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

Date of decision:07.05.2015

+ CS(OS) 1703/2002

ESS AAR UNIVERSAL PVT. LTD. Plaintiff
Through Mr.D.K.Rustagi, Mr.Mayank Rustagi &
Mr.B.S.Bagga, Advocates

versus

RUCHI JAIN AND ORS. Defendants
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. Arguments have been heard in the suit. Defendants entered appearance and have filed their written statement. The issues were framed on 17.11.2004. Thereafter, vide Order dated 28.07.2009 the defendants were proceeded ex-parte.

2. It is the contention of the plaintiff that it is engaged in the business of manufacturing various kinds of soles and has constituted PU division which deals with the manufacturing of PU soles for foot wear.

3. It is further contended that in the year 1995 the plaintiff company appointed M/s Vardhman Sales Corporation, a partnership firm having Sh.Mahendra Jain, late husband of defendant no.1 and defendant no.5 as partners of the firm as stockist for the territory of Agra, U.P. The broad terms of appointment are mentioned in para 6 of the plaint. It is contended that in the CS(OS)1703/2012

year 1988, the plaintiff was informed about the retirement of defendant no.5 and that his share was taken over by the late husband of defendant no.1.

4. It is the contention of the plaintiff that as per the understanding, the plaintiff company as well as the stockist used to get their respective accounts reconciled periodically. It is contended that as on 03.01.2002 the balance in the books of account was confirmed as Rs.86,39,777/- as due and payable, to the plaintiff company. It is contended that the stockist could not liquidate the aforesaid amount until 09.03.2002 and that the said stockist Sh. Mahender Jain suddenly died in a road accident on 09.03.2002.

5. It is the contention of the plaintiff that after the demise of the stockist defendant no.4 and 5 approached the plaintiff company and informed that defendant no.1 has been made the sole proprietor of M/s Vardhman Sales Corporation and they also made a request for resumption of supplies immediately. It is stated that the plaintiff company thereafter made the first supply after the demise of Sh. Mahender Jain on 14.03.2002. It is contended that in May, 2002 the defendant no. 1, 4 and 5 clarified that as per their family arrangement, defendant no. 1, 4 and 5 have succeeded to the aforesaid business and that defendant no.1 remains for formality the sole proprietor of M/s Vardhman Sales Corporation and M/s Vardhman Enterprise and that defendant no. 1, 4 and 5 are the recorded partners in M/s D.B. Sales Corporation/defendant No.3. It is the contention of the plaintiff that defendants no.1, 4 and 5 succeeded the deceased stockist which succession was accepted by the plaintiff company on the defendant's assurance that they will remain jointly and severally liable for the whole business transactions.

6. It is the contention of the plaintiff company that pursuant to the aforesaid

understanding the plaintiff began to make supplies as well as received payments for and on account of the aforesaid three firms as per the requirements made from time to time. It is contended that the plaintiff made supplies to defendant no.2 on 23.05.2002 and in the name of defendant no.3 between 29.05.2002 and 15.07.2002.

7. It is contended that the outstanding balance as on 31.03.2002 was Rs.82.55 lacs as reconciled on 04.04.2002. It is further stated that the above reconciliation took place in the presence of defendant no.1, 4 and 5 and one family member Sh.Kamal Jain and included representatives of the plaintiff as well as one Sh.A.K.Chaubey on 04.04.2002.

8. It is the contention of the plaintiff that the plaintiff company insisted for clearance of outstanding amount, but the defendants deferred the same on one pretext or the other. It is contended that in the second week of July, 2002, the defendants refused to meet their obligation to clear the outstanding in the time frame as stipulated between the parties and sought extension of time for indefinite period. The plaintiff contends that resultantly the plaintiff company severed their relationship w.e.f. 17.07.2002. It is the contention of the plaintiff that as on that date, the total outstanding comes to Rs.64.21 lacs on account of principal outstanding amount.

