(2007) 10 DEL CK 0159

In the Delhi High Court

Case No : CS (OS) 364 of 2006

Technology Information, Forecasting and Assessment Council — APPELLANT

Vs

Thermo Devices Pvt. Ltd. — RESPONDENT

Date of Decision : 23-10-2007

Acts Referred:

Citation : (2007) 10 DEL CK 0159

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : R.P. Aggarwal, for the Appellant; Ex parte, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—The suit has proceeded ex parte against the defendant. By an order dated 08.05.2007, this Court had noted that the defendant has not entered appearance despite service. The defendant was directed to be proceeded against ex parte and the plaintiff was directed to file its ex parte evidence by way of affidavit within eight weeks. The matter was thereafter placed before the Joint Registrar on 23.07.2007 for marking the exhibits. On behalf of the plaintiff, the affidavit of Mr A.K. Ahuja (PW1) has been filed by way of evidence. Along with the affidavit, a number of documents have also been filed and they have been marked as Exhibit PW1/1 to PW1/16.

2. The plaintiff has prayed for a decree against the defendant directing the defendant to pay the plaintiff a sum of Rs 25,42,199/- with interest thereon at 10% per annum, compounded monthly from the date of filing of the suit till the date of its realisation. The plaintiff has also prayed for a declaration that the plaintiff has a first charge on the hypothecated movable assets, plant and machinery of the defendant as referred to in the Hypothecation Deed dated 30.07.2001. However, the learned Counsel for the plaintiff states that this prayer with regard to declaration that the plaintiff has a first charge is being given up because the plaintiff has been unable to state as to where the movable assets,

plant and machinery are in existence at all. The plaintiff, however, presses for costs of the suit.

3. As stated by PW1, the plaintiff is a society registered under the Societies Registration Act, 1860 and is an implementing agency of Home Grown Technology (HGT) supported by the Government of India (Department of Science and Technology) and the development of technologies / processes is one of the activities of the plaintiff. The defendant is a company registered under the Companies Act, 1956 and was engaged in the up scaling project for "Pilot plant for producing improved evaporative cooling based air-ambiators". Initially the plaintiff had granted financial assistance to Dhaliwal Tech Systems which was a proprietary concern of one Mr S.D. Dhaliwal. Subsequently, the said proprietary concern was taken over entirely by the defendant company. The agreements which had been entered into initially between Dhaliwal Tech Systems and the plaintiff had been adopted by the defendant company. The original Technology Development Assistance (TDA) was executed on 04.01.2001 (Exhibit PW1/1). On the same day, the Deed of Hypothecation was also executed between the plaintiff and the said Dhaliwal Tech Systems (Exhibit PW1/2). Under the said agreement (Exhibit PW1/1), the project cost was fixed at Rs 126 lacs. The plaintiff had agreed to contribute Rs 50 lacs and the remaining amount of Rs 76 lacs was to be arranged by Dhaliwal Tech Systems. The agreement contained a provision for Constituting a Monitoring Committee to monitor the progress of the project and to inspect the work relating to the project at various stages of the completion. In terms of Clause VII of the said Agreement, it was stipulated that if the Monitoring Committee recommended the foreclosure of the project on account of its failure to take off due to lack of initiatives/willingness on the part of the Dhaliwal Tech Systems, the recovery of the amount paid by the plaintiff would be initiated by and between the plaintiff and the said firm.

