

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

% *Date of Decision : November 08, 2012*

+ **RFA(OS) 94/2011**

RANBIR SINGH GUGNEJA Appellant
Represented by: Mr.Jasbir Singh, Advocate.

versus

M/S.CONTINENTAL ENGINES LTD. & ORS. Respondents
Represented by: Mr.Sanjiv Bahl, Advocate and
Mr.Eklavya Bahl, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J. (Oral)

1. Learned counsel for the parties agree that we need to decide whether the impugned decision dated December 24, 2010 has correctly decided that the correspondence between the parties exchanged through e-mails evidences a full and final settlement of appellant's claim in sum of ₹27,79,739/- and since save and except a sum of ₹5,14,585/- from said sum remained payable the suit filed by the appellant has been correctly decreed in sum of ₹5,14,155/-.

2. It is not in dispute that vide Ex.P-1 dated September 01, 2000, the appellant was appointed as a CEO of four group companies (the respondents) at a remuneration of ₹1 lakh per month and subsequently vide Ex.PW-1/3 dated September 29, 2000, which letter supplemented Ex.P-1, the remuneration was enhanced to ₹1.5 lakhs per month and additionally the appellant was to receive 10% profit from the four companies of which he was appointed as the Chief Executive Officer.

3. As per the appellant, the sum of ₹27,79,739/- to which he had agreed to receive did not include the profits earned by the four companies when he worked as the CEO and thus he was entitled to 10% of the profits earned. He claimed the same as also the sum of ₹5,14,585/- in the suit.

4. The stand of the four companies was that since the appellant was the composite CEO of the four group companies, he was entitled not to individual profits made by two out of the four companies but to such profits as were earned by the four companies put together. It was pleaded that the parties had debated on the same and that offsetting losses with the profits; 2:2, it was agreed that nothing would be payable towards profits and for which the e-mails exchanged between the parties were relied upon as evidence.

5. The learned Single Judge has agreed with the appellant that the manner in which the companies were projecting their profits and losses was not correct but has finally concluded against the appellant with reference to the e-mails exchanged by holding that the parties discussed two aspects of profits i.e. whether the cumulative profits of four companies had to be seen, meaning thereby losses incurred by two could be set off against the profits earned by the other; and secondly the manner to compute the profits and in view of the final settlement arrived at, has concluded that only ₹27,79,739/- was payable.

6. Our job therefore is to reflect upon the e-mails exchanged between the parties. The e-mails exchanged have been proved as Ex.PW-1/5, Ex.PW-1/6, Ex.PW-1/7 and Ex.PW-1/8.

7. The e-mails dated April 14, 2003 and April 28, 2003 sent by the appellant to Mr.Dutta (representative of the four companies), read as under:-

E-mail dated April 14, 2003

“Dear Mr.Dutta

I would like to thank you for responding to my requests for

settling my account, latest of which was made on 18th February, 2003, addressed to Sh.R.L.Gupta. Based on your fax dated 25th March, E-mails dated 29th March and 8th April, 2003 and our telephonic conversations, I would like to summarize below the areas of our agreement and disagreement. After your own kind reconsideration if the differences still persist, I would like you to refer these for Sh.A.S.Bakshiji's final decision. I am sure he will be more generously inclined.

Areas of Agreement

1. Unpaid salary for two months	₹2.0 lacs
2. Leave salary 2/3 month	₹ 66,667/-
3. Supplementary allowance	₹ 27 lacs
4. Provident Fund equivalent in lieu	₹ 2.16 lacs
5. Severance (Terminal) Salary and PF	₹6.72 lacs
6. Medical, Petrol, diesel, gas, Entertainment etc.	₹1,12,019/-
7. (a) Furniture, appliance, curtains and moving	₹31,563/-
(b) Transferred Furniture (Rs.4.80-0.83)	₹3.97 lacs
(c) Telephones	₹23,000/-
8. Foreign Tour expenses (₹1,17,780 – 95,000)	₹22,780/-
9. Terminal moving expenses per vouchers	₹3,35,988/-

Areas of Differences

- Severance (Terminal) related:
 - House rental ₹4.5 lacs – according to you only cash type perquisites are payable
 - Transport (Personal) and other benefits ₹1.3 lacs (refer TDS document) – same comment as above.
 - Supplementary allowance for six months ₹9 lacs – this is a part of cash compensation.
- Profit share – according to you there was no profit in the period October, 2000 to March, 2003. This was not the case based on what was reported to me as well as Mr.Bakshi during my employment.
- Interest on all overdue payments till date of payment.”

Email dated April 28, 2003

“Dear Mr.Dutta

I understand that my letter dated 14th April has been already couriered to you. A copy of the same is reproduced below for ready reference. Kindly consider my request favourably. In the meantime if you need any clarification from me please let me know.

Best regards

Ranbir Gugneja”

8. Relevant would it be to note that in the e-mail dated April 14, 2003, responding to the account sent to him by the respondent companies, the appellant listed 9 areas of agreement followed by 3 areas of disagreement and the 2nd area of disagreement was pertaining to the profits earned by the 4 companies.

