

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

REGULAR FIRST APPEAL NO. 1052 OF 2013 (MON)

BETWEEN:

1. TRIANZ HOLDINGS PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
NO.165/2, 6TH FLOOR, KALYANI MAGNUM
DORAISANI PALYA, IIM POST
BANNERGHATTA ROAD
BANGALORE - 560 076, KARNATAKA
REPRESENTED BY ITS DIRECTOR -
MR. SRIKANTH MANCHALA
2. SRIKANTH MANCHALA
AGED MAJOR
DIRECTOR
TRIANZ HOLDING PRIVATE LIMITED
NO.165/2, 6TH FLOOR, KALYANI MAGNUM
KORAISANI PALYA, IIM POST
BANNERGHATTA ROAD
BANGALORE-560 076, KARNATAKA
3. SRI RON OEHM
AGED MAJOR
MEMBER OF THE BOARD OF ADVISORS
TRIANZ INC.,
3979 FREEDOM CIRCLE, SUITE 210,
SANTA CLARA, CALIFORNIA 95054
UNITED STATES OF AMERICA
4. DR ARVIND BHAMBRI
AGED MAJOR
MEMBER OF THE BOARD OF

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Location: HIGH
COURT OF
KARNATAKA

ADVISORS TRIANZ INC.,
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SANTA CLARA, CALIFORNIA 95054
UNITED STATES OF AMERICA

5. SRI LARS RUBBE
AGED MAJOR
MEMBER OF BOARD OF ADVISORS
TRIANZ INC.,
3979 FREEDOM CIRCLE, SUITE 210,
SANTA CLARA, CALIFORNIA 95054
UNITED STATES OF AMERICA
6. ROBERT E BRUCE
AGED MAJOR
MEMBER OF THE BOARD OF ADVISORS
TRIANZ INC.,
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UNITED STATES OF AMERICA
7. SMT LAKSHMI MANCHALA
W/O SRIKANTH MANCHALA
MAJOR
3979 FREEDOM CIRCLE, SUITE 210,
SANTA CLARA, CALIFORNIA 95054
UNITED STATES OF AMERICA

...APPELLANTS

(BY SRI. RAYAPPA Y HADAGALI AND
SRI. TEJAS .R, ADVOCATES)

AND:

SRI P MURALIDHAR
S/O LATE P.S PRAKASA RAO
AGED ABOUT 42 YEARS
R/AT F-102, JAKKUR VILLAGE
(NEAR JAKKUR FLYING CLUB)
BANGALORE - 560 064

...RESPONDENT

(BY SRI. K.R. KRISHNAMURTHY AND
SRI. B.N. PRAKASH, ADVOCATES)

THIS RFA IS FILED U/SEC.96 R/W ORDER 41 RULE 1 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 26.03.2013 PASSED IN OS NO. 8668/2007 ON THE FILE OF THE XIX ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE, PARTLY DECREERING THE SUIT FOR RECOVERY OF MONEY.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON 01.04.2026 COMING ON FOR PRONOUNCEMENT THIS DAY, **RAJESH RAI K, J.,** DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE RAJESH RAI K

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE RAJESH RAI K)

This is defendants appeal challenging the impugned judgment and decree dated 26.03.2013 passed in O.S No.8668/2007 by the XIX Addl. City Civil and Sessions Judge at Bangalore (for brevity, "**learned Trial Judge**"), in a suit filed for recovery of money and declaration, whereby the learned Trial Judge passed the following:

"ORDER

The plaintiff's suit is hereby partly decreed as follows:-

The defendants are directed to pay a sum of Rs.4,20,00,000/- (Rupees Four Crores and Twenty Lakhs only) towards the value of 30,000 units together with costs and current

*interest thereon at the rate of 12% p.a.
from the date of suit till the date of
realisation of the entire decretal
amount.*

*So far as the relief of declaration
regarding the allotment of additional
units is concerned, the plaintiff's suit is
hereby dismissed."*

2. The parties are referred to as per their ranking before the Trial Court for the sake of convenience.

3. The briefly stated plaint case is as under:

In the year 2002, Defendant No. 2, being the Chief Executive Officer of Defendant No. 1 - Company, induced the Plaintiff to join as a founder member of Defendant No. 1, namely Trianz Consulting India Pvt. Ltd., a wholly owned subsidiary of Trianz Inc., USA, engaged in software consultancy, upon the express representation and assurance that the value generated in the Company would be equitably shared by the defendant No.2 and his wife with the founder members through preferred stock/value creation units (VCUs) in a 40:60 ratio, under the avowed slogan that "let's build value and we will share the rewards," and that the relationship would

be founded upon trust. The 60% share was to be divided among founder members and the future employees on the basis of 80-20 rule, i.e., the founder members would get major portion in 60%.

