

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

+ **CO. APP. 104/2005**

PRADESHIYA INDUSTRIAL AND INVESTMENT
CORPORATION OF U.P. LTD. Appellant
Through: Mr. Sandeep Agarwal, Advocate

versus

M/S. ZULLU SECURITY (I) P. LTD. AND ANR. Respondents
Through: Mr. Ajit Sharma and Mr. J.M.
Sharma, Advocates for R-1.

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER (ORAL)

: REVA KHETRAPAL, J.

1. The Appellant assails the order dated 8th August, 2005 passed by the learned Company Judge in C.P. No.113/94 in respect of M/s. India Insulator Ltd. (in liquidation).

2. The facts in brief are that the Appellant is a financial institution within the meaning of State Financial Corporation Act, 1951. Sometime in April, 1996, the Respondent No.1 – M/s. Zullu Security (India) Pvt. Ltd. offered its services to the Appellant for providing security for the units taken over by the Appellant. On 19th April, 1996, an agreement was entered into between the Appellant and the Respondent No.1 for the aforesaid purpose. After execution of the said agreement, the Appellant vide its letter dated 9.5.1996 requested

the Respondent No.1 to provide security guards with effect from 10.5.1996 in respect of two units, i.e., M/s. India Insulator Ltd., Fatehpur and M/s. Manjusha Glass Works (P) Ltd., Distt. Fatehpur. Alongwith the said letter, inventories of the assets of the said units were handed over by the Appellant to the Respondent No.1 with a direction that security guards may safeguard the assets of the said units. M/s. India Insulator Ltd. is one of the industrial units taken over by the Appellant under Section 29 of the State Financial Corporation Act on 6.6.1994. However, later, pursuant to the orders of the Company Court passed in C.P. No.113/1994, the said company was ordered to be wound up and the official liquidator was directed to take possession of the assets of the said company. Accordingly, the official liquidator (the Respondent No.2) put his seal over the locks put by the Appellant in September, 1995. The inventory prepared by the Appellant on 14.6.1994 was provided to the official liquidator. Immediately thereafter, the Appellant filed an application, being CA No.600/1995 for modification of the order dated 1.2.1995 praying that the Appellant (PICUP) be permitted to retain the possession of the company and effect the sale of the same in accordance with the SICA, 1985 and the order of the BIFR dated 19.4.1994. The said application was moved by the Appellant as the only secured creditor of the company in liquidation and as BIFR had declared the company as sick unit and had recommended that the company be wound up. The aforesaid application was disposed of by the Company Court on 27.8.1996 with the direction that the official liquidator may associate PICUP as the assets of the company were seized by the PICUP in the

case, for taking steps to give effect to the order passed by the Court on 1.2.1995.

3. It is the case of the Appellant that on 10.5.1996, the Respondent No.1 was appointed as security agency in place of Taiba Security Services and a copy of the inventory prepared by the Appellant on 14.6.1994 was given to the Respondent No.1, which was acknowledged by it. Thereafter, sometime in 1998, the official liquidator was directed by the Company Court to evaluate the assets of the company in order to invite bids for the sale of the said assets. Accordingly, an inspection was carried out by a Valuer appointed for the aforesaid purpose of the plant, machinery, furniture and fittings of the company along with the officials of the Appellant and the Respondent Nos.1 and 2. A valuation report was filed by the Valuer on 31.3.1998.

4. Thereafter, on 16.12.2003, the Appellant received a communication that an inspection was fixed on 19.12.2003. Further, it was informed that the Appellant was required to be present before the Company Court on 19.2.2004 in terms of the order dated 4.12.2003. The Appellant alleges that during the inspection, it was noticed that certain items which were available at the time of valuation of the assets in 1998 were missing from the factory site. Accordingly, a communication was issued by the Appellant to the Respondent No.1 on 5.2.2004 asking the Respondent No.2 to explain as to how the various assets were missing from the factory premises of the company. On 21.4.2004, another inspection was carried out of the assets at the factory unit of the company, this time in the presence

of the representative of the Respondent No.1. According to the Appellant, it was noticed that along with some furniture and fixture, one of the major items which was valuable and missing, was the functional/electronic parts of a transformer, which was valued at ₹ 21.33 lacs in the report of the Valuers. Only the iron shell of the said transformer could be found at the factory site. On 15.7.2004, the Appellant called upon the Respondent No.1 to submit their explanation on or before 19.7.2004 or else pay for the missing items, which amounted to ₹ 23.91 lacs. On 19.7.2004, the Appellant received a communication from the Respondent No.1 stating that no deficiency had occurred during their tenure of security and as such they were not liable to pay any amount to the Appellant. Thereafter, the Respondent No.1 filed an application, being C.A. No.1288/2004 before the Company Court seeking direction, restraining the Appellant from recovering the amount of ₹ 13.92 lacs (the figure reached after depreciating the value of the missing assets) and directions to the official liquidator to visit the unit and prepare the list of assets and machines. By an order dated 23.11.2004, the Court appointed a Local Commissioner for on-the-spot verification of the items, who submitted his report on 6.3.2005. On 8.8.2005, the Company Court, on the basis of the report of the Local Commissioner, formed an opinion that the theft, if any, which had taken place in the company's factory premises, was not attributable to the applicant/M/s. Zullu Security (India) Pvt. Ltd. , **as the premises were sealed by the official liquidator at the time of deploying the applicant as security agency which seals were intact even at the**

time when the Local Commissioner visited the premises. On the above basis, the Appellant was directed to pay the balance amount to the Respondent No.1 within three weeks after deducting ₹ 1.5 lacs, which was offered by the Respondent No.1.