9. The respondents responded to the appellant via e-mail dated May 20, 2003 which reads as under:-

“Dear Mr.Gugneja, Mr. Bakshi’s reply to your letter is being sent in the attachment.

Regards

Alok Dutta”

10. To which the appellant replied vide e-mail dated May 25, 2003 which reads as under:-

“Dear Mr. Dutta

We were away for a few days and could not open the attachment while retrieving our mail. Even after our return I am unable to open the attachment containing Mr.Bakshi’s reply to my letter. Kindly resend the attachment by including it in body of the E-mail message as I do not know what is wrong. It has never been a problem before. In the meantime I will consult with some knowledgeable person seeking help to open the attachment sent by you.

Best Regards
Ranbir Gugneja”

11. The respondents re-sent the attachment containing Mr.Bakshi’s reply to the appellant vide e-mail dated May 27, 2003 which reads as under:-

“Dear Mr.Gugneja,

We missed you and Meena during Simran’s wedding as we were expecting you. Anyway thanks for your gift and the greetings sent by you. We are looking forward to meet you during your next visit to India.

Regarding the issues, I have reviewed each area with great details and I wish to comment as follows:-

- (a) House, Car & Other perquisites are not a part of severance, as you were availing these during the severance period as long as you were in India and you were given full option of using these perquisites/facilities for a period of six months from February 22, 2002, which is the date from which the notice period is to be counted.
- (b) Profit:- As no profit is accrued (accumulative) of the four companies during your tenure, there is nothing payable on this account.
- (c) Interest:- The delay in settling is not on account of Bakshi Enterprises; therefore this is not payable.

Since enough time has been spent on this matter, I would request you to conclude the matter by confirming the settlement. Immediately on receiving your confirmation, we will arrange to release the payment as mutually agreed.

With regards,
Amarjit Bakshi”

12. And relevant would it be to note that the appellant was informed vide point No.(b) that no profits (accumulative) for the four companies had accrued.

13. In response appellant responded as under:-

“Dear Mr.Dutta

Thank you for sending Sh.Bakshiji’s reply to my letter dated May 07, 2003. I have tried to contact him by phone. Perhaps he has been out of range for the cell phone. Kindly advise on which immediate date and time he will be available in his office for me to successfully talk to him. Sorry to give you this trouble but your’s is the only confidential e-mail address I have to contact Mr.Bakshi on this matter.

Best regards

Ranbir Gugneja”

14. To which the respondents replied vide e-mail dated June 12, 2003 which reads as under:-

“Dear Mr.Gugneja, Mr.Bakshi is in town for the next week and you may speak to him at your convenience. He would be expecting your call.

Regards,

Alok Dutta”

15. E-mails were thereafter exchanged on September 09, 2003, September 30, 2003 and October 04, 2003 and suffice would it be to state that in these three e-mails parties did not discuss anything about the issue of profits and the manner of computation thereof for the reason Mr.Bakshi’s letter sent by e-mail being the letter dated as also the e-mail dated May 27, 2003 was not refuted by the appellant with reference to point No.(d) i.e. no profits accruing (cumulatively).

16. We therefore concur with the view taken by the learned Single Judge that there was a complete accord between the parties.

17. A feeble attempt is made to urge that the appellant succumbed to the

pressures because he was induced to stop writing on the subject of profits inasmuch as Mr.Bakshi was insisting that unless there was a complete accord he would not release any money to the appellant.

18. We do not permit said plea to be raised inasmuch as a plea of undue pressure is a plea of fact and in the plaint or even in the replication there is not even a whisper. Besides, we find that the respondents have not obtained any document pertaining to a full and final satisfaction being recorded. The appellant was in Canada when the e-mails were exchanged. He raised the issue of manner in which profits had to be computed and the four companies took a stand. The stand of the four companies was that since appellant was a composite CEO of the four companies, his entitlement to 10% share in the profits had to be determined by looking at the issue cumulatively, and we find that Mr.Bakshi has used said expression i.e. 'cumulatively' in his letter. The petitioner acquiesced in the said manner of profits to be computed evidenced by the fact that his subsequent e-mails stopped any reference to said issue.

19. As regards the learned Single Judge opining that the respondent's method to compute profits was incorrect, we may only note that the learned Single Judge has not referred to any accounting standard to opine so. The view taken by the learned Single Judge in paragraph 12 of the impugned decision, and we quote: *'I have no doubt that in my mind that in order to work out the share of the plaintiff in the profits of the defendant companies, the amount of dividend, tax on dividend or income tax could not have been deducted. The profit made by the company exclusive of dividend, tax on dividend and income tax etc. is the amount representing the net profit made by the company in a particular financial year.'* is not a correct view for the reason the appellant was to receive 10% of the profits of the company as per Ex.PW-1/3 and the said document simply uses the expression '*profits*' as

against the expression '*net profit*' or '*gross profit*'. The parties were thus free to discuss and agree upon the mode of determining the profit, which they did and after some discussion the appellant left the issue.

20. We dismiss the appeal but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

NOVEMBER 08, 2012
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