4. Pursuant to the said TDA Agreement, the plaintiff released a sum of Rs 10 lacs to Dhaliwal Tech Systems on 10.01.2001. Subsequently, Dhaliwal Tech Systems was completely taken over by the present defendant (Thermo Devices Pvt. Ltd). It is stated that the defendant was also promoted by Mr S.D. Dhaliwal who was the sole proprietor of Dhaliwal Tech Systems. By a letter dated 22.06.2001 (Exhibit PW1/3) the said Mr S.D. Dhaliwal requested the plaintiff to agree for the merger of Dhaliwal Tech Systems with his Company Thermo Devices Pvt. Ltd (defendant herein) in order to simplify the matters and to facilitate smooth running of the project. The resolution was also passed by the Board of Directors of the defendant company on 17.07.2001 to the same effect. That has been exhibited as Exhibit PW1/4. In view of these developments, an Addendum was executed with the defendant on 30.07.2001 (Exhibit PW1/5). A fresh Hypothecation Deed dated 30.07.2001 with the defendant was also executed. This has been filed as Exhibit PW1/6. Thereafter, the plaintiff, on the request of the defendant, released a further Installment of Rs 6 lacs on 02.08.2001. In a meeting of the Monitoring Committee of 14.05.2002 it was decided to foreclose the project inasmuch as Mr S.D. Dhaliwal had stated that he is not willing to go

on with the project. On account of the said foreclosure, the balance amount of Rs 34 lacs which was to be released by the plaintiff was not released. A copy of the Minutes of the Monitoring Committee has been filed as Exhibit PW1/8.

5. As stated above, in view of the specific provisions contained in the agreement, between the parties, on account of foreclosure of the project, the amount of Rs 16 lacs paid by the plaintiff to the defendant became repayable Along with interest. Consequently, a letter dated 23.07.2002 was issued by the plaintiff calling upon the defendant to repay a sum of Rs. 18.05 lacs (inclusive of interest @ 10% per annum up to 30.06.2002). A reminder was also sent. Ultimately, the plaintiff received letters dated 26.06.2003 / 02.07.2003 from Mr S.D. Dhaliwal, Director of the defendant company which were written to the plaintiff from a different address wherein the defendant requested for help and assistance of the plaintiff in selling his technology overseas and that would enable him to settle his account with TIFAC. It is apparent that the defendant duly acknowledged and admitted its liability towards the plaintiff and merely sought assistance from the plaintiff. However, since the defendant was not forthcoming with the payment of the said sum of Rs 16 lacs plus the interest amount, the plaintiff served a legal notice on the defendant through its advocate Mr S.S.L. Gupta on 12.04.2005 (Exhibit PW1/12). The defendant sent a reply dated 08.05.2005 (Exhibit PW1/13) whereby he requested a meeting with the officials of the plaintiff. A meeting was arranged on 08.06.2005 in the office of the plaintiff at New Delhi. Thereafter, the said Mr S.D. Dhaliwal sent a letter dated 20.07.21005 requesting the plaintiff to write off the amount of Rs 16 lacs. The said letter dated 20.07.2005 is marked as Exhibit PW1/14. The request made by the defendant for writing off the said amount of Rs. 16 lacs was declined by the plaintiff and the plaintiff sent another letter dated 20.09.2005 (Exhibit PW1/15) calling upon the defendant to pay the said amount of Rs 18.05 lacs together with interest @ 10% per annum with effect from 01.07.2002 till the date of payment. Since the said amount was not forthcoming, the plaintiff has filed the present suit.

6. After considering the evidence of the plaintiff both by way of affidavits as well as documentary evidence, it is apparent that a sum of Rs 16 lacs was extended to the defendant. It is also clear that, in case, the project was foreclosed by the Monitoring Committee, the said amount became recoverable from the defendant by the plaintiff. The factum of foreclosure stands established by virtue of the Minutes of the Monitoring Committee dated 14.05.2002 (Exhibit PW1/8). It has also been established that the plaintiff had made several demands upon the defendant for repayment of the said amount of Rs 16 lacs plus the interest amount and that the defendant had not paid the said amount. It has also come in evidence that the defendant had not denied its liability towards the payment of the same. In these circumstances, I feel that the plaintiff is entitled to the decree to recover the principal amount of Rs 16 lacs along with interest @ 10% per annum. The amount crystallized at the time of the suit was Rs 25,42,199/-. The plaintiff is clearly entitled to the said amount. Accordingly, a decree is passed in favor of the plaintiff in the sum of Rs 25,42,199/- along with simple interest @

10 % per annum from the date of the suit till the date of payment.

The suit is accordingly decreed with costs. A formal decree be drawn up. All pending applications also stand disposed of.

