

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 1008/1998

Judgment reserved on 17th January, 2012

Judgment decided on 2nd February, 2012

MR. SANJEEV CHOPRA

..... Plaintiff

Through: Ms. Ekta Kalra, Adv. &
Ms.Neha Bhatnagar, Adv.

Versus

ALL WEAR CLOTHING (INDIA)

P. LTD. AND ANR.

..... Defendants

Through: Mr. Balaji Srinivasan, Adv.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

1. Plaintiff has filed this suit against the defendants for recovery of ₹21,34,126/- (Rupees Twenty One Lacs Thirty Four Thousand One Hundred Twenty Six Only) together with pendente lite and future interest @ 24% per annum and costs.

2. As per the plaint, plaintiff was engaged in the business of sale and purchase of “quotas” for exporting readymade garments from India to Europe and U.S.A., in the name and style of “M/s. Reliable Commitment”. At the time of sale, plaintiff used to get the “quotas” transferred in the name of prospective purchasers in the relevant records of Apparel Exports Promotion Council (“AEPC”,

for short). Trading of such “quotas” was permissible in the open market. In the month of January, 1994, defendant no.1, being a new exporter, approached the plaintiff through defendant no. 2 for purchase of export “quotas” under different categories, in respect of the readymade garments, at mutually agreed rates. Thereafter, defendants placed orders on the plaintiff from time to time. Depending upon the orders so placed, plaintiff purchased “quotas” from the market, got it transferred in the name of defendant no. 1 and supplied the same to the defendants at their Delhi office. Defendants used to make on account payments from time to time to the plaintiff through cheques issued and delivered by their Delhi office. Defendants successfully made and/or affected exports on the basis of these “quotas”.

3. During the above said dealings, sometime in the month of March, 1995, defendants placed order on the plaintiff for the purchase of two different categories of “quotas”, details whereof are as under:-

(a) Category 341 25000 @17.50 4,37,500/-

(b)Category 641 16405 @12.00 1,96,860/-

4. Plaintiff purchased aforesaid “quotas” from the market, got the same transferred in the name of defendant no. 1 and handed over the relevant certificates at their Delhi office. However,

defendants, without any justifiable reasons, returned the “quota” under Category 641 valued at ₹1,96,860/- to the plaintiff. In order to continue the business relations, plaintiff accepted the return of certificate, even though said “quota” had become useless as the same could not have been utilized by anybody else as per the export policy of the Government of India and AEPC, thus, plaintiff was entitled to recover this amount from the defendants.

5. Plaintiff was maintaining a running account with regard to the business dealings with the defendants, as also the payments received, in its books of accounts. On account payments made by the defendant no.1, were duly credited in the ledger. Lastly, defendants made part payment to the tune of ₹8,20,500/- (Rupees Eight Lacs Twenty Thousand Five Hundred Only) by issuing two cheques, that is, cheque bearing no. 665987 dated 31st July, 1995 for ₹5 lacs (Rupees Five Lacs Only) and cheque bearing no. 665988 dated 10th August, 1995 for ₹3,20,500/- (Rupees Three Lacs Twenty Thousand Five Hundred Only). However, on presentation, cheque for ₹5 lacs was returned dishonored on the ground “insufficient funds”. As regards cheque for ₹3,20,500/- (Rupees Three Lacs Twenty Thousand Five Hundred Only), defendants issued “stop payment” instructions to their banker. As on 4th August, 1995, a sum of ₹12,26,509/- (Rupees Twelve Lacs Twenty

Six Thousand Five Hundred Nine Only) was due and outstanding against the defendants, which amount defendants have failed to pay despite demands. Defendants were liable to pay the said amount to plaintiff along with interest @24% per annum since the transactions between the parties were commercial in nature.

