

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

%

Date of decision: 15th April, 2013

+

CS(OS) NO.576/2010

IUP JINDAL METALS & ALLOYS LTD. Plaintiff

Through: Mr. Raman Kapoor, Sr. Adv. with Mr.
P.K. Mittal & Mr. Ankur Gosain,
Adv.

Versus

M/S CONEE CHAINS PRIVATE LTD. Defendant

Through: Mr. R. Vasudevan, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

**IA No.6069/2011 (of the defendant for leave to defend) in CS(OS)
No.576/2010**

1. The plaintiff has instituted this suit under Order 37 of the CPC for recovery of Rs.1,49,21,015/- due from the defendant to the plaintiff towards following invoices:

"S.No.	Invoice No. &	Date	Amount
1.	11392	22.02.2007	Rs.32,87,749/-
2.	11515	19.03.2007	Rs.37,39,678/-
3.	12249	31.05.2007	Rs.40,80,909/-
4.	12572	31.08.2007	Rs.38,12,679/-

			Rs.1,49,21,015/-
			=====

towards the price of the Cold Rolled Stainless Steel Coils sold, supplied and delivered by the plaintiff to the defendant together with Rs.48,33,765/- towards interest @ 12% per annum from the due date of payment of each of the aforesaid invoices and till the date of institution of this suit. It is further the case of the plaintiff that a meeting was held by the parties on 02.06.2009 with the following agenda:

“AGENDA: *Regarding Old outstanding of Rs.1,49,21,015.00 as per IUP Jindal account statement and Approximately Rs.1,29,00,000.00 as per M/s Conee Chains Account statement and restart future Business on mutually agreed terms & conditions.”*

and in the Minutes drawn of the said meeting and signed by the representatives of the parties, it was agreed as under:

“DISCUSSIONS & CONCLUSION:

Mr. Manish Gandhi agreed to reconcile the IUP Jindal A/C statement with their books of accounts. The old pending payment of Rs.1,49,29,015.00 bearing invoice value as follows:

Inv. No.	Inv. Date	Inv. Amount
11392	22-Feb-07	32,87,749.00
11515	19-Mar-07	37,39,678.00
12249	31-May-07	40,80,909.00
12572	31-Aug-07	38,12,679.00
TOTAL		1,49,21,015.00

It has been mutually agreed that M/s Conee Chains will issue Demand Draft of 35% of the Purchase order value along with

every purchase against old pending payment order and additional Rupees fifteen lakh will also be released by Conee Chain in every quarter month against old pending payment as mentioned above. The Purchase order will be released on 20th day of every month based on the prices quoted by IUP JINDAL and agreed by Conee Chain and material will be supplied in every next month. As the material is produced, IUP JINDAL will issue the Proforma invoice. M/s Conee Chains will send draft LC copy, on confirmation from IUP Jindal, shall release Letter of credit. On receipt of LC the material will be dispatched immediately.

In case the above agreed conditions are not acceptable by the management or failure due to any reason (the same will be communicated within 2 weeks) M/s Conee Chain agreed to release Rs.6.0 lakh through Demand draft against old outstanding every month commencing from the month of July'09 and additionally Rupees Fifteen Lakh will be released every quarter month against old pending dues."

Upon no payment by the defendant of the amount in terms of the aforesaid Minutes also, this suit was filed.

2. Summons for appearance and thereafter for judgment were issued and the defendant has applied for leave to defend pleading:

- (i) that the invoices raised by the plaintiff on the defendant on which the suit is based are not bills of exchange or promissory notes and therefore not covered under Order 37 of the CPC;
- (ii) this Court does not have territorial jurisdiction to try this suit - invocation of the territorial jurisdiction of this Court by the plaintiff pleading discussions, negotiations and agreement have been reached at Delhi and the payments having been made at Delhi is wrong - the officials of the plaintiff had approached the defendant for business at the factory of the defendant at Tamil Nadu and the parties agreed that the defendant would place orders at the plaintiff's Chennai office; all payments were made by the defendant by Letters of credit payable at Haryana; all materials were dispatched by the plaintiff from Haryana and received by the defendant at Tamil Nadu;
- (iii) the suit is barred by time, having been filed beyond three years from the date of the invoices;
- (iv) there is no acknowledgment by the defendant of the amount claimed by the plaintiff;
- (v) “ no amount reflected in the books of account of the defendant can be said to be due when disputes have been raised with regard to the materials relating to invoices reflected in the accounts. All such amounts contained in the books of account are subject to such disputes.”;
- (vi) that the plaintiff sent short supply of many sizes ordered and excess of others – though the plaintiff was informed of the same but the defendant never received the shortage quantity and the size supplied

in excess are still available with the defendant as dead inventory; the representative of the plaintiff at Chennai Sh. Hanumantha Rao had inspected the defective goods at the defendant's factory and had acknowledged the same;

