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

103

+ CRL.M.C. 1073/2024

RAHEJA DEVELOPERS LIMITED & ANR. Petitioners
Through: Mr. Mohit Mathur, Senior Advocate
with Mr. Rajesh Chugh and Mr. Deepak Goel,
Advocates.

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Digam Singh Dagar, APP for
State.
Mr. Arun Vohra, Advocate for R-2.

104

+ CRL.M.C. 1074/2024

RAHEJA DEVELOPERS LIMITED & ANR. Petitioners
Through: Mr. Mohit Mathur, Senior Advocate
with Mr. Rajesh Chugh and Mr. Deepak Goel,
Advocates.

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Digam Singh Dagar, APP for
State.
Mr. Arun Vohra, Advocate for R-2.

105

+ CRL.M.C. 1075/2024

RAHEJA DEVELOPERS LIMITED & ANR. Petitioners
Through: Mr. Mohit Mathur, Senior Advocate
with Mr. Rajesh Chugh and Mr. Deepak Goel,
Advocates.

versus



STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Digam Singh Dagar, APP for
State.

Mr. Arun Vohra, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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09.02.2024

CRL.M.A. 4262/2024 (Exemption) in CRL.M.C. 1073/2024

CRL.M.A. 4264/2024 (Exemption) in CRL.M.C. 1074/2024

CRL.M.A. 4266/2024 (Exemption) in CRL.M.C. 1075/2024

1. Allowed, subject to all just exceptions.

2. Applications stand disposed of.

CRL.M.C. 1073/2024 & CRL.M.A. 4261/2024 (stay)

CRL.M.C. 1074/2024 & CRL.M.A. 4263/2024 (stay)

CRL.M.C. 1075/2024 & CRL.M.A. 4265/2024 (stay)

3. CRL.M.C. 1073/2024 is a petition filed on behalf of the Petitioners under Section 482 Cr.P.C. for setting aside order dated 19.12.2019 passed by learned Magistrate in Complaint Case No. 42389/2019 filed by second Respondent under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') qua the Petitioners along with order dated 31.05.2023 passed by learned M.M. allowing the application under Section 143A of NI Act. Petitioners also assail the order dated 03.02.2024 passed by learned M.M., NI Act whereby the Court has directed issuance of NBWs against Petitioner No. 2 as well as directed attachment.

4. CRL.M.C. 1074/2024 is a petition filed on behalf of the Petitioners under Section 482 Cr.P.C. for setting aside order dated 19.12.2019 passed



by learned Magistrate in Complaint Case No. 42452/2019 filed by second Respondent under Section 138 of the NI Act qua the Petitioners along with order dated 31.05.2023 passed by learned M.M. allowing the application under Section 143A of NI Act. Petitioners also assail the order dated 03.02.2024 passed by learned M.M., NI Act whereby the Court has directed issuance of NBWs against Petitioner No. 2 as well as directed attachment.

5. CRL.M.C. 1075/2024 is a petition filed on behalf of the Petitioners under Section 482 Cr.P.C. for setting aside order dated 19.12.2019 passed by learned Magistrate in Complaint Case No. 42864/2019 filed by second Respondent under Section 138 of the NI Act qua the Petitioners along with order dated 31.05.2023 passed by learned M.M. allowing the application under Section 143A of NI Act. Petitioners also assail the order dated 03.02.2024 passed by learned M.M., NI Act whereby the Court has directed issuance of NBWs against Petitioner No. 2 as well as directed attachment.

6. Mr. Mohit Mathur, learned Senior Counsel appearing on behalf of the Petitioners submits that as per the law laid down by the Supreme Court in ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel and Another, (2023) 1 SCC 578***, there must exist a legally enforceable debt on the date mentioned in the cheque, which is the date of maturity. Learned MM has failed to appreciate while issuing the impugned directions that there existed no legally enforceable debt at the time of presentation of cheques or filing and institution of the complaints as there was an embargo of Section 14 of the Insolvency and Bankruptcy Code, 2016 ('IBC'). When the cheques in question were presented by Respondent No.2, Petitioner company was before the NCLT, which had initiated insolvency proceedings against the Petitioner company vide its order dated 20.08.2019 and admittedly, the



cheques were dishonoured post the said date. An application was filed on behalf of Petitioner No.2/Accused No.2 bringing to the notice of the Court that vide order dated 05.12.2023, NCLT had appointed a Resolution Professional namely, Sh. Rajendra Prasad Tak qua Petitioner No.2 and an application in this regard was filed in terms of provisions of Section 96 of IBC, which was taken on record and perused, which the impugned order itself indicates. Despite these glaring facts, learned MM has issued NBWs and attachment orders against Petitioner No.2, who is undergoing individual insolvency proceedings and on this ground alone, impugned orders dated 03.02.2024 cannot be sustained in law.

7. Issue notice.
8. Learned APP accepts notice on behalf of the State.
9. Mr. Arun Vohra, learned counsel accepts notice on behalf of Respondent No. 2.
10. Reply be filed by Respondent No. 2 before the next date of hearing.
11. In my view, the issues raised by the Petitioners require consideration in light of the IBC proceedings pending against the Petitioners. Till the next date of hearing, operation of the impugned orders dated 03.02.2024 shall remain stayed qua Petitioner No. 2.
12. List on 11.03.2024.

JYOTI SINGH, J

FEBRUARY 09, 2024/shivam