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

+ CRL.M.C. 5633/2024 & Crl. M.A. 21501/2024

MOMENTUM SOLUTIONS PVT LTD & ORS.Petitioners

Through: Mr. Rishi Bhuta and Mr. Saurabh
Soni, Advocates

versus

HERO FINCORP LTDRespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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03.02.2025

1. The present petition has been filed under Section 528 BNSS, 2023 against the impugned order dated 18.12.2021 passed by the learned Metropolitan Magistrate (N.I. Act) Digital Court-01, South, Saket Courts, New Delhi in CC NI Act 74/2021 titled as '*Hero Fincorp Ltd. Momentum Solution Private Limited*', whereby the present petitioners who have been arraigned as an accused in the complaint case under Section 138 of the N.I. Act were summoned to stand the trial.

2. The revision petition preferred by the present petitioners against the said impugned order came to be dismissed *vide* impugned order dated 09.04.2024 by the learned District & Sessions Judge (South), Saket Courts, New Delhi.

3. Learned counsel appearing for the petitioners submits that since all the three accused in the present case i.e. the company as well as its two



directors are resident of Mumbai (Maharashtra). Therefore, the learned Magistrate ought to have held an inquiry under Section 202 Cr.P.C. before proceeding to take cognizance.

4. In support of his submissions, he has placed reliance on the Constitution Bench of the Hon'ble Supreme Court in ***Re: Expeditious Trial of Cases under 138 of NI Act, 1881 – Suo Moto W.P. Crl. 2 of 2020, (2021) 16 SCC 116*** as well as ***Vishwakalyan Multistate Credit Co Op Society Ltd. V. Oneup Entertainment Pvt. Ltd. 2023 SCC Online SC 1749.***

The relevant extract from the ***Vishwakalyan*** (*supra*) reads as under:

3. The appellant is the complainant in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for short “the NI Act”). On 26th June, 2021, the Judicial Magistrate issued process on the complaint. By the impugned judgment, the High Court has held that as the respondent was having its office outside the jurisdiction of the Court of the learned Magistrate, it was necessary for the learned Magistrate to hold an inquiry under Section 202 of the Criminal Procedure Code, 1973 (for short “the CrPC”). In paragraph 15 of the impugned judgment, the High Court held that for non-compliance with the mandate of Section 202 of the CrPC, the order issuing process is illegal. Therefore, the High Court has proceeded to set aside the order issuing process. However, no further direction was issued by the High Court to the learned Judicial Magistrate to hold an inquiry under Section 202 of the CrPC.

4. We may note here that as far as complaints under Section 138 of the NI Act are concerned, this Court in Suo Motu Writ Petition (Criminal) No. 2 of 2020 in the case of “In Re : Expeditious Trial of Cases Under Section 138 of N.I. Act, 1881” has laid down the guidelines. In clause (3) of paragraph 24 of the said decision, the Constitution Bench has directed as under:

“3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents



without insisting for examination of witnesses.”

5. *We, therefore, modify the impugned judgment and direct the Trial Court to proceed from the stage of Section 202 of the CrPC. While doing so, the learned Magistrate will be guided by the direction issued by the Constitution Bench which is reproduced above.”*

5. In view of the above, issue notice to the respondent by all permissible modes returnable on 19.05.2025.

6. Having regard to the fact that this Court is seized of the matter, learned trial court is directed to defer the trial proceedings to a date after the next date fixed before this Court.

VIKAS MAHAJAN, J

FEBRUARY 3, 2025

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