- (vii) the claim of the plaintiff therefore that amounts are due under the aforesaid invoices is wholly misconceived and a total misrepresentation of facts;
- (viii) that though the plaintiff had represented its goods to be competitively priced but the defendant had learnt later on that the plaintiff was charging exorbitantly high price for the same material which were available in the market for lesser price – though the plaintiff had been promising to rectify the same, it was never done;
- (ix) that though the purchase order dated 08.03.2007 placed by the defendant on the plaintiff was at Rs.240/- per kg., the plaintiff in invoice no.11515 dated 19.03.2007 had priced the material at Rs.275 and Rs.251 per kg. and which was never agreed;
- (x) that the plaintiff had also not supplied the goods ordered by the defendant on 12.05.2008 & 16.06.2009 and on account of which the defendant had suffered losses of more than Rs.1 crore;
- (xi) that there was huge shortage in the last four supplies resulting in mismatch of quantity of approx. 5 tons and on account of which also, the defendant suffered losses;
- (xii) that the payment towards the invoices subject matter of this suit was being withheld by the defendant only because of the dispute arising in respect therefor and which the plaintiff has failed to resolve;

(xiii) that there is no agreement for payment of interest and the claim for interest is outside the purview of order 37 of the CPC;

3. The counsel for the parties have been heard.

4. The counsel for the defendant has addressed arguments on two aspects only i.e. on the aspect of territorial jurisdiction and with reference to the copy of the letter dated 28.06.2007 filed by the defendant along with its documents with respect to the supplies vide invoices no.11515 and 12249 stating “..... we have received material in which some of material rejected as per the following list and we have inform regarding this to Mr. Hanumantha Rao, your representative came and inspected the material. Hence we are sending back the material to you as per the list which please note and do the needful.” The material listed thereunder is of the total value of Rs.3,25,898.90p.

5. Reliance in support of the objection as to the territorial jurisdiction is placed on *Rashtriya Mahila Kosh vs. Youth Charitable Organisation* 2005 Law Suit (Delhi) 913.

6. The senior counsel for the plaintiff, on the aspect of territorial jurisdiction has referred to various judgments which will be discussed hereinbelow and has with respect to the letter dated 28.06.2007 contended that neither any proof of dispatch or delivery thereof has been filed nor the defendant at any time had returned any goods; alternatively it is contended that the impact of the said letter is at best of Rs. 3,25,898.90 only and from the factum that except for the said letter, the defendant has not been able to produce the letter qua any other supplies it is obvious that the pleas qua the

other supplies are without any basis.

7. I have weighed the rival contentions aforesaid. I will take up the aspect of territorial jurisdiction first.

8. The plaintiff has invoked the territorial jurisdiction of this Court by pleading in para 13 of the plaint that discussions and negotiations between the parties took place at Delhi; agreement was concluded at Delhi; discussions about delivery of goods took place at Delhi; payment was agreed to be made at Delhi; the payment was tendered at New Delhi; the Letters of Credit were encashed in New Delhi; and number of meetings took place at New Delhi.

9. The defendant in the application for leave to defend has though denied that any of such things happened at Delhi but has not and could not deny the factum of the registered office of the plaintiff being at Delhi. The plaintiff in this regard has invoked the doctrine of 'debtor must seek creditor' and has relied on:-

(i). ***Startech Enggcon Pvt. Ltd. Vs. Bundelkhand University***, 147 (2008) DLT 276 laying down that the place where payments are made or were required to be made would be relevant to determine the territorial jurisdiction.

(ii). ***Ms. Shradha Wassan Vs. Mr. Anil Goel*** MANU/DE/0490/2009 laying down that the place from which the legal notice preceding the suit and demanding payment on behalf of creditor is sent would have jurisdiction on the principle of 'debtor must seek creditor' and that where the leave is sought merely on the ground of territorial jurisdiction of the Court, unless a clear case of ouster of jurisdiction

is made out, leave ought not to be granted on such a plea.

(iii). ***Union Bank of India Vs. M/s Milkfood Ltd.***, MANU/DE/2078/2012 where also the Division Bench of this Court invoked the principle debtor must seek creditor to negate the objection as to the territorial jurisdiction.

(iv). ***M/s Lohmann Rausher GmbH. Vs. M/s Medisphere Marketing Pvt. Ltd.*** 2005 II AD (Delhi) 604, laying down that suit under Order 37 of the CPC is maintainable on invoices and the plea of rejection of goods taken belatedly cannot be a ground for granting leave to defend.

