

(2003) 07 DEL CK 0049

In the Delhi High Court

Case No : Company Petition No. 219 of 2002 and C.A. 622 of 2002

Motorola India (P) Ltd.

APPELLANT

Vs

Symphony Wireless Telecommunication Ente

RESPONDENT

Date of Decision : 07-07-2003

Acts Referred:

Companies Act, 1956 — Section 433, 435

Contract Act, 1872 — Section 23

Negotiable Instruments Act, 1881 (NI) — Section 138

Wireless Telegraphy (Possession) Rules, 1965 — Rule 3, 3(2), 9

Citation : (2003) 117 CompCas 398 : (2003) 105 DLT 772 : (2003) 70 DRJ 34 : (2003) 48 SCL 36

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Gaurav Sarin, for the Appellant; Atul Kumar, for the Respondent

Judgement

Mukundakam Sharma, J.—The present petition is filed by the petitioner company praying for an order that the respondent company is indebted to the petitioner and that it is unable to pay its debt as it has become commercially insolvent.

2. The petitioner is a subsidiary of Motorola Inc. The petitioner is a supplier of telecom equipments to various Government departments and Public Sector Undertakings etc. The respondent is a trader of telecom equipment and used to purchase telecom equipments from the petitioner and sell the same to its customers. The telecom equipments were shipped by the petitioner to the respondent on the basis of the purchase orders issued by the respondent for the same. During the course of its business with the respondent the petitioner supplied and delivered telecom equipments of certain quantities at agreed prices to the respondent and raised invoices for the telecom equipments supplied, which were duly accepted. The said equipments were used and utilised by the respondent and at no stage the respondent raised any dispute either with regard to quality or standard of such equipments supplied by the petitioner to the respondent. It is stated that as per the records of the petitioner, the respondent

is indebted to the petitioner for a principal sum of Rs. 18,42,155.28p for the supplies made. In addition, interest at the rate of 2% per month till the date of payment is also due and payable.

3. The respondent issued two cheques in favor of the petitioner dated 1st March, 2001 for a sum of Rs. 5,40,800/- and Rs. 2,16,830.80p towards part payment of the dues payable to the petitioner. The said cheques when presented to the bank were dishonoured by the bank. The petitioner issued two notices dated 23.3.2001 u/s 138 of the Negotiable Instruments Act, which were replied to by the petitioner by letter dated 7.4.2001. Part of the amount due and payable to the petitioner is also reflected from the balance sheet of the respondent dated 31st March, 2001 filed with the Registrar of Companies and to that extent the dues are admitted. As against Item No. 7 in the list of Sundry Creditors an amount of Rs. 15,21,766/- is admitted as due and payable to the petitioner. A legal notice was issued by the petitioner to the respondent on 22nd March, 2002 under Sections 433 and 435 of the Companies Act. The said notice was duly served upon the respondent company for an amount of Rs. 18,42,155.28p with interest at the rate of 2% per month from the due date of payment till realisation. The respondent did not send any reply to the aforesaid notice even in spite of receipt of the same. Accordingly, the present petition was filed in this court praying for the aforesaid relief.

4. The respondent has filed a reply to the petition filed by the petitioner, taking up a stand that the aforesaid amount is not legally due and payable as the petitioner did not have a valid license to deal with the aforesaid goods on the date when the aforesaid supplies were made to the respondent. It was submitted by the counsel appearing for the respondent that since the petitioner did not have a valid license when the aforesaid supplies were made to the respondent the demand made by the petitioner is void in view of the provisions of Section 23 of the Indian Contracts Act and, Therefore, the petition is liable to be dismissed.

5. I may, Therefore, proceed to deal with the objection i.e. raised by the respondent regarding maintainability of the present petition. The objection is that the petitioner did not have a valid license under the Indian Telegraph Act and the rules made there under to make any supplies of the telecom equipments on the date when the aforesaid supplies were made to the respondent and, Therefore, the dues, even if there be any, cannot be said to be legally recoverable dues.

6. I have given my anxious consideration to the aforesaid plea raised by the respondent. The aforesaid plea came to be raised, for the first time, by the respondent in its letter dated 5th April, 2003. Even prior to the said date, the respondent issued cheques in favor of the petitioner towards part payment of its liability. Two cheques were issued by the respondent to the petitioner on 1st March, 2001 for the sums of Rs. 5,41,800/- and Rs. 2,16,830.80p. The said cheques when presented with the bank for encashment were dishonoured. In the balance sheet of the respondent dated 31st March, 2001 filed with the Registrar of Companies, part of the amount due and payable to the petitioner was

reflected at Item No. 7 in the list of Sundry Creditors. Therefore, atleast an amount of Rs. 15,21,766/- is admittedly due and payable by the respondent to the petitioner. It is sought to be submitted that the aforesaid dues are not legally recoverable dues as the petitioner did not have a WPC - Dealers license under the Indian Wireless Telegraphy Act, 1933 read with the rules made there under. A WPC - Dealers license under the Indian Wireless Telegraphy Act, 1933 is granted under the provisions of the Indian Wireless Telegraphy (Possession) Rules, 1965. A copy of the said Rules is placed on record. Rule 3 thereof deals with the licensing requirements It is provided therein that no person shall possess wireless telegraphy apparatus except under in accordance with a license issued under these Rules and that no person shall sell, hire or otherwise transfer a complete wireless set to any person, who is not in possession of a valid license issued in his name either under these rules or under the Indian Telegraph Act. There is a note appended thereto, on which strong reliance was placed by the counsel appearing for the respondent which provides that a dealer who seeks to exercise the privilege vested in him under the provision to sub-rule 3 (2) will have to be a dealer who possesses a valid license. It was also provided that a dealer whose license has expired on 31st December cannot be said to be possessing a valid license until the license itself is renewed. Rule 8 provides the duration of the period for which a license is valid, when it states that the license shall be valid up to 31st December of the year mentioned in this behalf in the license. Rule 9 deals with the license Fee, which provides the quantum of the license fee.

