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

+ **CRL.M.C. 1324/2023**

KHUSHIYA INDUSTRIES PVT LTD & ORS. Petitioners

Through: Mr. Rajul Shrivastav, Mr. Anubhav Sharma and Mr. Mohit D. Ram, Advocates.

versus

THE STATE (GOVT OF NCT OF DELHI) & ORS. Respondents

Through: Mr. Satinder Singh Bawa, APP for the State.
Mr. Kunal Sabharwal, Mr. Deepak Mahajan, Mr. Raghav Mittal and Ms. Aishwarya Parashar, Advocates for R-2.
Mr. Ripu Daman Bhardwaj, SPP with Ms. Aakriti Roy, Advocate for CBI.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **24.02.2023**

CRL.M.A. No. 5056/2023 (Exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

CRL.M.C. 1324/2023 & CRL.M.A. No. 5057/2023

By way of the present petition under section 482 of the Code of Criminal Procedure 1973, the petitioners seek quashing of criminal complaint bearing CC No. 579/2022 and setting-aside of summoning



order dated 25.07.2022 made by the learned Metropolitan Magistrate in that matter.

2. Petitioners Nos. 2 and 3 are described as ‘directors’ of petitioner No.1/company, and the subject cheque for Rs.96,20,000/- was issued on the company’s account, in favour of respondent No. 2.
3. Mr. Rajul Shrivastav, learned counsel appearing for the petitioners submits that the date of 30.09.2021 on the cheque was put by respondent No. 2; and the cheque was returned unpaid on 05.11.2021 *after* an Interim Resolution Professional (‘IRP’) had already been appointed in relation to petitioner No. 1 company on 28.09.2020, under the Insolvency & Bankruptcy Code, 2016.
4. At the outset, it is noticed that the State has been impleaded as party-respondent No. 1 in the present matter. However, since the matter arises from a private criminal complaint, respondent No. 1/State has no role in the matter. Respondent No. 1 is accordingly deleted from the array of party-respondents. Let amended memo of parties be filed within 07 days.
5. Counsel submits that, in fact, a public notice inviting claims had already been put-out by the IRP on 01.10.2020 but petitioner No. 2 did not prefer any claim.
6. That apart, counsel submits that petitioners Nos. 2 and 3 were neither directors of petitioner No. 1/company on the date when the cheque was handed-over in 2015 as ‘security’ towards a loan; nor were they directors on the date when the cheque was dishonoured.
7. Upon a *prima-facie* conspectus of the averments contained in the petition and the submissions made, issue notice.



8. Mr. Kunal Sabharwal, learned counsel appears on behalf of respondent No. 2; accepts notice; and seeks time to file reply.
9. Let reply be filed within 06 weeks; rejoinder thereto, if any, be filed within 04 weeks thereafter; with copies to the opposing counsel.
10. Re-notify on 11th July 2023.
11. The petitioners have been summonsed to appear before the learned Metropolitan Magistrate on 25.02.2023.
12. Upon an overall consideration of the matter, *without staying proceedings* in the criminal complaint, the personal presence of petitioners Nos. 2 and 3 before the learned Magistrate is exempted, till the next date of hearing in this court.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 24, 2023/uj