(v). ***Halcyon Asia Management Vs. Hotel Blue Stone*** MANU/DE/2550/2012, also on the aspect of maintainability of the suit under Order 37 on the basis of a notice and principles governing grant of leave to defend.

(vi). ***M/s Duraline India Pvt. Ltd. Vs. M/s BPL Broadband Network Pvt. Ltd.*** 111 (2004) DLT 736, again on maintainability of the suit under Order 37 on the basis of invoice and refusing leave to defend on the plea of territorial jurisdiction in spite of the legend on the invoices of “subject to Goa jurisdiction” and holding that since some cause of action had accrued at Delhi and since the legend of jurisdiction of Goa was for sales tax purpose, Delhi also would have territorial jurisdiction.

(vii). ***G.P. Bhatia Vs. Dee Kay Inc.*** MANU/DE/1017/2012 on the principles of granting leave to defend.

(viii). ***Anchal Vs. Anand Prakash*** 53 (1994) DLT 348, giving

weightage to the entries in the books of accounts of the defendant at the stage of grant of leave to defend.

10. I am satisfied that the objection of the defendant in the leave to defend application as to the territorial jurisdiction is dilatory and vexatious. The registered office of the plaintiff being at Delhi and the plaintiff having got issued a legal notice prior to the institution of the suit calling upon the defendant to pay the monies due at Delhi, the Courts at Delhi also would have jurisdiction on the principle of 'debtor must seek creditor' and it cannot be said that this Court has no territorial jurisdiction to entertain the suit.

11. As far as the only other plea of the defendant on the basis of the letter dated 28.06.2007 is concerned, the same is falsified from the Minutes of the meeting held on 02.06.2009. Though the agenda for the said meeting was 'reconciliation of the outstanding against the defendant of Rs. 1,49,21,015/- claimed by the plaintiff and the outstanding admitted of approximately Rs. 1,29,00,000/- by the defendant' but in the discussions held and conclusions drawn, the defendant agreed to pay Rs. 1,49,21,015/- in the manner as recorded therein. Thus, the grievances even if earlier raised with respect to goods worth Rs. 3,25,898.90 did not survive. It is also not the case of the defendant that after the said meeting on 02.06.2009, the defendant had pointed out any inconsistencies in the accounts or that any reconciliation was carried out. Had the defendant not admitted the liability in the sum of Rs. 1,49,21,015/- on 02.06.2009, the defendant would have thereafter on reconciliation informed its version to the plaintiff and it admittedly was not done.

12. The mala fides of the conduct of the defendant is clearly borne out from the defendant, in spite of the clear admission even in the agenda for the said meeting of the liability of Rs.1,29,00,000/-, not paying the said amount also.

13. It is perhaps for the reason of the said Minutes of the meeting held on 02.06.2009 only that the learned counsel for the defendant has chosen not to press any of the other grounds taken in the application for leave to defend and rightly so. I have even otherwise satisfied myself of the claim in suit being within time. The other grounds taken in the application do not inspire any confidence in the light of the admitted Minutes of the meeting dated 02.06.2009.

14. It has thus to be held that the grounds on which leave to defend is sought are vexatious and a moonshine and the defendant has no defence least a substantial defence to the suit.

15. The application for leave to defend is accordingly dismissed.

16. Axiomatically, the suit of the plaintiff is decreed in the sum of Rs. 1,49,21,015/-. However, I am not inclined to award interest to the plaintiff @ 12% per annum and with effect from the date of each invoice as claimed. In the consensus reached in the meeting held between the parties on 02.06.2009, there is no mention of payment of any interest on the old outstanding. The plaintiff thus cannot be entitled to any interest for the period prior thereto. The plaintiff is thus held entitled to interest with effect from 02.06.2009 only. Considering that the transaction between the parties is a commercial one, it is deemed appropriate to award interest @ 10% per annum from 02.06.2009 till the date of institution of the suit,

pendente lite and from the date of decree and till three months thereafter. If the defendant does not pay the decretal amount within the said period of three months, there is no reason to not award interest @ 18% per annum thereafter.

17. Accordingly, a decree is passed in favour of the plaintiff and against the defendant for recovery of Rs. 1,49,21,015/- together with interest @ 10% per annum thereon w.e.f 02.06.2009 till the date of institution of the suit, pendente lite and till three months after this date. Thereafter, the plaintiff would be entitled to interest on the principal amount of Rs. 1,49,21,015/- @ 18% per annum till realization. The plaintiff is also entitled to costs as per schedule. The decree sheet be drawn.

RAJIV SAHAI ENDLAW, J

APRIL, 15, 2013

‘gsr’/sd

(corrected and released on 30th July, 2013)