4. Acting upon such representations and in bona fide reliance thereon, the Plaintiff accepted the position of Managing Director and proceeded to establish and develop the Indian operations of the Company from inception, expanded the workforce to approximately 225 employees, facilitated the acquisition of Exim Soft, and further extended personal guarantees, including encumbering personal assets, for and on behalf of the Company.

5. It is submitted that the Defendants instituted a Value Creation Plan (for brevity, "**VCP**") in or about September 2004, pursuant to which the Plaintiff was allotted 30,000 units for the financial year 2003-04, the same having duly vested in his favour. It is further evident that for the financial year 2005-06, the Plaintiff was entitled to additional units commensurate with his performance up to March 2006. Further, the Plaintiff rendered substantial contributions towards the growth of the Company, including the establishment and expansion of Indian

operations, augmentation of revenue, and strengthening of the workforce.

6. It further emerges that, owing to the Plaintiff's persistent assertions regarding the promised preferred stock, Defendant No. 2, with intent to sideline the Plaintiff, orchestrated his exit from the Company. Consequently, the Plaintiff was compelled to tender his resignation effective 31.03.2006; however, his services continued to be availed in the capacity of a consultant for the period from 01.04.2006 to 30.06.2006.

7. It is further submitted that during the financial year 2005-06, NYLIM India Fund had agreed to invest in the Company, and, in that context, the valuation of M/s Trianz Inc., USA along with its subsidiary, Trianz Consulting India Pvt. Ltd., was undertaken as on 31.03.2006. However, the Defendants, with a mala fide intent to deprive the founding members and employees of the benefits arising therefrom, caused the incorporation of a new entity, namely M/s Aryabhatta Consulting India Pvt. Ltd., in or about July 2006. Subsequently, the said entity was renamed as M/s Trianz Holdings Pvt. Ltd. (for brevity, "**THPL**"), and both Trianz Inc., USA and Trianz

Consulting India Pvt. Ltd. were structured as subsidiaries under the said holding company.

8. Further, according to the plaintiff in January 2007, the investment from NYLIM India Investment Fund was received in THPL, which, at the material time, was merely a shell entity and had not carried on any substantial or independent business activities since its incorporation.

9. It is the further case of the Plaintiff that a liquidity event, within the meaning of the VCP adopted by the Company, had duly occurred, thereby triggering the Plaintiff's entitlement to receive payout under the said VCP. It is asserted that the value of the 30,000 units allotted and vested in favour of the Plaintiff in the year 2004 amounted to Rs.4.2 crores, and that the Plaintiff was further entitled to additional units for the period up to 31.03.2006.

10. In pursuance of the aforesaid entitlement, the Plaintiff raised a claim in December 2006 through electronic communication, followed by a formal legal notice dated 28.01.2007. The Defendants, however, by their reply dated 27.04.2007, denied the Plaintiff's claim in toto. In view of such denial, the Plaintiff was constrained to institute the suit seeking

declaration and recovery of the amounts due from the Defendants.

11. Upon service of summons, Defendant No. 2 entered appearance on his own behalf as well as on behalf of Defendant No. 1 - Company and filed a written statement, wherein the averments made in the plaint were denied. It was contended, *inter alia*, that the VCP was neither adopted by the Indian entity nor applicable to its employees, and that, notwithstanding its status as a subsidiary, the Indian entity constituted a distinct legal entity to which the said Plan was never extended.

12. The Defendants have further denied the Plaintiff's assertions regarding his performance and have contended that the Plaintiff voluntarily resigned on 31.03.2006 on account of his alleged poor performance. It is their case that, as per the terms of the VCP, the rights of a participant stand terminated immediately upon cessation of employment. It is also contended that, in any event, Trianz Inc., USA had terminated the VCP prior to the occurrence of any alleged liquidity event.

