

(2005) 10 DEL CK 0075
In the Delhi High Court
Case No : CS (OS) 72 of 2005

Technology Development Board

APPELLANT

Vs

ACME Metal Powder Private Limited and Others

RESPONDENT

Date of Decision : 20-10-2005

Acts Referred:

Citation : (2005) 10 DEL CK 0075

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Priya Kumar, for the Appellant; Nemo, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The plaintiff is a Technology Development Board of India which is a statutory body constituted under the Technical Development Board Act, 1995. M/s ICICI Venture Funds Management Company Limited (hereinafter referred to as the Venture Fund), a company incorporated and registered under the Companies Act, 1956 is stated to be appointed as the Asset Manager of the plaintiff in respect of several loan accounts. A notarized copy of the power of attorney dated 22.06.2004 (Ex. P-1) has been filed in favor of Venture Funds. Mr. Vinod Kumar Menon, Manger (Legal) of the Venture Fund is duly authorised in pursuance to the power of attorney dated 22.06.2004

2. Defendant No. 1 is a company incorporated and registered under the Companies Act, 1956 and is stated to be engaged in the business of development and commercialisation of iron powder. Defendants 2 and 3 are the Directors of defendant No. 1 company. A loan agreement was executed between the plaintiff and defendant No. 1 dated 24.12.1999 whereby defendant No. 1 was granted a loan of Rs. 2 crores for his business. Defendants 2 and 3 executed personal guarantees separately on 25.12.1999. The loan agreement is exhibited as P-2 and the personal guarantees as exhibits P-3 and P-4.

3. In pursuance to the loan agreement the plaintiff disbursed the sum of Rs. 1.2 crores on 28.11.1999 and Rs. 70 lakhs on 31.08.2000. The repayment of the

loan had to be made as per Schedule II of the agreement in nine half yearly Installments and interest @ 6% per annum on the loan assistance outstanding from time to time. Defendant No. 1 had further agreed to pay royalty to the plaintiff @ 1% on the annual sales turn-over of the product developed with the plaintiff's instruments in terms of the loan agreement and in case of delay in payment of such royalty defendant No. 1 was liable to pay simple interest @ 10% per annum.

4. A deed of hypothecation was also executed on 25.12.1999 in respect of movable assets situated at the property of defendant No. 1 at Pondicherry.

5. It is averred in the plaint that the loan amount was not repaid. On call to pay the amount, defendant No. 1 by its letter dated 22.09.2003 (ExP-6) stated that the project has got delayed and requested for co-operation of the plaintiff. In fact even prior to this letter, the legal notice is stated to have been issued by the plaintiff dated 30.05.2002. Since even after the letter dated 22.09.2003 (received by fax) the payment was not made. The plaintiff vide its letter dated 30.03.2004 (ExP-7) recalled the loan amount along with royalty and interest due and payable. The plaintiff has sued for a sum of Rs. 2,67,20,317/- with interest @ 18% per annum. This principal amount is stated to be due as on 01.10.2004. The suit has been filed under the provisions of Order 37 of the Code of Civil Procedure, 1908, based on the loan agreement and the personal guarantees.

6. Summons were issued in the prescribed form on 20.01.2005 and in terms of order dated 17.03.2005 it is recorded that the summons were duly served by ordinary process as well as through dusty. The defendants have chosen not to appear.

7. A perusal of the document show that the suit is based on the loan documents and the personal guarantees. A sum of Rs. 1.9 crores was advanced as the principal amount which has not been repaid.

8. In my considered view, the issue of the payment of royalty would arise on the turn-over of the product developed but admittedly the project itself has not taken off. Thus the occasion of payment of royalty or any interest due thereon would not arise.

9. I am also unable to appreciate as to how interest @ 18% is chargeable when as per the agreement as submitted by learned counsel for the plaintiff and as stated in the plaint, the rate of interest chargeable is 6% per annum. Learned counsel for the plaintiff, however, states that Clause 1.4 dealing with the repayment provides for an additional 10% rate of interest in case of default. Though the Clause says that the same is not a penal interest but by the very difference in rate of interest, it can be nothing but a penal rate of interest for default on the payments.

10. Taking into consideration the present lending rates, I am not inclined to grant this penal rate of interest. There is, however, no doubt that the defendants have

defaulted in making payments and thus taking into consideration the prevailing rate of interest, I am inclined to grant the plaintiff simple interest @ 9% per annum. Since the personal guarantees have been accepted by defendants 2 and 3, defendants are jointly and severally liable to the plaintiff.

11. A decree is passed in favor of the plaintiff and against the defendants who are jointly and severally liable for the sum of Rs. 1.90 crores along with interest @ 9% per annum from the date of advancement of the loan being 28.12.1999 for the sum of Rs. 1.2 crores and Rs. 70 lakhs from 31.08.2000 till date of payment. The plaintiff shall also be entitled to proportionate costs. The decree sheet be drawn up accordingly.

IA No. 466/2005 and 2133/2005

No further directions are called for in these applications. The applications stand disposed of.