9. It is the contention of the plaintiff that the defendants having accepted their aforesaid liability jointly and severally have avoided the same on one pretext or the other. It is further contended that the defendants are liable to pay interest at the agreed rate of 24% p.a. which comes to Rs.17 lacs. Thus, it is contended that the total liability of the defendants as on the date of termination of the stockist agreement comes to Rs.81,80,275.00/-, the breakup of which is

as follows:

a. Towards the principal amount outstanding as per account reconciled	Rs. 64,21,251/-
b. Towards the interest @24% p.a. accrued from time to time whenever the defendants has committed default in the payment of their dues on the expiry of 45 days, till 16.09.2002	Rs. 17,59,024/-
Total	Rs. 81,80,275/-

10. Defendant Nos.1 and 2 have filed their written statement. In the written statement, they have raised various preliminary objection, i.e. this court has no territorial jurisdiction to try the present suit, the suit is barred by time and is not signed and verified by a duly authorised person. It is urged that it was M/s Rustagi Engineering Udyog Pvt. Ltd., the predecessor-in-interest of the plaintiff company with whom M/s Vardhman Sales Corporation initiated transactions on a consignment basis. The said M/s Rustogi Engineering Udyog Pvt. Ltd. was also said to be holding an initial security deposit of Rs. Rs.3,70,000.00/- which was later on increased to Rs.5,00,000.00/- and was bearing interest @ 12% p.a. If this amount with interest is adjusted against the claim of the plaintiff, nothing would be found payable to the plaintiff. It is admitted that defendant No.5 and late Sh. Mahender Jain had formed a partnership firm - M/s Vardhman Sales Corporation which was dissolved on 31.03.1997 and defendant No.5 retired from the said firm. The appointment of

M/s Vardhman Sales Corporation as a stockist has been denied by the plaintiff. It is however, admitted that the relationship between the plaintiff and M/s Vardhman Sales Corporation started by a contract for supplies on Consignment Basis. The reconciliation of account by Sh. Khurshid Alam has been denied. All other contentions in the plaint have also been denied. It is however admitted that defendant Nos.1, 4 and 5 have started a new business under the name and style of defendant No.3 - M/s D.B. Sales Corporation under a partnership deed dated 22.05.2002.

11. Alongwith written statement, defendant Nos.1 and 2 have filed a receipt dated 08.09.1995 issued by M/s Rustogi Engineering Udyog Pvt. Ltd. to M/s Vardhman Sales Corporation for Rs.70,000.00/- against security deposit of Rs.3,70,000.00. Statement of account of transaction with the plaintiff for the financial year 2002- 2003 has also been filed. Reconciliation of accounts with the plaintiff and M/s Vardhman Sales Corporation has also been placed on record and the Balance Sheet as on 31.03.2002 of M/s Vardhman Sales Corporation has also been placed on record.

12. Defendant Nos.3 to 5 have also filed their separate written statement. It is urged that the said defendants have nothing to do with the transactions between the plaintiff and M/s Vardhman Sales Corporation. It is further urged that the plaintiff has amalgamated the alleged transactions with M/s Vardhman Sales Corporation, M/s Vardhman Enterprises and M/s D.B. Sales Corporation in one suit. It is urged that each firm is an independent body and the transactions cannot be mixed up. It is further urged that the legal heirs of late Sh. Mahender Jain have not been impleaded as a party. It is also urged that this Court has no territorial jurisdiction to try this case. It is also urged that the suit

is barred by time. The defendants have denied being legal heirs of late Sh. Mahender Jain. It is accepted that defendant No.1 acted as a sole proprietor of M/s Vardhman Sales Corporation. It is denied that defendant No.1 was made sole proprietor of M/s Vardhman Enterprises - defendant No.2 after the death of Sh. Mahender Jain. It is admitted that defendant Nos.1, 4 and 5 are running a business under the name and style of defendant No.3 - Mrs. D.B. Sales Corporation. It is denied that said defendant No.3 in any way succeeded to the business of late Sh. Mahender Jain. All other contentions in the plaint have also been denied.

