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> *2. At the time of signing this settlement agreement by both the parties, the First Party has paid the 50% of the total settlement amount i.e. Rs.15,82,050/- (Rupees Fifteen Lakh Eighty Two Thousand Fifty Only) through demand draft no.755851 dt. 04-03-2022 to the Second Party, receipt of which is acknowledged by the Second Party.*
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> *3. That the parties herein shall jointly file a Petition before the Hon'ble High Court of Delhi for Quashing the FIR No.173/2017, Police Station Okhla Industrial Area New Delhi within 15 days of the signing of the present Settlement Agreement and the First Party shall pay the balance 50% of the settlement amount i.e (Rs.*

15,82,050/-) to the Second Party through Demand Draft at the time of quashing of the above said FIR.

4. In the event, the quashing petition is not filed jointly within the stipulated period as agreed upon, the parties shall move appropriate application for passing of consent decree in the Counter-claim bearing No. 756/2021 titled. M/s Global Infonet Distribution Pvt. Ltd. vs. M/s Capstech Network Pvt. Ltd. as before Ld. ADJ for the settled amount of Rs.15,82,050/- (Rupees Fifteen Lakh Eighty Two Thousand Filly Only).

5. The First Party undertakes to withdraw unconditionally Civil Suit No. No. 471 of 2016, M/s. Capstech Network Pvt. Ltd. Vs. M/s Global Infonet Distribution Pvt. Ltd. pending before Ld. ADJ, Saket Court, and shall also withdraw the cases bearing Nos. CM(M) 519/2019 & CRL.M.C. 3404/2019 titled as M/s Capstech Network Pvt. Ltd. Vs. M/s Global Infonet Distribution Pvt. Ltd. both are pending before the Hon'ble Delhi High Court.

6. The Second party undertakes to withdraw the Criminal complaint No.18145/2016 under Section 138 NI Act, titled as M/s Global Infonet Distribution Pvt. Ltd. vs. M/s Capstech Network Pvt. Ltd. on the next date of hearing, before the Ld. M.M., Tis Hazari Courts, Delhi.

7. This Settlement shall be applicable and binding to on all directors of MIS. CAPSTECH NETWORK PVT. LTD.

8. That the above said settlement amount is a full and final settlement of all the disputes between the First Party, Second Party and any other person named in the complaint for the transactions between the parties till date and there would be no dues and claims of either party against each other towards any interest, cost, incentives, damages or on any other account.

7. Learned counsel for the respondent No.2 company today, has handed over a cheque of Rs.15,82,050/- drawn on Punjab & Sind Bank dated 10th December, 2022.

8. Both the parties submit that other proceedings have also been settled in terms of the settlement agreement.

9. In the case of ***Yashpal Chaudhrani and Others vs. State (Govt. of NCT Delhi) and Another***, 2019 SCC OnLine Del 8179, while examining the scope of Section 482 Cr.P.C inter alia held as under:

> *55. Though the above-noted authoritative pronouncements of the Supreme Court have consistently laid down the broad principles governing the exercise of power of the High Court under Section 482 of the Cr. PC for bringing an end to the criminal process, for addressing the concerns noted at the outset and future guidance of trial courts, some of the crucial ones may be flagged as under:—*
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> *(i). The inherent jurisdiction vested in the High Court, as recognized and preserved by Section 482 Cr.PC, is primarily to "prevent abuse of the process of court" or to "otherwise secure the ends of justice".*
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> *(ii). The ends of justice are higher than the ends of mere law, the prime principle governing the exercise of inherent power being "to do real, complete and substantial justice" for which the court exists.*
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> *(iii) It is the duty of the court to give "adequate treatment to the settlement between the parties" particularly in cases involving compoundable offences, the exercise of inherent power of the High Court under Section 482 Cr.P.C., however, not being inhibited in case of non-compoundable offences though, for the latter category, such power is to be "exercised sparingly and with caution".*

(iv). If the criminal case has "overwhelmingly and predominantly civil character", particularly if it arises out of "commercial" (financial, mercantile, partnership or such other) transaction - and this would include the "cheque bouncing cases" under Section 138 N.I. Act - or "matrimonial dispute" or "family dispute", genuine resolution on equitable terms, in entirety, by the parties should result in criminal proceedings being quashed.

(v). Since the institution of marriage has an important role to play in the society, the court is to make every effort to encourage the parties to terminate such discord amicably and if it appears that elements of settlement exist, and the parties are willing, they are to be directed to the process of mediation to explore the possibility of settlement, it being desirable to do so even at the "pre-litigation stage".

(vi). While examining the prayer for quashing of a non compoundable offence, on the basis of settlement of the dispute between the wrongful doer and the victim, the High Court is to bear in mind as to whether the possibility of conviction is "remote and oblique" and further, if the continuation of the criminal case would lead to "oppression and prejudice" or "extreme injustice" for the accused.

(vii). The considerations which would weigh with Court include the antecedents of the accused, possible lack of bona fides, his past conduct and that includes the question as to whether he had earlier absconded and as to how he had managed with the complainant to enter into a compromise.

(viii). But, the High Court, when called upon to exercise the power under Section 482 Cr. PC to bring the criminal case to an end on the basis of settlement, must steer clear of intervention in "heinous" or "serious" offences, including those involving "mental depravity", as indeed "economic offences" affecting "the

financial and economic well being of the State", such as murder, attempt to murder, extortion, forgery, rape, dacoity, financial or economic frauds, cases under Arms Act, etc., the reason being that such offences are "not private in nature" but have "a serious impact upon society", and continuation of trial thereof is essential due to "overriding element of public interest".

(ix). The court, however, is not to go by mere use of label of a serious offence (e.g. offence under Section 307 IPC), it being open to it to examine, by scrutiny of the evidence gathered, to find as to whether there are sufficient grounds to frame charge for such offence and, in this view, it being "not permissible" to intervene till the matter has been properly investigated."

10. The present case predominantly arises out of commercial transaction. Except the commercial transaction, there does not seem to be any other dispute between the parties. This dispute only has led to various litigations between the parties. In the commercial world, it is always better and desirable that the disputes are settled amicably. There is nothing on the record to suggest that there is any element of force or coercion. Hence, there is no reason to not to act upon the settlement.

11. Learned counsel for the petitioner has stated at Bar that as per instructions from his client there is sufficient balance in the clients account to honor the cheque issued to the respondent No.2.

12. Petitioner has undertaken that there is sufficient balance in the account for the cheque issued.

13. In view of the statement made by the petitioner as well as petitioner the FIR No. 173/2017 PS Okhla Industrial Area, New Delhi under

Section 420/406/120-B/34 IPC and all the proceedings emanating therefrom are quashed.

14. Accordingly, the present petition stands disposed of.

DINESH KUMAR SHARMA, J

DECEMBER 12, 2022
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