

(2012) 10 DEL CK 0322

In the Delhi High Court

Case No : CS (OS) No. 313 of 1999

Motor Industries Co. Ltd.

APPELLANT

Vs

M/S. Capital Fuel Injection Engineers Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Citation : (2012) 9 AD 121

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Vibhu Bakhru, with Mr. Chetan Chopra and Ms. Saba Grover, for the Appellant; Sumati Anand, for the Respondent

Judgement

Valmiki J Mehta, J.—The subject suit has been filed by the plaintiff against the defendants for recovery of Rs. 51,79,210.85/- being the price of the goods/spark plugs sold to the defendant No. 1. Out of the total amount claimed, the principal amount is Rs. 47,38,564.57. Balance claim is towards interest @ 24% per annum. The suit is filed against four defendants. Defendant No. 1-company is the buyer. Defendant Nos. 2 and 3 are stated to be Directors of the defendant No. 1-company. Defendant No. 4 is the sole proprietorship concern of the defendant No. 2 to whom the goods are said to be transferred by the defendant No. 1. The facts as stated in the plaint are that earlier the plaintiff had appointed as its distributor the partnership firm of Mr. B.M. Sethi and Mr. Vineet Sethi. Subsequently, this partnership firm was incorporated as a private limited company M/s. Capital Fuel Injection Engineers Pvt. Ltd.(=defendant No. 1). Ownership of the company came to be vested with Mr. B.M. Sethi who held 51% shareholding of the company and Mr. Prabhu Kumar Khatpal/defendant No. 2 who held 49% shares in the company. Thereafter, the shareholding of Mr. B.M. Sethi stood transferred to Mr. Prabhu Kumar Khatpal/defendant No. 2. The entire shareholding of the defendant No. 1-company thereafter came to be held by defendant Nos. 2 and 3, and then defendant No. 1-company was again reappointed as a distributor vide plaintiff's letter dated 6.12.1995. The invoices

which are the subject matter of the suit are stated in para 5 of the plaint as under:-

Further, the case of the plaintiff is that defendant No. 1 is only a paper company and therefore defendant Nos. 2 and 3 are personally liable. Liability of the defendant No. 4 is alleged on the ground that defendant No. 1 transferred the goods purchased by it to the said defendant No. 4 proprietorship concern of the defendant No. 2.

2. Defendants have contested the suit. Liabilities of defendant Nos. 2 and 3 are denied on the ground that they are only Directors of the company and therefore they have no liabilities of the company which is a separate entity. So far as defendant No. 4 is concerned, the liability of the said concern was denied on the ground that it was a separate sole proprietorship concern of the defendant No. 2, and which therefore cannot be fastened with the liability of the defendant No. 1. Defendants claimed in the written statement that value of the goods supplied by the plaintiff was not of Rs. 47,42,216.80/- but only of Rs. 2,43,888/-.

3. The following issues were framed in this suit on 17.1.2003:-

1. Whether the suit is bad for misjoinder of parties i.e. defendants No. 2 to 4 and the plaintiff has no cause of action against them?

2. Whether the plaintiff supplied the goods in question to the defendant No. 1 covered by invoice No. 30007316 to 30007426?

3. Whether defendants No. 2 to 4 had diverted the goods and had misappropriated the same thereby rendering the company, defendant No. 1, a defunct and fundless? If so, its effects.

4. Whether the plaintiff is entitled to the suit amount or any other amount?

5. Whether on the facts and circumstances of the case the corporate veil of defendant No. 1 is liable to be lifted and to what consequence?

6. Whether the plaint has been signed, verified and the suit instituted by a duly authorised person and plaintiff is entitled to any rebate?

Issue No. 6

4. This issue is not pressed on behalf of the defendants and is therefore decided in favour of the plaintiff by holding that suit is properly instituted. There is an additional aspect in this issue of defendants' entitlement to rebate, but, there is a typographical mistake as the expression used is "plaintiff instead of "defendants". This rebate aspect of issue No. 6 will be dealt with by me while deciding issue No. 2.

Issue Nos. 1, 3 and 5

5. So far as these issues are concerned, I am inclined to hold the same in favour of defendant Nos. 2 to 4 inasmuch as the liability of a company is always

separate from the liabilities of its Directors and shareholders. Admittedly, defendant Nos. 2 and 3 have not executed any documents making themselves liable towards the plaintiff for the liability of the defendant No. 1. I do not find any ground to lift the corporate veil of the defendant No. 1 in the present case inasmuch as there is nothing on record that the defendant No. 1-company was only a sham/paper company. The fact that plaintiff has done business with the defendant No. 1-company by appointing the defendant No. 1-company as a distributor shows that defendant No. 1-company was very much in existence for the purpose of business and it was not a paper company so that the corporate veil can be lifted to fasten the liability upon the defendant Nos. 2 and 3. If in any and every case corporate veil has to be lifted then in every case the shareholders/directors of a company will become personally liable, more so in small private companies. In the facts of the present case no factual foundation exists for applicability of the doctrine of lifting of corporate veil. So far as the issue of liability of defendant No. 4 is concerned, admittedly it is only a sole proprietorship concern of the defendant No. 2 and which had no personal dealings with the plaintiff. Even if we take the case of the plaintiff at best the same is that goods were transferred by the defendant No. 1 to the defendant No. 4, but admittedly there is no privity of contract between the defendant No. 4 and the plaintiff so as to make defendant No. 4 liable to the plaintiff. Once the liability of the defendant No. 1 is established as a buyer of goods, if the goods are transferred, thereafter, by the buyer/defendant No. 1 to other persons including defendant No. 4 such persons cannot be legally liable to the plaintiff.

