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## **PENDENCY OF ARBITRATION DOES NOT IMPAIR THE MAINTAINABILITY OF PROCEEDINGS UNDER THE NEGOTIABLE INSTRUMENTS ACT, 1881**

### **A. Introduction**

The Delhi High Court (“**HC**”), in *Newton Engineering And Chemicals Limited And Ors.* case<sup>1</sup>, held that the pendency of the arbitration proceedings does not render the proceedings under the Negotiable Instruments Act, 1881 (“**NI Act**”) non-maintainable, since each of the proceedings arise from separate causes of action.

### **B. Brief Facts**

1. A Memorandum of Understanding (“**MOU**”) was signed between Newton Engineering And Chemicals Limited (“**Newton**”) and UEM India Private Limited (“**UEM**”) for technical collaboration in relation to modernisation of an effluent treatment plant at an Oil and Natural Gas Corporation (“**ONGC**”) plant.
2. The performance of the MOU was subject to Newton being awarded the contract by ONGC.
3. The tender bid of Newton was declared successful and the contract was awarded to it by ONGC (“**Contract**”). Consequently, post dated cheques (“**PDCs**”) for certain amounts were submitted to UEM by Newton pursuant to certain meetings between them.
4. Thereafter, the Contract was terminated by ONGC.
5. Newton sought UEM to not proceed with encashing the PDCs. However, UEM deposited the PDCs and they were returned as ‘dishonoured’.
6. A complaint under Section 138 of the NI Act was filed by UEM against Newton pursuant to dishonouring of the PDC (“**Complaint**”) and the Magistrate issued summons to Newton and other petitioners (“**Petitioners**”).
7. Petitioners approached the HC by invoking its inherent jurisdiction under the Code of Criminal Procedure, 1973 (“**CrPC**”)<sup>2</sup> praying for the relief that the Complaint be quashed.

### **C. Petitioners Contentions**

1. The MOU contained an arbitration clause and arbitration proceedings were already initiated and thus, the Complaint is not maintainable.

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<sup>1</sup> *Newton Engineering and Chemicals Limited and Others v. UEM India Pvt. Ltd.*, 2023 SCC OnLine Del 7464 (“**Judgment**”)

<sup>2</sup> See Section 482 of the CrPC providing for saving of inherent powers of High Court.

2. The amount due from Newton can only be crystallised upon conclusion of the arbitration proceedings and therefore, the deposit of the PDCs was premature.

#### **D. UEM's Contentions**

It relied on the judgement of the Supreme Court (“**SC**”) in *Sri Krishna Agencies*<sup>3</sup> case wherein the SC held “[t]he arbitration proceedings and proceedings under Section 138 of the NI Act are separate and independent proceedings and both can proceed simultaneously ....”

#### **E. HC's Judgement and Reasoning**

The HC, relying on the *Sri Krishna Agencies* case, dismissed the petition ruling that there “[i]s no merit in the contention of the petitioners that the complaint under Section 138 of the NI Act is not maintainable in view of the ongoing arbitration proceedings between the parties.”

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<sup>3</sup> *Sri. Krishna Agencies v. State of A.P.*, (2009) 1 SCC 69.