13. It is further contended that the investment by NYLIM India Fund was made in THPL, an entirely distinct entity

incorporated in June 2006, and not in Trianz Consulting India Pvt. Ltd. or Trianz Inc., USA. Consequently, according to the Defendants, no "liquidity event," as defined under the VCP, was ever triggered. The Defendants have also disputed the authenticity and validity of the alleged Notice of Award of 30,000 units, contending that the same was never officially issued, bears only the Plaintiff's signature, and lacks the requisite authorization of the Board.

14. The Defendants have further contended that the Plaintiff was paid a comprehensive severance package amounting to Rs.67 lakhs, equivalent to nearly one year's salary, which was accepted by him in full and final settlement of all claims. It is also asserted that the Plaintiff was merely an employee/executive of the Company and not a founder, and that no units were ever validly allotted to him. According to the Defendants, the only founders of the Company were Defendant No. 2 and his wife, Defendant No. 7.

15. It is further contended that the present suit is bad for mis-joinder of parties, inasmuch as Defendants Nos. 3 to 6, being advisory board members based in the United States, have no nexus with M/s Trianz Consulting India Pvt. Ltd. and

are not amenable to the jurisdiction of this Court. It is also urged that any claims, if at all, pertaining to Trianz Inc., USA, ought to be instituted before a court of competent jurisdiction in the United States.

16. In sum and substance, the Defendants have denied the allegations of the Plaintiff in their entirety, disputed the applicability of the VCP, denied the issuance or vesting of any units in favour of the Plaintiff, asserted that no liquidity event ever occurred, and contended that the Plaintiff has no legal or contractual entitlement to the reliefs sought in the present suit.

17. Thereafter, the Plaintiff filed a Re-joinder in response to the Written Statement, specifically countering the new allegations and defenses raised by the Defendants. The Plaintiff disputed the Defendants' contention that the VCP was not applicable to the Indian entity, asserting that the Plan was discussed, deliberated, and agreed upon jointly, and that legal opinion was obtained to ensure its applicability to the Indian entity and its employees.

18. The Plaintiff further denied the allegation that he had fabricated the Notice of Award in his favour, contending that the original documents remain in the custody of the

Defendants. Additionally, the Plaintiff asserted that Defendants Nos. 3 to 7 were actively involved in discussions as part of the advisory group and, therefore, constitute necessary parties to the present proceedings.

19. On the basis of above rival pleadings, the Trial Court framed the following issues:

"ISSUES

1. Whether the plaintiff proves that the defendants are liable to pay a sum of Rs.4,20,00,000/- along with interest at the rate of 12% p.a. from the date of suit till the date of realisation?

2. Whether the plaintiff proves cause of action?

3. Whether the defendant proves that the suit is not maintainable as pleaded in the written statement?

4. Whether the plaintiff is entitled for the decree sought ?

5. What order or decree?"

20. In support of his case, the Plaintiff examined himself and an additional witness as P.W.1 and P.W.2, respectively, and marked documents Ex.P.1 to Ex.P.37. In

opposition, the Defendants examined one witness as D.W.1 and marked documents Ex.D.1 to Ex.D.4. Upon consideration of the oral and documentary evidence, the Trial Court adjudicated the issues as follows:

Issue No.1: Partly affirmative in favour of the Plaintiff;

Issue No.2: Affirmative in favour of the Plaintiff;

Issue No.3: Negative in favour of the Defendants;

Issue No.4: Partly affirmative in favour of the Plaintiff, with the Court holding that the Plaintiff was not entitled to a declaration regarding allotment of additional units for the period from 28.10.2004 to 31.03.2006;

Issue No.5: Decree passed in favour of the Plaintiff as per the final order.

21. Aggrieved by the judgment and decree of the Trial Court, the Defendants have preferred the present appeal before this Court.

22. Heard the learned counsel Sri Rayappa Y. Hadagali and Sri Tejas. R. for the appellants, learned counsel Sri

K.R.Krishnamurthy, for Sri B.N.Prakash, counsel for the respondents.

23. The learned counsel for the appellants/Defendants contended that the VCP was formulated and made applicable solely to Trianz Inc., USA. It was submitted that Section 1 of the VCP, marked as Ex.P6, explicitly provides that the Plan is intended: (i) to attract and retain key employees critical to the success of Trianz Inc., USA (the "Firm"), and (ii) to provide incentives to such employees to maximize the value of the Firm. Accordingly, it was argued, there exists no admissible or valid document to demonstrate that the VCP was ever adopted by Trianz Consulting Pvt. Ltd. (for brevity, "**TCPL**").

