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

\+ CRL.M.C. 5393/2025, CRL.M.A. 23208/2025 & CRL.M.A. 23209/2025

M/S DIGIHIVE SOLUTIONS PVT LTD .....Petitioner

Through: Mr. Rohan Jaitley, Mr. Akshay S harma and Mr. Dev Pratap Shahi, Advs.

versus

M/S SUPERWAVE COMMUNICATION AND INFRASOLUTION PVT LTD & ANR. .....Respondents

Through: Mr. Rajat Wadhwa, Mr. Sahil Kakkar, Mr. Gurpreet Singh and Mr. Manish Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

O R D E R

% **11.08.2025**

CRL MA 23209/2025 (exemption)

1. Exemption allowed, subject to just exceptions.

2. This application is disposed of.

CRL.M.C 5393/2025 & CRL M.A 23208/2025 (stay)

3. The present petition under Section 528 of the Bharatiya Nyayaya Sanhita, 2023, has been filed against impugned order dated 16.04.2024 passed by the learned ASJ, Saket Courts, in CA 125/2025, whereby conviction order dated 18.02.2025 and order on sentence dated 18.03.2025 were stayed, and the sentence of the respondent was suspended without directions for a deposit as contemplated within Section 148 of the Negotiable Instruments Act, 1881.

4. The brief facts relevant to the adjudication of the present dispute are that the petitioner was the complainant before the Court of JMFC (NI Act), Saket, for a default by the respondent in connection with a purchase order. The petitioner had supplied material to the respondent, who took delivery without raising objection, and did not honour payment for goods received.

5. In this regard, ₹54,00,000/- was paid in two tranches of ₹44 lakh and ₹10 lakh *on* 08.04.2021 and 17.06.2021 respectively. Post this, a sum of ₹54,12,869 lakh remained payable, for the discharge of which a cheque dated 28.07.2021 was issued by the respondent in favour of the petitioner. It was this cheque that came to be dishonoured, forming the basis of proceedings under Section 138.

6. During the pendency of proceedings, an application under Section 143A was filed by the petitioner. While adjudicating this application, the learned Metropolitan Magistrate, Saket Court, directed the respondent to make a deposit of 20% of the cheque amount *vide* order dated 25.07.2023 on account of the petitioner being able to prove a *prima facie* case against the respondent, as well as the presumption under Section 139 operating in favour of the petitioner. This order was challenged before the learned Sessions Court, where it was upheld *vide* order dated 09.02.2024.

7. The learned JMFC while concluding trial, *vide* order dated 18.02.2025, found the respondent guilty of committing an offence under Section 138 of the NI Act on the grounds that the presumption under Section 139 of the Act stood unrebutted. A month later, *vide* order dated 18.03.2025, the respondent was sentenced to pay a fine of ₹86,67,738/- along with simple interest at the rate of 9% per annum. The Court also went on to suspend the respondent's sentence for a period of one month on the condition of furnishing of bail bonds of ₹50,000, in consideration of the offence being bailable in nature, to allow the respondent to prefer an appeal.

8. These two orders were challenged by the respondent through CA 125/2025 before the learned ASJ, Saket Court, who *vide* order dated 16.04.2025, suspended the respondent's sentence and admitted the respondent to bail, listing the matter on 19.04.2024 for furnishing of bail bonds. Bail bonds were furnished by the respondent and accepted by Court *vide* order dated 19.04.2025, where notice was issued for 13.08.2025.

9. Mr. Rohan Jaitley, learned Counsel for the petitioner, draws this Court's attention to para 4 of the impugned order, arguing that it formed the basis for the learned ASJ to stay judgment dated 18.02.2025 and order on sentence dated 18.03.2025, as well as suspend the respondent's sentence. Considering its brevity, the impugned order is reproduced in its entirety for ready reference:

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1. Criminal Appeal u/s 415(3) BNSS has been filed on behalf of appellant against the impugned judgment and order on sentence dated 18.02.2025 and 18.03.2025 respectively, passed by Ms. Anjali Singh, Ld. JMFC, SED, Saket Courts, whereby the appellant was convicted and sentenced to pay a fine of Rs. 86,67,738/- to the complainant/respondent as compensation and in default, convict/appellant would undergo simple imprisonment for a period of 6 months.
2. An application u/s 430 BNSS for suspension of sentence and releasing the appellant on bail till pendency of appeal is also on record.
3. Submissions heard on the present application.
4. Ld. Counsel for the appellant submitted that a sum of Rs. 10,80,000/- has already been paid to the complainant in term of the order dated

25.07.2023 for interim compensation to the extent of 50% of the cheque amount.

5. Heard. Record perused.
6. Thus, impugned judgment dated 18.02.2025 and order on sentence dated 18.03.2025 shall remain stayed till the pendency of present Criminal Appeal.
7. Appellant is hereby admitted to bail, upon his furnishing personal bond with surety bond of Rs. 50,000/-.
8. Accordingly, the application u/s 430 BNSS for suspension of sentence and releasing the appellant on bail till pendency of appeal is hereby disposed of.
9. At this stage, Ld. Counsel for the appellant submits that since the appellant has gone out of station, he sought a short adjournment in the matter.
10. At request of Ld. Counsel for the appellant, be put up again for furnishing of bail bond on 19.04.2025 at 11:00 AM."