6. In the written statement defendants have taken certain preliminary objections. It was alleged that the plaint was not maintainable either under law or on facts and was liable to be dismissed; suit was vexatious and had been filed with the intention to harass the defendants. On merits it was not denied that defendants were having business dealings with the plaintiff and that they had purchased “quotas” for exporting readymade garments from the plaintiff from time to time. It was denied that defendants had approached the plaintiff for purchasing “quotas”. It was alleged that it was the plaintiff, who had approached the defendants and offered his services to procure “quotas” from the market for and on behalf of defendants. It was admitted that dealings between the plaintiff and the defendants commenced from January, 1994 and the plaintiff purchased “quotas” for and on behalf of the defendants and that payments were made for the same by the Delhi office of defendants. However, it was alleged that Delhi office of the defendants was shut down in the year 1997, that is, prior to the

filing of present suit. As per the defendants, payments were made regularly and promptly. Defendants admitted that “quotas” under Category 341 and Category 641 were supplied by the plaintiff to the defendants in the month of March, 1995. However, it was denied that defendants had returned the “quota” under Category 641 valuing ₹1, 96,860/- without any justifiable reason. Defendants have alleged that as per the normal practice, “quotas” had to be delivered within four working days of placing of the order; “Quota” under Category 641 was supplied beyond four days of placing of the order. Order was placed on the plaintiff for supply of this “quota” on 6th March, 1995, however, it was delivered in batches on 22nd March, 1995, 23rd March, 1995 and 24th March, 1995. Since certificates were supplied beyond four days, “quota” under Category 641 was returned to plaintiff on 27th March, 1995 and plaintiff accepted the same without demur. AEPC served a show cause notice dated 21st October, 1994 on the defendant no.1 stating therein that the “quota” of M/s Vinky Impex Pvt. Ltd. for 199 pieces of garments was forged and threatened to debar defendant no.1 from participating in the Garment Export Entitlement Distribution Scheme. Plaintiff assured that steps would be taken to ensure that defendant no.1 is not de-registered. However, defendants received notice from AEPC for personal hearing on 8th

August, 1995, thus, payment of two cheques was stopped as defendants suffered business losses and loss of reputation on account of acts of plaintiff. Defendants admitted that plaintiff had been maintaining a running account of the business dealings. However, correctness of the Statement of Account has been disputed.

7. In the replication, plaintiff has denied the contents of the written statement and has reiterated and reaffirmed the averments made in the plaint. Plaintiff further contended that “quotas” for both Category 341 and Category 641 were purchased and delivered together, however, only “quota” under Category 641 was returned, thus, the allegations of delay have been made merely to wriggle out from the liability of payment of plaintiff’s dues. Plaintiff had accepted the “quota” only to maintain the business relations, however the claimed amount was not waived off, which has duly been reflected in the Statement of Account. Plaintiff has also alleged that the “quota” pertaining to M/s Vinky Impex Pvt. Ltd. was worth only ₹ 2000/-. Even the letter of “stop payment” was sent to the plaintiff only on 8th August, 1995, whereas the 1st cheque had been presented on 4th August 1995 itself, thus, the contention of the defendants that payments were stopped due to the notice of AEPC, was just an afterthought. As regards the plea of damages suffered

by the defendants due to the lapses on the part of plaintiff, no claim had ever been raised.

8. Vide order dated order dated 25th August 2000, following issues were framed:

- “1. Whether the suit is within time?
2. Whether the certificate regarding Category No.641 was returned to the plaintiff? If so, to what effect?
3. What is the effect of the issue of show cause notice by the Apparel Export Promotion Council to defendant No.1 in respect of the quota which had been given by the plaintiff to the said defendant?
4. To what amount, if any, is the plaintiff entitled?
5. Whether the plaintiff is entitled to interest? If so, at what rate and for what period?
6. Whether this Court has no jurisdiction to try this suit?
7. Relief.”

9. Plaintiff has examined himself as PW-1. Ms.Preeti Chopra, wife of the plaintiff, has been examined as PW-2. Mr.R.K.Saboo, Assistant with AEPC, has been examined as PW-3. Mr.Narender Kumar, CCT, AEPC has been examined as PW-4. Mr.K.Raju, Joint Director, AEPC has been examined as PW-5. Mr.R.K.Sharma,

Joint Director, AEPC has been examined as PW-6. Mr.Ashok Nagpal, official of Allahabad Bank has been examined as PW-7. Mr.P.C.Mehta, Assistant-AEPC, has been examined as PW-8. Statement of Account has been proved as Ex.PW-1/1. Challans showing transactions between the plaintiff and defendants from 28th January, 1994 till 24th March, 1995 have been collectively proved as Ex.PW-1/2. Cheque dated 31st July, 1995 for ₹ 5 lacs has been exhibited as PW-1/3. Cheque dated 10th August, 1995 for ₹3,20,500/- has been exhibited as PW-1/4. Cheque Return memos have been exhibited as Ex.PW-1/5 and PW-1/6 respectively. Photocopy of Fax letter dated 8th August, 1995 sent by defendant no.1 has been exhibited as Ex. PW1/9. Quota certificates for Category 641 have been proved as Ex.PW-1/10- Ex.PW-1/15. Legal notice dated 26th March, 1997 has been exhibited as Ex.PW-1/19. Reply dated 21st April, 1997 of the defendant to the plaintiff's legal notice dated 26th March, 1997 has been exhibited as Ex.PW-1/23.