24. Learned counsel further contended that the document relied upon by the Plaintiff to substantiate the applicability of the VCP to the Indian entity, namely Ex.P6 received via e-mail (Ex.P7), bears only the signature of the Plaintiff, and lacks any signatures of authorized representatives, company seal, or supporting documentation such as a Board Resolution. It was also emphasized that, as admitted by the Plaintiff during cross-examination, it was

possible for him to take a print out of Ex.P6 from the e-mail (Ex.P7), casting doubt on its authenticity and evidentiary value.

25. Emphasizing the Plaintiff's admissions during cross-examination, the learned counsel for the appellants submitted that the Plaintiff had categorically acknowledged that a separate VCP was required for TCPL, given its status as an independent legal entity. It was further contended that Ex.P6 was never deliberated upon in any Board meeting of TCPL, but was merely signed by Defendant No. 2 and the Plaintiff via e-mail.

26. Learned counsel highlighted that there exists no Board Resolution of TCPL adopting Ex.P6, nor any document requesting execution of the VCP. Accordingly, it was submitted that Ex.P6 is a marked-up document and not an original, was never made applicable to TCPL, nor ratified by its Board at any point in time. Consequently, the Plaintiff did not even annex the original or a valid copy of Ex.P6 along with the plaint, undermining the claim of its applicability.

27. The learned counsel further submitted that Ex.P7 to Ex.P9, relied upon by the Plaintiff, merely reflect discussions regarding the feasibility of applying the VCP to TCPL and, in no

manner, demonstrate that the Plan was ever implemented or made operative by TCPL. Similarly, Ex.P11, comprising a video recording on C.D. and its transcript marked Ex.P11(c), does not substantiate the claim that the VCP was made applicable to Defendant No. 1.

28. Learned counsel also contended that Ex.P10, the alleged Notice of Award of units, is not accompanied by any letter, Board Resolution, or authorization from TCPL, and bears only the signature of the Plaintiff. Consequently, it is evident that the Notice of Award was neither adopted nor made applicable to TCPL, a position explicitly stated in the Written Statement filed by the Defendants. It was further submitted that, in any event, the VCP stood terminated with effect from June 2006.

29. The learned counsel further submitted that the corporate veil can, in law, be lifted only in respect of a holding company and not in respect of its subsidiary, namely Trianz Consulting Pvt. Ltd. It was contended that lifting the corporate veil requires specific pleadings and proof of fraud or impropriety, which are entirely absent in the present case.

30. Notwithstanding the above, learned counsel alternatively contended that no "Liquidity Event," as defined under Section 12(e) of the VCP, ever occurred that would entitle the Plaintiff to receive any "Proportionate Share under the VCP" pursuant to Section 12(e), 6(b), and 12(h). It was further submitted that the Plaintiff's valuation of the alleged claim under the VCP is wholly erroneous and without basis.

31. Without prejudice to the aforesaid contentions, it is submitted by the learned counsel that the plaintiff was never awarded any units under the VCP, and that the formula adopted by the plaintiff for valuation of his alleged share under Section 12(h) of the VCP is wholly erroneous. It is further contended that, even assuming the VCP was adopted by TCPL, the plaintiff would, at best, be entitled only in terms of Section 12(b) of the VCP.

32. Placing reliance on the evidence of PW.2, it is submitted that a sum of Rs.1,55,778/- was paid to PW.2 towards 5,000 vested units. Accordingly, it is contended that the plaintiff, if at all entitled, would be eligible only for an amount computed under Section 12(b), subject to a maximum of Rs.9,43,668/- for 30,000 units.

33. It is further submitted that the plaintiff joined TCPL in the year 2002 with an annual remuneration of Rs.34,00,000/- and, upon cessation of his employment, received a severance package of Rs.67,00,000/-, which he accepted unconditionally, without any demur, as evidenced by Ex.D1 (E-mail).

34. Lastly, it is contended that the suit is bad for misjoinder of parties, inasmuch as defendant Nos.3 to 7 have no manner of association with the operations or management of defendant No.1. In particular, defendant Nos.2 to 6 are stated to be merely advisors on the Board of Trainz Inc., USA, and are neither Directors on the Board of TCPL nor in any way responsible for its management. On these grounds, the learned counsel prays that the appeal be allowed and the impugned judgment be set aside.