10. Mr. Jaitley submits that the amount which is payable under Section 143A is separate and distinct from that which may be payable under Section 148, and that the former is to be directed at a pretrial stage, while the latter concerns the stage of appeal.

11. To buttress his submissions, he relies upon the judgments of the Hon'ble Supreme Court in ***Jamboo Bhandari v M.P. State Industrial Development Corporation Ltd., (2023) 10 SCC 446,*** and ***Muskan Enterprises v State of Punjab***, ***2024 SCC OnLine SC 4107***, also highlighting the *proviso* contained within Section 148 to state that an amount paid on directions issued under Section 143A can't be accounted for in a deposit that has been directed under Section 148.

12. Thereafter, relying upon ***Jamboo Bhandari*** and ***Muskan Enterprises***, Mr. Jaitley sought to persuade this court that a deposit under Section 148 is normally sought for, and that it is only when exceptional circumstances are made out that the same may be waived. He also states that it is in an application for suspension of sentence made at the time of appealing an order of conviction which must contain reasons as to why the applicant's case is exceptional and warrants a waiver of the deposit as contemplated under Section 148.

13. Mr. Jaitley then also relies on the aforementioned judgments to argue that the words "*may*" and "*shall*", as contained in both Section 143A as well as Section 148, must not be interpreted the same way in a reading of both provisions, and that the deposit contemplated in Section 148 is mandatory in nature while that which is contained in Section 143A is discretionary in nature.

14. Concluding his arguments, Mr. Jaitley submits that the facts pertaining to the present dispute do not fall into the category of an "*exceptional case*" by any measure, and that, above and beyond this, the impugned order did not substantiate its directions with any findings or reasoning. Besides a waiver of the deposit to be made under Section 148, Mr. Jaitley argues that the impugned order, whereby conviction order dated 18.02.2025 and order on sentence dated 18.03.2025 were stayed, was erroneous to the extent that it was passed in the absence of the petitioner. In fact, he points out, the learned ASJ went on to stay these orders on 16.04.2025 without hearing arguments on the merits of the case, and only later, *vide* order dated 19.04.2025, issued notice to the petitioner.

15. Mr. Rajat Wadhwa, learned Counsel for the respondent who appears on advance notice, sought to defend the discretion exercised by the learned ASJ in passing the impugned order. He submits that the Hon'ble Supreme Court's decisions in ***Jamboo Bhandari*** and ***Muskan Enterprises*** do not speak of a mandatory deposit with respect to Section 148 of the Act, and that an application for waiver of such a deposit is not required. To this effect, he draws the Court's attention to para 7 of the decision in ***Jamboo Bhandari***.

16. Mr. Wadhwa also submits that the reasoning to this effect is contained in para 8 of the impugned order, and the Court's decision to suspend the respondent's sentence without an order directing a deposit under Section 148 is because it rightly considered the payment of 20% of the cheque amount at the stage of Section 143A which had been directed *vide* order dated 25.07.2023.

17. Pressing on, Mr. Wadhwa counters Mr. Jaiteley's case in an attempt to persuade this Court that bail might have been granted without hearing the petitioner, but that fact would not be of material significance, as the offence in question is bailable and an appeal against a sentencing order is a statutory right.

18. Before delving into the merits of arguments advanced, it would be proper that Section 143A and Section 148 stand reproduced for ready reference:

> "**143A**. Power to direct interim compensation.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—
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> (a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
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> (b) in any other case, upon framing of charge. (2) The interim compensation under sub-section (1) shall not exceed twenty per cent. of

the amount of the cheque. (3) The interim compensation shall be paid within sixty days from the date of the order under subsection (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.]"

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"**148.** Power of Appellate Court to order payment pending appeal against conviction.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

19. In reliance upon these provisions, specifically the first *proviso* contained within Section 148, Mr. Jaitley argues that the learned ASJ did not exercise his discretion for waiver of the deposit under this section as no reasoning has been recorded to this extent. Refuting this, Mr. Wadhwa submits that the acceptance of the respondent's application for suspension of sentence was in itself an acceptance of the reasons contained therein, constituting a valid exercise of discretion by the Court to waive such deposit.

20. After a thorough reading of the first *proviso* contained within Section 148, the impugned order, *prima facie,* appears to suffer from an infirmity. In light of this, the impugned order is stayed in part- to the extent of waiver of the deposit stipulated under Section 148. However, the grant of bail to the respondent shall remain undisturbed.

21. CRL M.A 23208/2025 stands allowed on the aforesaid terms.

22. Issue notice in CRL.M.C 5393/2025. Notice is accepted on behalf of the respondent by Mr. Wadhwa.

23. Reply be filed within two weeks. Rejoinder, if any, be filed within four weeks thereafter.

24. List on 06.11.2025.

AJAY DIGPAUL, J

AUGUST 11, 2025/ar/av