These issues are answered against the plaintiff and it is held that no decree can be passed against the defendant Nos. 2 to 4 and no liability of the defendant No. 1 can be fastened on the defendant Nos. 2 to 4.

Issue Nos. 2 and 4

6. The plaintiff has proved on record the invoices by which the goods were supplied to the defendants. These invoices are Ex. PW1/6(colly). These invoices are the invoices which have been detailed in para 5 of the plaint. The plaintiff has also filed and proved on record its outbound stock register as Ex. PW1/7 and which bears the signatures at various places of one Sh. Puran Singh of the defendant No. 1. Though the defendants have denied that they have received the goods through the said Sh. Puran Singh, the cross-examination of witness of defendants DW-1 Sh. Prabhu Kumar Kathpal on 17.4.2006 and 18.12.2006 shows that Sh. Puran Singh was an employee of the defendants; Sh. Puran Singh was a driver employed by the defendants duly shown in the muster roll; and it is admitted that in majority of the occasions Sh. Puran Singh used to visit the premises of the plaintiff for the purpose of taking the goods. In my opinion therefore, these admissions in cross-examination along with proving of the invoices and stock register shows that the disputed goods which are stated in para 5 of the plaint were in fact sold and supplied to the defendant No. 1, and for which amounts of the total invoices the defendant No. 1 is liable.

7. In my opinion, the supply of the goods in question to the defendant No. 1 is also proved from the fact that if really the defendant No. 1 would not have received these goods, it was very easy for the defendant No. 1; which is a limited company and whose accounts are audited; to have filed its stock register to show that in fact these stock registers did not reflect the goods which the plaintiff has proved to have been sold to the defendant No. 1. Since the defendant No. 1 has not filed its stock register, I draw an adverse inference against the defendant No. 1. This is therefore additional reason to hold that the plaintiff supplied goods of the value of Rs. 47,42,216.80/- to the defendant No. 1.

So far as the issue of rebate is concerned, I have not found any credible evidence much less credible documentary evidence on record which proves the same and therefore the defendant No. 1 is held not entitled to any rebate.

Issue No. 2 is therefore decided in favour of the plaintiff and against the defendants.

8. There is now the related issue as to whether the plaintiff is entitled to interest @ 24% per annum simple as claimed in the plaint inasmuch as out of the total suit amount of Rs. 51,79,210.85/- only an amount of Rs. 47,42,216.80/- is the principal amount.

9. In my opinion, interest @ 24% per annum is indeed exorbitant. The Supreme Court in the recent chain of judgments reported as *Rajendra Construction Company Vs. Maharashtra Housing and Area Development Authority and Others*, , *McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others*, , *Rajasthan State Road Transport Corpn. Vs. Indag Rubber Ltd.*, , *Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy and Another*, & *State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd* (2009) 3 Arb. LR 140 (SC) has held that the Courts must not grant high rates of interest in view of the changed economic scenario where the rates of interest have fallen. A Division Bench of this Court in the case of *Pandit Munshi Ram Associates vs. DDA* 2010 (9) AD (Delhi) 313 has held that high rates of interest can also be challenged on the ground of public policy.

10. Accordingly, I am of the opinion that interest @ 9% per annum simple will meet the ends of justice in the facts of the present case. Plaintiff is awarded pre suit interest @ 9% per annum simple, the transaction being commercial transaction between the parties, and which rate of interest will be payable from 1.9.1998 till the date of filing of the suit. Plaintiff will also be entitled to pendente lite and future interest at the same rate of 9% per annum simple till payment by the defendant No. 1 to the plaintiff.

Relief

The suit of the plaintiff is therefore decreed against defendant No. 1 for a sum of Rs. 47,42,216.80/- along with interest @ 9% per annum simple from 1.9.1998 till the date of filing of the suit. Plaintiff will also be entitled to pendente lite and

future interest at the same rate of 9% per annum simple till payment. Parties are left to bear their own costs. Decree sheet be prepared. It is clarified that since the defendant No. 1 has paid an amount of Rs. 10.12 lacs to the plaintiff during the pendency of the suit, when the calculations will be made for payment under the present judgment and decree, the defendant No. 1 will be entitled to credit of this amount of Rs. 10.12 lacs.