35. *Per contra*, the learned counsel for the respondent/plaintiff submits that the Trial Court, upon meticulous consideration of the evidence on record, has rendered a well-reasoned judgment and decree, which do not warrant any interference by this Court. Elaborating upon his submissions, he contends that it is undisputed that Trianz Inc.,

USA was incorporated on 07.08.2000, and that TCPL was incorporated as its wholly owned subsidiary on 08.05.2002. It is further submitted that the plaintiff joined TCPL as its Managing Director in September 2002 at the invitation of defendant No.2.

36. According to the learned counsel, during the period between 2002 and 2006, TCPL witnessed substantial growth, with its workforce increasing from 33 to 225 employees, its revenue rising from USD 1.5 million to USD 27 million, and its client base expanding to 25. It is further submitted that on 01.09.2004, Trianz Inc., USA adopted the VCP.

37. He further contends that the allotment of 30,000 VCUs to the plaintiff stands clearly established in terms of Exs.P8 to P10, being the e-mails of defendant No.2 along with the accompanying spreadsheet. It is also submitted that the VCP was retired by the Advisory Board of Trianz Inc., USA on 05.05.2006, and that Aryabhatta Consulting Pvt. Ltd. was incorporated on 21.07.2006, which was subsequently renamed as "Trianz Holdings Pvt. Ltd."

38. It is further contended that THPL acquired 100% shareholding in Trianz Inc., USA on 17.01.2007, and that

NYLIM India Fund II invested in THPL on 16.01.2007. Thereafter, TCPL was merged with THPL.

39. By placing reliance on Ex.P6A, being the VCP plan adopted on 01.09.2004, the learned counsel submits that the object of the plan is to attract and retain key employees critical to the success of Trianz Inc. ("the Firm") and its subsidiaries, and to provide incentives to such employees to maximize the value of the Firm. It is further submitted that TCPL, being a wholly owned subsidiary of Trianz Inc., USA, squarely falls within the ambit of the term "subsidiaries" as employed in Section 1 of the VCP, which, according to him, is plain and unambiguous, as also admitted in the reply notice marked as Ex.P16.

40. It is further contended that the said legal notice (Ex.P16) was signed by appellant No.1, who is its author, and that DW.1, in her cross-examination, has admitted that she was neither present at the time of its drafting nor had any personal knowledge of its contents. The plea of "inadvertence," as raised in the written statement filed subsequently, is therefore held out to be an afterthought.

41. Placing further reliance on Ex.P7, being the e-mail dated 09.12.2004, it is submitted that the legal opinion therein confirms the applicability of the VCP to the employees of Trianz Inc. and its subsidiaries. It is also contended that defendant No.2, being the author of Ex.P9, had directed that VCP award letters be prepared and executed for all India Directors. The accompanying spreadsheet, according to the learned counsel, clearly reflects such directions and evidences the allotment of 30,000 units in favour of the respondent/plaintiff.

42. The learned counsel further contends that the evidence of PW.2 clearly establishes that he received benefits under the VCP while serving as Vice President-HR at TCPL, despite never being employed by Trianz Inc., USA. On that basis, it is submitted that the plaintiff is equally entitled to similar benefits.

43. Placing reliance on Exs.P1 to P3, P9, P27 and P34, along with the testimony of PW.2, it is contended that the Trial Court was justified in lifting the corporate veil, having been satisfied on the evidence that TCPL lacked real market autonomy. Consequently, the contention of the appellants that

TCPL and Trianz Inc., USA are separate legal entities is held to be untenable.

44. The learned counsel further contends that defendant No.2 has admitted that the plaintiff is a founder member, as evidenced by Exs.P9 and P16, being the relevant e-mails. Placing reliance on the spreadsheets annexed to Exs.P8 and P9, it is submitted that the plaintiff was awarded 30,000 units with effect from 01.09.2002, and that Ex.P9 bears the signature of PW.2.

45. It is further contended that the acquisition of Trianz Inc., USA constitutes a "liquidity event," inasmuch as THPL, on 17.01.2007, acquired 100% of the outstanding common stock of Trianz Inc., USA, as contemplated under Section 12(e)(ii) of the VCP. It is also submitted that Ex.P29, being the certified copy of Form-2, and Ex.P12, being the press release dated 16.01.2007, have not been challenged by the defendants and, therefore, stand duly proved in evidence.

46. The learned counsel further contends that THPL is a shell company created with the intent to evade liability under the VCP, having been incorporated on 27.01.2006, shortly after the VCP was retired on 05.05.2006. It is submitted that THPL

had no independent business activity from the date of its incorporation until the investment by NYLIM.