10. Defendants have not lead any evidence despite opportunities granted to them, consequently, vide order dated 7th February, 2006, defendants' evidence was closed.

11. I have heard learned counsel for the parties and perused the entire material placed on record and my issue wise findings are as under:-

Issue No. 2

12. It is an admitted case of the parties that certificates regarding quota under Category 641 were returned by the defendants to the plaintiff. However, as per the plaintiff “quota” was returned without any justifiable reason, thus, defendants were liable to pay the amount of ₹1,96,860/-. In para 9 of the plaint, it has been averred that defendants, without any justifiable reason, returned the “quota” under the Category 641 valued at ₹1,96,860/- to the plaintiff. Upon being enquired by the plaintiff about the reason for return of said “quota”, defendant no. 2 gave a lame excuse that he has changed his mind. Defendant no. 2 had placed the order for the said “quota” for and on behalf of defendant no. 1, inasmuch as, the certificates were duly transferred in the name of defendant no. 1, thus, defendants were liable to pay the amount involved therein, that is, ₹1,96,860/-. PW1 in his affidavit has supported this version. He has deposed that in the month of March, 1995, defendants placed an order on the plaintiff regarding purchase of “quota” under the Category 641 valuing at ₹1,96,860/-. Certificates under this “quota” were even transferred in the name of defendant no. 1 and

handed over to defendant no. 1 at its Delhi office. Defendants without any justifiable reason returned the “quota”. On enquiry, defendant no. 2 gave a lame excuse that he had changed his mind. Since “quota” was specifically purchased on the asking of defendants and was even got transferred in the name of defendant no.1, plaintiff could not have sold this “quota” to anybody else and the same had become useless for the plaintiff, thus, defendants were liable to pay ₹1,96,860/-.

13. The case of defendants, as set up in the written statement, is that as per the normal practice “quota” had to be delivered within four working days of placing of the order. Certificates regarding “quota” under Category 641 were not supplied within four working days. Order was placed on 6th March, 1995; whereas certificates were delivered in batches on 22nd March, 1995, 23rd March, 1995 and 24th March, 1995. Since certificates under this “quota” were delivered beyond the time prescribed for delivery, defendants returned the certificates to plaintiff on 27th March, 1995. It was further stated that certificates were accepted by the plaintiff without any demur, thus, plaintiff was not entitled to ₹1,96,860/-. However, the fact remains that defendants have not led any evidence to show that as per the agreed practice, plaintiff was to supply certificates under each “quota” within four days from the

date of placing of the order. No evidence has been led by the defendants to prove the defence taken by them. In absence of any evidence led by the defendants, the plea of the plaintiff that certificates were returned without any justifiable reason, has to be accepted.

14. From the evidence adduced by the plaintiff it is proved that the “quota” under Category 641 valuing ₹1,96,860/- was purchased by the plaintiff from the open market for and on behalf of defendants pursuant to the order placed by them, inasmuch as, certificates were duly transferred in the name of defendant no.1 (Refer to Ex. PW1/10 to Ex. PW1/16) by the AEPC. Thus, in my view, plaintiff is entitled to recover the amount involved under this “quota” valuing ₹1,96,860/-. Accordingly, issue no. 2 is decided in favour of the plaintiff and against the defendants.

Issue No. 3

15. This issue has been framed on the plea taken by the defendants in their written statement and onus to prove this issue was on the defendants. However, no evidence has been led by the defendants to prove this issue. Defendants have not led any evidence to show that they had suffered losses pursuant to the show cause notice issued by the AEPC to defendant no. 1. PW1 has categorically deposed that action was taken by AEPC against the

plaintiff as well as defendant no. 1 on the complaint of M/s. Vinky Impex Pvt. Ltd. However, M/s Vinky Impex Pvt. Ltd. withdrew its complaint; consequently, proceedings against the plaintiff were dropped. As regards defendant no. 1, it did not participate in the proceedings nor filed any appeal against its alleged debarment. Accordingly, in view of the above discussion, this issue is decided in favour of plaintiff and against the defendants.