7. The petitioner has placed on record the licenses. Correspondences requesting for renewal of possession license are also placed on record. Letter dated 31st December, 1999 sent by the petitioner to the Department of Telecommunications is placed on record wherein it is stated that the petitioner was issued the possession license for Wireless Receiving/Transmitting Apparatus Equipment with a validity up to 31st December, 1999 for stock and sale. By the aforesaid letter the petitioner sought for renewal of the possession license for stock and sale of the aforesaid equipments till 31st December, 2000. Necessary fee of Rs. 60/- was also sent by a demand draft for grant of the aforesaid license. On the basis of the aforesaid letter, the license was extended up to 31st March, 2000, which is indicated from the letter dated 1st March, 2000. Therefore, there cannot be any dispute with regard to the fact that the petitioner had a valid license up to 31st March, 2000, which is not disputed by the counsel appearing for the respondent during the course of his submission. Even thereafter, the petitioner requested the Department of Telecommunications for grant of a license till 31st December, 2001 and the document evidencing the said fact are placed on record. In this connection, reference may be made to the letter dated 4th May, 2001. Request was sent by the petitioner for renewal of the license for the period ending on 31st December, 2001. A bank draft towards the license fee was also sent to the Department of Telecommunications towards renewal fee for the year ending on 31st December, 2001. On 30th July, 2001, such a license was also issued in the

name of the petitioner, copy of which is placed on record. The said license indicates that the license is valid up to 31st December, 2001. Therefore, the documents placed on record prove and establish that the petitioner had a valid license atleast up to 31st December, 2001. It was sought to be submitted that the aforesaid license to the petitioner was granted by the competent authority only on 30th July, 2001 renewing the license up to 31st December, 2001 and, Therefore, when the aforesaid supplies were made to the respondent the petitioner did not have a valid license. The aforesaid contention cannot be accepted in view of the fact that the petitioner had a valid license up to 31st December, 1999 and thereafter up to 31st December, 2000 and also up to 31st December, 2001.

8. Supplies were made by the petitioner to the respondent which were duly received. The said supplies were also used and utilized by the respondent without raising any dispute with regard to the same. That the respondent is indebted to the petitioner is also an admitted position. At no stage, before filing the reply in the present petition, the respondent has ever raised such a plea that the petitioner did not have a valid license when the supplies were made to the respondent. The respondent did not even return the said equipments to the petitioner taking up the plea that the petitioner did not have the power to deal with the said instruments and equipments as it did not possess a valid license. The respondent has not come to the court with clean hands and has taken up an unwarranted and untenable plea that the petitioner did not have a valid license for the supplies made when, in fact, there are documents placed on record to prove and establish that the petitioner had such a valid license. Grant of a license by the competent authority is valid for one full year and Therefore, it cannot be said that supplies made by the petitioner to the respondent was not covered by a valid license.

9. In view of the aforesaid position and conclusion that the petitioner had a valid license for the aforesaid supplies made, it is not necessary to deal with and decide the contention raised by the respondent that the dues payable by the respondent to the petitioner are hit by the provisions of Section 23 of the Indian Contract Act nor would it be necessary to deal with the decisions that have been placed on record by the respondent in that regard. In my considered opinion, the aforesaid dispute raising a plea that the amount is not legally due, has been raised only to delay and defeat realisation of the dues of the petitioner and the same is merely being used as a shield for the inability of the respondent to pay the dues. The defense of the respondent is found to be frivolous and fallacious and the same also lacks commercial morality. It is needless to mention that even assuming Section 23 of the Contract Act is applicable, the ratio of the decision of the Supreme Court in Gurmukh Singh Vs. Amar Singh, shall be applicable in the facts of the present case, particularly in view of the conduct of the respondent in taking resort to commercial immorality. The agreement between the petitioner and the respondent towards supply of the equipments was also fulfilled and complete. The respondent received the statutory notice. Even at that stage, no

such plea was raised by the respondent company. The respondent company failed to comply with the statutory notice. The admission of the liability is proved and established from the balance sheet of the respondent company and also from the fact that the cheques issued by the it for re-payment of the part debt were dishonoured. In that view of the matter, I am of the considered opinion that the respondent is indebted to the petitioner and that it is unable to re-pay the debt.

10. Accordingly, the petition is admitted to hearing. Citation is directed to be published in daily issue of Statesman (English) and Jansatta (Hindi) for 15.10.2003. The Official Liquidator attached to this court is appointed as the Provisional Liquidator and is directed to take-over the assets and records of the respondent company.

11. Renotify on 15.10.2003.