47. It is further contended that, although Section 8 of the VCP provides for termination rights, it also stipulates that a participant may receive the termination amount in cash within a period of 24 months. According to the learned counsel, no such termination amount was paid to the respondent by the appellants.

48. Denying the contention of the appellants that the sum of Rs.67,00,000/- constituted full and final settlement, the learned counsel submits that Ex.D1 merely reflects negotiations and acceptance of severance in relation to termination of employment. It is observed that the said document contains no reference to VCP rights, no release of equity-linked entitlements, and no language waiving future claims. On these grounds, the learned counsel prays that the appeal be dismissed. He places reliance on the following judgments:

- (i) ***Hackbridge - Hewittic & Easun Ltd. Vs. GEC Distribution Transformers Ltd., - (1992) 74 Company Cases 543 (Madras HC)***
- (ii) ***Vidhyadhar Vs. Manikrao - (1999) 3 SCC 573***

(iii) *Man Kaur (Dead) By Lrs Vs. Hartar Singh Sangha - (2010) 10 SCC 512.*

49. Having heard the learned counsel for both the parties and on perusal of the material on record, the following points that would arise for our consideration in this appeal are:

- (i) Whether the Value Creation Plan (VCP) was confined only to Trianz Inc., USA and was neither adopted by nor applicable to Trianz Corporation Private Limited (TCPL)?*
- (ii) Whether a "liquidity event," as defined under Section 12(e) of the VCP, occurred so as to entitle the plaintiff to receive his proportionate share thereunder?*
- (iii) Whether the valuation of the plaintiff's claim is in accordance with the VCP, and whether he has been duly and adequately compensated at the time of his exit from TCPL?*
- (iv) Whether the impugned judgment and decree call for interference by this Court?*

50. Before answering the points raised above, it is appropriate to mention the structuring of the various Companies in brief as under:

- i) Trianz Inc., USA - incorporated on 07.08.2000
- ii) Trianz Consulting Pvt. Ltd. (India) - incorporated on 08.05.2002.
- iii) Aryabhatta Consulting Pvt. Ltd. - incorporated on 21.07.2006.
- iv) Trianz Holdings Pvt. Ltd. - came into existence with effect from 28.06.2007 (Aryabhatta Consulting Pvt. Ltd. was renamed as Trianz Holdings Pvt. Ltd.
- v) Trianz Holdings Pvt. Ltd. acquired Trianz Inc., as per the Director's report dated 03.09.2010 (Ex.P21).

51. With the foregoing background in order to address point No.1, it is important to refer to the VCP. Trianz Inc., is referred to in the VCP as the 'Firm'. VCP has been marked as Ex.P6. It is pertinent to refer to Section 1 of the VCP which provides as follows:

"Section 1 – Purpose : Administration

This Plan (the "Plan") is entered to (1) attract and retain key employees that are critical to the success of Trainz Inc (the Firm) and (2) to provide incentives to such employees to maximise the value of the Firm. The Plans goals are to be achieved by providing the Firm's employees with (1) the opportunity to earn annual incentives payments, and (2) the right of participate in certain liquidity events effecting the Firm."

52. The above portion of the VCP, marked in evidence as Ex.P6(a), clearly indicates that TCPL is owned by Trianz Inc., USA, and that the VCP was introduced to attract and retain key employees critical to the success of Trianz Inc., USA, while providing them with appropriate incentives.

53. The appellants contended that there is no specific contractual document evidencing adoption of the VCP by TCPL. However, a careful examination of Ex.P7, the e-mail dated 09.12.2004, is required, which reads as follows :

" We have reviewed the value creation plan of Trainz Inc (the Plan) and are of the opinion that

- A.The plan can be implemented in respect of the employees of Trainz India/ its subsidiaries and nothing in Indian law restricts the same ; and*
- B.Nothing in the Plan as per Indian law can be construed as granting an ownership right in Trainz Inc. to the participants.*

We have carried out certain minor modification in a marked up form in the attached soft copy from the perspective of ensuring the applicability of the plan to the employees of Trainz India / its subsidiaries."

54. The aforesaid document remained unchallenged during the course of cross-examination by the defendants. Further, Ex.P9 e-mail dated 18.06.2005, issued by Defendant No.2 regarding VCU distribution to Indian employees, clearly establishes that the plaintiff, who was serving as the Managing Director of TCPL, had been allotted 30,000 units.