5. It may be noted at this juncture that during the pendency of the Appeal, without prejudice to the rights and contentions of the parties, this Court directed the Appellant to pay a sum of ₹ 5 lacs to the Respondent No.1 and also issued a direction to the Respondent No.1 to furnish an undertaking that in case ultimately the Appeal is decided in favour of the Appellant, the Respondent No.1 would return the said amount to the Appellant. As is reflected in the order, this order was passed as Respondent No.1 had contended that they had to make payment to the security guards who had been posted at the factory premises.

6. Before embarking upon a discussion on the merits of the Appeal, it may be noted that no reply to the Appeal was filed by the official liquidator though ample opportunity was granted for the aforesaid purpose.

7. The sole contention of learned counsel for the Appellant was that the agreement dated 19th April, 1996 entered into between the Appellant and the Respondent No.1, i.e., M/s. Zullu Security (India) Pvt. Ltd. provided for the preparation of an inventory of items and assets to be prepared by the officers of the Appellant in the presence of the representative of the Respondent No.1. For the sake of ready reference, the relevant clause, being Clause 3 of the Agreement, is reproduced hereunder:-

“3. At the time of posting the security guards at the guarded premises, an inventory of items and assets available therein shall be prepared by the officers of the Second Party in the presence of the representative of the first party and a copy thereof shall be handed over to and shall be kept in the custody of the first party and the security guards posted at such premises for inspection/re-checking from time to time on behalf of the Second Party.”

8. Learned counsel for the Appellant also placed reliance upon a communication dated 9/10.5.1996, which reads as under:-

“ROL/FUP/73 *Dated 9/10.5.96*
M/s. Zullu Security India (P) Ltd.
SR-4, Khazana Complex,
Ashiana, Kanpur Road,
Lucknow – 226012

Dear Sir,

You are requested to provide security guards in the following units w.e.f. 10.5.96:

- 1. M/s. India Insulators Ltd., Fatehpur*
- 2. M/s. Manjusha Glass Works (P) Ltd., Distt. Fatehpur*

The inventories of the assets of the above units are enclosed herewith. The security guards may be directed to safeguard the assets of these units and they may not receive any paper from anybody.

Thanking You,

Yours faithfully,

(S.K. AGGARWAL)
REGIONAL MANAGER

C.C. To:

Sri M.C. Yadav, Dy. Manager (A)
for kind information.

(S.K. AGGARWAL)”

9. The contention of the Appellant's counsel is that the agreement provided for an inventory to be prepared and the communication dated 9/10.5.1996 clearly showed that a copy of the inventory was handed over to the Respondent No.1 with the request to post security guards. The Respondent No.1 not having raised any objection with regard to the correctness and authenticity of the inventory, it was not open to the Respondent No.1 to now contend that it was not its fault if articles went missing and it (the Respondent No.1) cannot be held responsible for the same. We find this contention to be wholly devoid of merit for the reason that the agreement itself stipulated that an inventory would be prepared of the articles lying at the factory site *in the presence of the representative of the Respondent No.1*. Admittedly, such exercise was never performed and the Appellant cannot be allowed to take advantage of this breach committed by the Appellant itself.

10. We also see no infirmity in the order of the learned Single Judge. It is noted in the order that the list of missing items, which was prepared on 19th September, 2003, was made after comparing with the inventory prepared in the year 1994 when the O.L. had taken possession of the factory premises on his appointment as the provisional liquidator. It is further noted that admittedly, from 1994 to 1996 some other security agency was deployed at the factory premises and the applicant came on the scene in the year 1996 and before giving the security arrangement to the applicant, no inventory was prepared. The learned Single Judge (Hon'ble Mr. Justice A.K.

Sikri, as his Lordship then was) has also noted that a Local Commissioner was also appointed at the request of the applicant to visit the factory premises and his report indicated that the theft, if any, which took place in the meantime cannot be attributed to the applicant inasmuch as the premises were sealed by the O.L. at the time of deploying the applicant as security agency, which seals were intact even at the time when the Local Commissioner visited the premises.

11. We find no merit in the Appeal. The Appeal is accordingly dismissed. No order as to costs.

**REVA KHETRAPAL
JUDGE**

**PRATIBHA RANI
JUDGE**

July 08, 2013
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