

(2021) 11 DEL CK 0003

In the Delhi High Court

Case No : Civil Suit (COMM) No. 691 Of 2019

Flow Cool India Pvt. Ltd

APPELLANT

Vs

Flow Tech Air Pvt. Ltd.

RESPONDENT

Date of Decision : 09-11-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4, Order 38 Rule 5

Citation : (2021) 11 DEL CK 0003

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Naveen Sharma, Vikas Sharma

Final Decision : Disposed Of

Judgement

Jayant Nath, J

IA Nos. 17787/2019 & 1954/2020

1. IA No.17787/2019 is filed under Order 38 Rule 5 read with Order 39 Rules 1 and 2 CPC seeking an ex-parte injunction to direct the defendant not to dispose of or alienate or encumber or part with possession of any assets, current, fixed, intangible, tangible including moveable and immoveable properties etc. to the tune of Rs.3,47,18,402.80 except in the ordinary course of business. Other reliefs regarding the bank accounts of the defendant are also sought.

2. IA No.1954/2020 is filed under Order 39 Rule 4 CPC seeking to vacate the order dated 16.12.2019.

3. The accompanying suit is filed by the plaintiff seeking a decree for an amount of Rs.3,47,18,402.80.

4. It is the case of the plaintiff that the plaintiff company entered into an arrangement for supply of cooling towers and its components with the defendant company, to be subsequently installed by the defendant in pursuance of its

contract with its various customers. It is stated that the defendant was to provide for the timely release of the amount due and payable on account of the invoices vide which the goods in question were supplied. It is urged that despite repeated demands, the defendant has been dilly dallying and avoiding making payment of the balance due on account of the invoices. There is an apprehension that the defendant would siphon off the funds upon receipt from its customers. It is further urged that the defendant is in the habit of not making payment to its creditors and systematically siphoning off funds from its bank accounts received from the debtors.

5. It is further reiterated that the plaintiff has supplied cooling towers in question to the defendant on the assurance to release the amount forthwith. Now, with a view to defraud and cheat the plaintiff, the defendant has not disclosed the receipt of the amounts and avoided making payments on some pretext or the other. It is further stated that the plaintiff has also deposited Goods and Services Tax (hereinafter referred to as the 'GST') corresponding to the invoices raised. The defendant has also confirmed the receipt and supply of the goods in terms of the invoices by filing a return under GSTR 2A online on the GST portal. It is urged that the factum of receipt and supply of goods in question is admitted. Hence, the present suit.

6. The defendant has filed a written statement. In the written statement, it is stated that the defendant is one of the only four Indian Companies and approximately 50 world-wide holding a world standard certification in cooling towers. It is stated that the plaintiff is not a manufacturer of cooling towers and is engaged in the business of supply and trading of the raw materials required for manufacturing of cooling towers. The plaintiff has been a supplier of certain raw materials, i.e., resin, fiber, cobalt etc. to the defendant since 2017. The plaintiff has neither the expertise, nor any facilities for manufacturing cooling towers. It is stated that till 2019, the defendant made payments to the plaintiff on an "on account" basis and no invoices were raised by the plaintiff. The defendant and the plaintiff had a common accountant i.e. Mr.Sabal Singh Rawat, who was responsible for handling their inter-se transactions and the plaintiff colluded and conspired with Mr.Rawat to fudge and inflate the account to siphon money out of the defendant company. In 2019, in the course of an internal review, it came to the light that there were serious discrepancies in the amounts being claimed by the plaintiff. The defendant with the help of a reputed chartered accountant conducted an internal verification and following discrepancies were identified in the plaintiff's account:

"i. The Plaintiff Company had heavily overstated the value of the stocks supplied to the Answering Defendant. This was verified from the purchase invoices from vendor(s) of the Plaintiff.

ii. The invoices submitted by the Plaintiff were not in line with the actual materials supplied by the Plaintiff to the Answering Defendant."

7. It is stated that it was discovered that the plaintiff had been acting in collusion and conspiracy with Mr.S.S.Rawat and Mr.Biju Joseph (Senior Production Manager of the defendant) to over bill the defendant and thereby siphoning off money. The said Mr.S.S.Rawat and Mr.Biju Joseph are said to have made false entries in the defendant's record in collusion with the proprietor of the plaintiff company. It is stated that Mr.Biju Joseph admitted his part of the conspiracy and tendered his resignation on 04.09.2019. The defendant has terminated the service of Mr.S.S.Rawat on 10.11.2019. A police complaint was also filed on 10.09.2019. Para 18 of the written statement spells out the detailed comments as to the invoices, delivery note etc. of the plaintiff are wrong. The defendant has also denied that they have confirmed the receipt and supply of goods in terms of the invoices by filing a return under GSTR 2A online on the GST portal.

8. I may note that when the matter came up before this court on 16.12.2019 this court recorded that the plaintiff is prima facie entitled to recovery of a sum of Rs.3,47,18,402.80 and passed an interim order directing Manager, HDFC Bank, Charmwood Plaza, Upper Ground Floor, Charmwood Village, Faridabad, Haryana not to release any amount to the defendant lying in the account except for the payments of salaries and statutory dues in the ordinary course of business. A similar direction was also passed to the Manager, Bank of India, Chitranjan Park, New Delhi.

9. On 26.02.2020, the interim order granted on 16.12.2019 was kept in abeyance.

10. I may also note that the plaintiff had earlier also filed a suit for same relief being CS(COMM) 555/2019. On 30.09.2019, this court noted as follows:

"7. Though from a reading of the plaint, it appears that the claim subject matter of the suit is with respect to specific invoices but from the documents filed by the plaintiff, it appears that the claim is for the balance amount due at the foot of the account.

8. Such dichotomy cannot be permitted and if overlooked at this stage, is the root cause for the suits remaining pending endlessly. Moreover, the plaintiff has instituted this suit as a commercial suit. I have in Vifor (International) Ltd. Vs Suven Life Sciences Ltd. 2019 SCC OnLine Del 7514 observed that a change of attitude at the end of the advocates is required to make the Commercial Courts Act, 2015 workable. Alas, none appears to be reading the judgments also."

11. The plaint was rejected. It was clarified that the plaintiff shall be entitled to sue afresh on the same cause of action.

12. Even now in the present suit, the plaint completely lacks details of invoices, proof of delivery of goods, and further details. No facts are narrated specifying as to why the plaintiff has arrived at the figure of Rs.3,47,18,402.80. A statement of account is filed alongwith list of documents which seems to be an extract from the ledger account of the plaintiff. As per the statement of account, a sum of

Rs.3,47,18,402.80 is pending. The statement of account is not signed by the defendant. The same will have to be proved by the plaintiff.

13. There is nothing to suggest that a prima facie case is made out in favour of the plaintiff or to suggest that the defendant is seeking to dissipate the assets to defeat any decree that is likely to be passed in favour of the plaintiff.

14. There is no merit in IA No.17787/2019. The same is accordingly dismissed.

15. As far as IA No.1954/2020 is concerned, there is no interim order in favour of the plaintiff. The same is also disposed of.