55. It is contended by the learned counsel for the appellants that Ex.P6 was neither deliberated upon in the Board Meeting of TCPL nor supported by any official record, and that it was merely executed through e-mail correspondence between Defendant No.2 and the plaintiff. However, upon careful scrutiny of Ex.P9, along with the testimony of PW.2, who was serving as Vice President (Human Resources) at TCPL, it is evident that PW.2 has unequivocally admitted to having received 5,000 VCUs and that the same were fully paid out under Ex.P33(a). Notably, this admission was elicited during cross-examination by the learned counsel for the appellants.

56. In light of the foregoing, this Court finds no merit in the contention advanced by the appellants with respect to the genuineness of Ex.P6 to Ex.P9.

57. Upon careful perusal of Ex.P16, this Court notes that Trainz Inc., USA had adopted the VCP in September 2004, and that, in the event of termination of the plaintiff's employment, any units held by him were liable to be returned to the plan for future distribution. It is further evident that the VCP itself stood terminated with effect from June 2006. Though the defendants have sought to contend, by way of a plea of inadvertence in the written statement, with regard to Ex.P16, we find that such a plea is unsupported by any cogent evidence. Accordingly, the said contention cannot be sustained.

58. Upon careful consideration of the aforesaid evidence and documents, this Court is of the considered view that the appellants have failed to establish that the VCP was neither adopted by nor applicable to TCPL, and that it was exclusively applicable to Trainz Inc., USA. Accordingly, Point No.1 is answered in favour of the plaintiff.

59. Insofar as Point No.2 is concerned, it is apposite to extract Sections 12(b) and 12(e) of the VCP, which read as follows:

Section 12(b) Share. A participant's "Share" shall be determine by the following formula:

Share =	Participant's Vested Units for given Performance Period	X	Distributable Cash Flow
	Total Outstanding Vested Units for given Performance Period		

Section 12(e) Liquidity Event. As used herein, the term "Liquidity Event shall mean the earliest to occur of: (i) an initial, underwritten public offering by the Firm of any of its securities; (ii) the sale of all of the Firm's capital stock or the consolidation or merger of the Firm with or into another entity or entities, except where the Firm is the surviving entity and the holders of the Firm's outstanding capital stock which possesses the voting powers to elect a majority of the Board immediately prior to such merger continue to own capital stock possessing such voting powers; or (iii) any sale or transfer by the Firm of all of its assets.

60. On a plain reading of Section 12(e)(ii), it is evident that a sale of all the Firm's capital stock, or the consolidation or merger of the Firm with or into another entity, constitutes a triggering event, except in cases where the Firm remains the surviving entity and its existing shareholders continue to hold capital stock with voting powers subsequent to such merger. In the instant case, the acquisition of Trainz Inc., USA does not fall within the said exception, as Trainz Inc., USA did not remain the surviving entity, and THPL acquired its entire capital stock.

61. It is evident from Ex.P21 which, *inter alia* contains the Director's Report and Auditor's Report both dated 03.09.2007 pertaining to THPL. The Director's report itself reflected that the company had acquired the Trainz Inc., for a consideration of Rs.138,000,000/-. Schedule II to the balance sheet enclosed with the Auditor's report corroborates this fact that a sum of Rs.135,000,000/- was invested by THPL in Trainz Inc., USA.

62. Upon careful perusal of Ex.P29, we note that the allotment of 33,23,967 shares in THPL to NYLIM India Fund II at ₹203.07 per share (amounting to ₹66.5 crores) stands duly confirmed. Further, Ex.P12 corroborates the said NYLIM investment. Significantly, both these documents remained unchallenged during the course of cross-examination by the defendants. This aspect raises a serious doubt as to whether THPL was structured as a shell entity with the intent to evade liability under the VCP. It is also pertinent to note that, as stated in the re-joinder, Aryabhatta Consulting Pvt. Ltd. (subsequently renamed as Trainz Holdings) was incorporated on 21.07.2006, i.e., 77 days after the VCP was terminated, and it did not operate as an independent entity from the date of its incorporation until the NYLIM investment. Such deliberate

structuring, whereby the liquidity event was routed through a newly created entity while simultaneously terminating the VCP to defeat the claims of its participants, amounts to conduct warranting the invocation of the doctrine of lifting the corporate veil. The defendants, by such design, failed to honour the plaintiff's vested units at the time of VCP termination. In these circumstances, we are of the considered view that a liquidity event did, in fact, occur in TCPL, and consequently, the plaintiff is entitled to the vested units as on the date of VCP termination. Accordingly, point No.2 is answered.