Issue nos. 1, 4 and 5

16. All the three issues require common discussions, thus, are being decided together. It is not in dispute that the plaintiff had been purchasing “quotas” for and on behalf of defendants from the open market; getting the said “quotas” transferred in the name of defendant no. 1 from AEPC and supplying the certificates duly transferred in the name of defendant no. 1 to the defendants, from time to time. PW1 has categorically deposed that defendant no. 1, being a new exporter, approached the plaintiff with a request to purchase “quotas” under different categories from the open market, get the same transferred in the name of defendant no. 1 and supply the same to defendants, so as to enable defendant no. 1 to export readymade garments from India to Europe and USA. Defendant no. 2, for and on behalf of defendant no. 1, placed purchase orders with the plaintiff from time to time. Pursuant to such orders,

plaintiff purchased “quotas” from the open market, got it transferred in the name of defendant no. 1 and handed over the certificates to defendant no. 2 or to the other employees of defendant no. 1 at their Delhi office. Pursuant to these “quotas” defendant no. 1 has made exports. Plaintiff was maintaining a running account of business dealings with the defendants. Payments made by the defendants were duly credited in the said account. Statement of Account was maintained by the plaintiff in his regular course of business. Relevant folios of the ledger have been proved as PW1/1. PW1 has deposed that the same was true and correct. Photocopies of the challans showing the transactions between the plaintiff and defendants from 28th January, 1994 till 24th March, 1995 have been proved as PW1/2 (collectively). PW2 Ms. Preeti Chopra has deposed that accounts were prepared under her supervision and were correct. After the challans were prepared, the corresponding entries were made in the ledger. Payments received were also entered in the ledger. She has deposed that Ex. PW1/1 was prepared by the Accountant under her control and supervision and the same was correct.

17. In their written statement defendants have not disputed that they had been purchasing “quotas” from the plaintiff from time to time. It was admitted that dealings between the plaintiff and

defendants commenced in the month of January, 1994. It was also admitted that the plaintiff had been maintaining a running account of business dealings, though correctness thereof has not been admitted. In para 12 of the written statement defendants have stated as under:

“With reference to the contents of para 11 it is submitted that it is true that the Plaintiff had been maintaining a running account of the business dealings and that the Defendant used to make payments from time to time. Without admitting the correctness of the contents of Annexure A, it is submitted that a mere perusal of Annexure A clearly indicates that the Defendant would not only make payments in round figures but also on actuals. It is however clarified and reiterated that the said Annexure A is denied by the Defendants.”

18. Defendants have denied correctness of the Statement of Account Ex. PW1/1 without pointing out any incorrect entry therein. Defendants have failed to point out any incorrect debit or credit entry as contained in Ex. PW1/1. Burden of proof was upon the defendants to point out incorrect entries in Ex. PW1/1, more so, when it was admitted that plaintiff had been maintaining a running account with regard to the business dealings as well as the payments made by the defendant no. 1. Debit entries with regard to each challan have been categorically mentioned in Ex. PW1/1. It is true

that value of the “quota” involved in the challan has not been mentioned in each of the challans (Ex. PW1/2 collectively); but the fact remains that defendants have not disputed the value of the “quota” involved in the said challans. It is not stated that the challans involved in this case and/or as reflected in Ex. PW1/1 were not purchased by the defendants for the amounts shown to have been debited against each challan. It is also not the case of the defendants that any of the amount paid by defendant no. 1 was not given due credit to, inasmuch as no evidence has been led by the defendants in this regard to rebut the correctness of Statement of Account.

19. As against this, PW1 and PW2 have categorically deposed that entries made in Ex. PW1/1 were true and correct. PW1 has categorically deposed that he was maintaining a running account of business dealings with the defendants. Defendants used to make part payments, mostly in round figures, against the outstanding and/or dues and the same were credited into this account from time to time. Statement of Account was maintained by his office in the regular course of business and was correct. As per Ex. PW1/1, a sum of ₹12,26,509/- besides interest was due from the defendants to the plaintiff. His this testimony has remained unshattered in his cross-examination, inasmuch as no suggestion was put to him that

Ex. PW1/1 contained incorrect entries or that ₹12,26,509/- was not due or outstanding as per the running account maintained by the plaintiff in respect of business dealings between the plaintiff and defendants. PW2 Ms. Preeti Chopra has categorically deposed that she had done M.Com. and was conversant with the accounting and its procedure. Accounts were prepared under her supervision and were correct. Ex. PW1/1 was correct having been prepared by the Accountant under her control and supervision. Her this testimony has remained unshattered in her cross-examination. In her cross-examination, PW2 has categorically deposed that the entries were made by one Mr. Chauhan, who had been working with the plaintiff as part time Accountant. She has further deposed that she had personally checked the entries. She has denied that she has fabricated Ex. PW1/1. In my view, plaintiff has succeeded in proving correctness of Ex. PW1/1 from the testimonies of PW1 and PW2 and in absence of any evidence led by the defendants to the contrary and the same has to be taken as correct.

20. In **Kulamani Mohanty vs. Industrial Development Corporation of Orissa Ltd. AIR 2002 Orissa 38**, a money decree in a suit for recovery was passed against appellant Kulamani, employee of the respondent Company who had allegedly embezzled some monies of the respondent. In appeal, genuineness of books of

accounts was challenged, which plea was dismissed and it was held that if the books of account are produced as the primary evidence and oral evidence is led to corroborate the entries in the books of accounts maintained in the regular course of business, unless the contrary is proved or any doubt is raised regarding genuineness of such books of accounts, the same shall be regarded as proved. In **Kalipada Sinha vs. Mahaluxmi Bank Ltd. AIR 1961 Calcutta 191**, trial court had passed a money decree against the appellant. In Appeal, appellant had contended that entries in the certified copy of the Statement of Account were not sufficient to fasten the liability under Section 34 of the Indian Evidence Act. While dismissing the appeal, the Court found oral deposition corroborating the entries made in the Statement of Account to be sufficient enough to prove the respondent's case. The entries made in the Statement of Account coupled with the oral deposition were found sufficient to prove the case of respondent. In **R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami and V.P.Temple and Anr. AIR 2003 SC 4548**, dispute was between the appellant and respondent-temple about the title of the property. Ledger books showing entries of receipt of rent from the tenants were produced in the court. High Court had reversed the findings of the courts below that the property belonged to the appellant and held that it belonged to the

temple. Supreme Court allowed the appeal and rejected the finding of the High Court that ledger accounts cannot be considered, as books supporting ledger entries were not produced, thus, casting a doubt whether the books were maintained regularly and properly as even the maker of some of the entries had not stepped in the witness box. Supreme Court observed that the books were maintained regularly and properly; during cross examination, no question regarding authenticity of the books or the entries made therein was raised. The facts deposed by the appellant on oath were not even challenged in the cross examination. The appellant was believed by the trial court and his statement was enough to corroborate the entries made by him.

21. In the case in hand I find no reason to disbelieve entries made in the ledger book of the plaintiff. PW1 has deposed that he was maintaining running account of the business dealings with the defendants. The Statement of Account was maintained by his office in the regular course of business and same was Ex. PW1/1 and that the same was correct as per the records. PW2 has deposed that accounts were prepared under her supervision and were correct. She has also reiterated that Ex. PW1/1 was correct. Their testimony has remained unshaken on this point. Defendant no. 1 is a company incorporated under the Companies Act and must have been

maintaining books of account but no books of account have been produced by the defendants, inasmuch as, no evidence has been led to create suspicion about the genuineness of the Statement of Account produced and proved by the plaintiff.

22. Ex. PW1/1 clearly indicates that a sum of ₹12,26,509/- was due and outstanding as on 8th August, 1995. Interest component has not been depicted in Ex. PW1/1. Neither any separate statement has been filed with regard to the interest accrued on the outstanding dues nor such calculation of interest has been depicted in the plaint. In para 21 of the plaint, plaintiff has simply alleged that he is entitled to interest @ 24% per annum on the withheld payments, as per the prevailing market rate in respect of sale and purchase of “quotas” as also in view of the agreed rate of interest. In para 24 of the plaint, plaintiff has claimed a sum of ₹21,34,126/- inclusive of interest till 30th April, 1998. However, it has not been mentioned as to on what basis plaintiff has claimed interest amounting to ₹9,07,617/- (₹21,34,126/- – ₹12,26,509/-).