63. Insofar as Point No.3 is concerned, it is vehemently contended by the learned counsel for the appellants that the plaintiff was never awarded any units under the VCP, and that the formula adopted by the plaintiff for valuation of his alleged share thereunder is wholly erroneous. It is further contended that a sum of Rs.67,00,000/- constitutes full and final settlement of all his claims. *Per contra*, the plaintiff asserts that he is entitled to a sum of Rs.4,20,00,000/- in terms of the formula prescribed under Section 12(h) of the VCP. The appellants, however, contend that at best, the plaintiff would be entitled to certain payments under Section 12(b) of the VCP, and that such methodology was, in fact, adopted in computing

and disbursing VCU to PW.2. As discussed hereinabove, Section 12(b) provides the formula for determination of share entitlement, whereas Section 12(h) specifically governs the computation of VCU in the event of a liquidity event, which reads as under:

"Section 12(h) Proportionate Share Under a Liquidity Event: Sixty percent of the Net Value of the firm will be set aside for distribution among the Participants of the Plan and the remainder set aside for the common stock holders. This formula will be equitably adjusted by the Board, in its sole and absolute discretion, to account for dilutive events, including, by way of example, but not limitation, an equity financing or treatment of Treasury Units or other types of special situations prior to a Liquidity Event. A participant's "Proportionate Share" shall therefore be determined by the following formula:

$\text{Proportionate Share} = 0.6 \times \text{Net Valuation} \times \frac{\text{Participant's Vested Units}}{\text{Total Outstanding Vested Units}}$

64. Ex.P8 which is an e-mail dated 09.12.2004 sent by the Director of the THPL to the plaintiff-appellant. This e-mail attaching therewith VCP spread sheet for India. The VCU distribution detail regarding the Indian Employees shows

against the name of the plaintiff /appellant, a total of 30,000 units at the end of the year 2004.

65. Ex.P9 is yet another e-mail dated 18.06.2005 sent by the Director of the THPL to the plaintiff-appellant enclosing therewith the spread sheet containing all allocations in India and the basis for estimation of the same. In the attached spread sheet too, against the name of the plaintiff/appellant, a total of 30,000 units is shown at the end of the year 2004.

66. Therefore, in view of the proof of 30,000 units of entitlement of the plaintiff/appellant under the VCP/VCU once the formula mentioned aforesaid in the preceding paragraph is applied, works out to be Rs.4.2 crores as found by the Trial Court in the impugned judgment. No material has been placed before us by the learned Counsel for the appellant to demonstrate that the figures when applied to the formula as aforesaid would not adopt to Rs.4.2 Crores. Accordingly, the observation of the Trial Court regarding entitlement of the plaintiff/appellant of Rs.4.2 Crores under the VCU is upheld.

67. As discussed hereinabove, no document evidencing full and final settlement has been placed on record by the defendants. A perusal of Ex.D1 indicates that, though

negotiations were held with respect to acceptance of severance upon termination of employment, there is no reference whatsoever to the plaintiff's rights under the VCP, equity-linked entitlements, or any waiver of future claims. It thus becomes evident that the VCP entitlements had not crystallised at the time of severance.

68. It is an admitted position that the respondent accepted a sum of Rs.67,00,000/- in March 2006, whereas the liquidity event occurred subsequently in January 2007. In such circumstances, an inference can be drawn that the said amount was accepted prior to the occurrence of the liquidity event, and not in discharge of any claim arising there from.

69. The record further discloses that, subsequent to the press release, the plaintiff issued a legal notice dated 28.01.2007 and thereafter instituted the suit. In view of these circumstances, the contention of the defendants that the plaintiff's valuation is incorrect and that he is not entitled to Rs.4,20,00,000/- cannot be accepted. Accordingly, Point No.3 is answered in favour of the plaintiff.

70. For the foregoing discussion and reasons, this Court is of the considered view that the learned Trial Judge has duly

and correctly appreciated the evidence on record and has rendered a well-reasoned judgment and decree, which is upheld. Accordingly, Point No.4 is answered in the negative and as a result, the appeal is ***dismissed.***

**SD/-
(JAYANT BANERJI)
JUDGE**

**SD/-
(RAJESH RAI K)
JUDGE**

PKS/K