23. It has been admitted by PW1, in his cross-examination, that no agreement was entered into between the plaintiff and defendant no. 1 with regard to purchase and/or supply of export “quotas” nor any written agreement with regard to the payments of interest has been placed on record. PW1 in his cross-examination has admitted

that orders were orally placed by the defendants with regard to purchase of “quotas”. However, in view of the fact that present transactions between the plaintiff and defendants were purely commercial in nature, in my view, plaintiff is entitled to the interest on the payments withheld by defendant no. 1 without any justifiable reason. At the same time I find rate of interest, as claimed in the plaint, to be on higher side. In my view, interest of justice would be met in case interest is awarded @ 9% per annum with effect from 8th August, 1995 till realization of the outstanding dues of the plaintiff, amounting to ₹12,26,509/-.

24. Perusal of Ex. PW1/1 shows that last debit entry with regard to the supply of “quota” was made on 24th March, 1995. No order appears to have been placed by the defendants after this date nor had plaintiff purchased and/or supplied “quotas” to the defendants thereafter. PW1 in his cross-examination has admitted that after 27th March, 1995 he had stopped the supply of “quotas” to the defendants. Ex. PW1/1 shows that last transaction took place on 27th March, 1995. Present suit has been filed on 18th May, 1998, which is beyond the period of three years, thus, according to the defendants the suit is barred by time. As against this, case of the plaintiff is that defendants had acknowledged the amounts due

and outstanding against them by making part payments vide cheque bearing no. 665987 dated 31st July, 1995 for ₹5 lacs and cheque bearing no. 665988 dated 10th August, 1995 for ₹3,20,500/-, both drawn on State Bank of Mysore, Bangalore. Cheque for ₹5 lacs dated 31st July, 1995 was handed over to the plaintiff on 28th July, 1995 and entry in this regard was made in Ex. PW1/1. Cheque for ₹5 lacs was presented for encashment but the same was returned dishonored by the bankers of the plaintiff on 9th August, 1995 for the reason “funds insufficient”. As regards cheque for ₹3,20,500/- is concerned, defendant no. 1 had issued instructions to its bankers for “stop payment”. In any event, by making payment through these two cheques, defendants had accepted their liability to pay to the plaintiff the amount due and outstanding as shown in Ex. PW1/1, which is a ‘debt’ within the meaning of Section 19 of the Limitation Act, 1963 (“the Act”, for short). Reliance has been placed on **International Print-O Pac Limited vs. MAA Communication Bozell (P) Ltd. 2010 (118) DRJ 246.**

25. Section 19 of the Act reads as under:-

“Effect of payment on account of debt or of interest on legacy.- Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorized in this behalf, a fresh period of limitation shall be

computed from the time when the payment was made: Provided that, save in the case of payment of interest made before the 1st day of January, 1928 , an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment. Explanation.- For the purposes of this section,-

[\(a\)](#) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

[\(b\)](#) " debt" does not include money payable under a decree or order of a court.”

26. A perusal of the aforesaid provision makes it clear that in case a debtor makes on account payment of a debt or of interest before the expiration of the prescribed period of limitation, fresh period of limitation shall commence from the period when such payment is made.

27. In International Print-O Pac Limited’s case (supra), it has been observed as under:-

“20. This court in the case of Rajesh Kumari (supra) held that "a payment by cheque satisfies the requirement of Section 19, in as much as the acknowledgment of payment appears in the handwriting of or in a writing signed by the person making the payment in the form of a cheque." In the said case, it was further clarified that on the language of Section 19 itself, it is clear that the payment may be made either against the principal or on account of the interest. In either case, the payment will be on account of the debt,

which is all that the provision requires. Once "payment by cheque" is accepted by the plaintiff, the plaintiff will RFA No. 108/2009 Page 11 of 17 be entitled to the extended period of limitation under Section 19 of the Limitation Act, 1963 and the said advantage cannot be wiped off or undone by the tortuous act of the defendant withholding the payment of the cheque. It was also observed that it is settled that "this provision is to be interpreted liberally so as to save the suits from being barred by limitation so long as its benefits can reasonably be extended to assist a claim, otherwise legal and sustainable.

21. In the case of Technofab Engineering Ltd. (supra), a learned Single Judge of this Court, relying upon the earlier judgment of this Court in Rajesh Kumari's case held that when payment on account of debt or of interest on a legacy is made before expiration of the prescribed period by the person liable to pay the debt or by an agent duly authorised on his behalf, a fresh period of limitation shall be computed from the time when the payment is made.

22. In the case reported as J.K. Lakshmi Cement Ltd. (supra) it was held that the period of limitation shall be computed from the date of invoices by which goods were sold and delivered by the plaintiff to the defendant, but where there is an acknowledgment in writing of the amount due to the plaintiff by the defendant or on account of part payment of the amount due from the defendants to the plaintiff, the period of limitation shall stand extended for

filing the suit in accordance with the provisions of the Limitation Act, 1963.

23. Likewise, in the decisions rendered in the cases of Bharat Electronics Ltd.; The Motor & General Finance Ltd. and F.C.C. Projects Pvt. Ltd. (supra), this Court held that a part payment made by the debtor to the creditor would tantamount to the acknowledgement of the amount and a fresh period of limitation shall be computed from the date when the last payment is stated to have been made.

24. In view of the aforesaid, it must be held that a fresh period of limitation would commence from the date the cheque was issued in part- payment of the dues of the plaintiff i.e. on 12.07.2001, in view of the provisions of Section 19 of the Limitation Act, 1963. The learned Trial Court has not considered the said provision and thus, its findings recorded on the issue no.1 are wholly unsustainable and are accordingly set aside.”

28. In this case, last transaction was made on 27th March, 1995 and a sum of ₹16,26,509/- was due and outstanding as on that date. However, thereafter ₹ 4 lacs was paid on 19th April, 1995 leaving behind balance of ₹12,26,509/-. Subsequently, cheque dated 31st July, 1995 for ₹5 lacs was again issued towards part payment. Lastly, cheque dated 10th August, 1995 was again issued. By virtue of these part payments, the period of limitation stands extended for

another three years from the date of last cheque. Thus, the suit filed in the month of May, 1998 shall be within the period of limitation.

29. In view of the above discussions, it is held that plaintiff is entitled to recover ₹12,26,509/- together with interest @ 9 % per annum with effect from 8th August, 1995 from the defendant no.1. In my view, defendant no. 2 cannot be fastened with the liability to pay the dues of the defendant no. 1 merely because he happens to be its Managing Director. Defendant no. 1 being a juristic person can sue and be sued in its name. Directors and/or Managing Directors of a company are not personally liable to pay the debt of the company unless they have personally guaranteed the due repayment of such a 'debt'. No such personal guarantee has been pleaded nor proved.

30. Accordingly, above three issues are decided in favour of the plaintiff and against the defendants, in the above terms.

Issue No. 6

31. Onus to prove this issue was on the defendants. However, no evidence has been led by the defendants to show that this Court has no territorial jurisdiction to entertain and try this suit. Even otherwise, sufficient evidence has been led by the plaintiff to show that cause of action had arisen in Delhi, inasmuch as, Delhi office of defendant no. 1 had actively participated in the business

transactions involved in this case. PW1 has categorically deposed that the orders were placed by defendant no. 2 for and on behalf of defendant no. 1 from Delhi; after getting the certificates transferred in the name of defendant no. 1, same were delivered at Delhi office of defendant no. 1, inasmuch as, defendant no. 1 used to make on account payment from time to time through cheques issued and delivered by its Delhi office. In their written statement, defendants have neither denied that “quota” certificates were delivered at Delhi office nor about the factum of payment being made through cheques from the Delhi office. Though it is stated in the written statement that Delhi office of defendant no. 1 was closed much prior to filing of the present suit, but no evidence in this regard has been led by the defendants. Accordingly, this issue is decided in favour of the plaintiff and against the defendants.

Issue No. 7

32. In view of the findings returned on the aforesaid issues, a decree is passed in favour of the plaintiff and against the defendant no.1, in the sum of ₹12,26,509/- together with interest @ 9 % per annum with effect from 8th August, 1995 till realization of decretal amount together with costs. Decree sheet be drawn accordingly.

A.K. PATHAK, J.

February 02, 2012/rb