13. On 17.11.2004, the following issues were framed by this Court:

- (1) Whether this Court has the Territorial jurisdiction to try the suit? OPP
- (2) Whether the plaint discloses any cause of action against defendant Nos.2 to 5? If so, to what effect? OPP
- (3) Whether the suit is bad for misjoinder of defendant Nos. 2 to 5? OPD
- (4) Whether the suit is bad for misjoinder of cause of action? OPD
- (5) Whether Vardhaman Sales Corporation was a consignment agent and not the stockist or not? OPD
- (6) Whether M/s Rustagi Engg. Udyog Pvt. Ltd. was amalgamated with the plaintiff as alleged in para 3 of the replication to P.O. of W.S. of defendant Nos.1 and 2? OPP
- (7) Whether the plaintiff is holding any Security Deposit of Rs.5.00 lacs bearing an interest of 12% p.a. from the defendants as stated in para 4 of the P.O. of W.S. of defendant Nos. 1 and 2? OPD

- (8) Whether the plaintiff is not obliged to afford credit for the rejected goods returned by the defendants No.1 and 2 as stated in para 5 of Preliminary Objections of replication to W.S. of defendant Nos. 1 & 2? OPP
- (9) Whether the suit has been properly valued for the purposes of Court fee and jurisdiction? If not, to what effect? OPP
- (10) Whether the suit is filed within time? OPP
- (11) Whether the plaint has been signed and verified and the suit has been filed by a duly authorized person in accordance with law? OPP
- (12) Whether the defendant No.5 was a partner of M/s Vardhman Sales Corporation after 31.03.1997 as stated in para 4 of the plaint? If so, to what effect? OPP
- (13) Whether M/s Vardhman Sales Corporation was appointed stockist by the plaintiff as alleged in para 6 of the plaint? If so, to what effect? OPP
- (14) Whether any lien was created in favour of the plaintiff in respect of the moveable and immoveable properties of defendants as alleged in para 4 of the plaint and para 8 of the replication to the W.S. of defendant Nos. 1 and 2? If so, to what effect? OPP
- (15) Whether there was any reconciliation of Accounts as alleged on 03.01.2002? If so, whether Shri Khurshid Alam was authorized by the defendants to do so? If so, to what effect? OPP
- (16) Whether the defendants or any of them succeeded to any estate left by Shri Mahendra Jain, who died in a road accident on 09.03.2002? If so, to what effect? OPP
- (17) Whether the defendant No.1 is the Sole Proprietor of defendant No.2? If so, whether she ever authorized the defendant Nos. 4 and 5 to negotiate and approach the plaintiff on her behalf? OPP

- (18) Whether Shri Mahendra Jain is succeeded by any other Legal Representative? If so, whether the said Legal Representative is not a necessary party to the suit? OPP
- (19) Whether the defendant nos. 1 , 4 and 5 ever represented to the plaintiff to have jointly succeeded to the estate of Late Mahendra Jain as alleged in para 10 of the plaint and took over the liabilities of Late Mahendra Jain as alleged in para 10 of the plaint? OPP
- (20) Whether there was any Family Arrangement as alleged in para 10 of the plaint? If so, to what effect? OPP
- (21) Whether there was an outstanding balance of Rs.82.55 lacs as on 31.03.2002 as alleged in para 12 of the plaint?
- (22) What amount, if any, is the plaintiff entitled to recover and from which of the defendants? OPP
- (23) Whether the plaintiff is entitled to recover any interest? If so, at what rate and for what period? OPP
- (24) Relief”

14. Thereafter defendants had filed IA No.483/2006 stating that a settlement has been entered into between the parties and an amount of Rs. 25 lac was agreed to be paid by the defendants in instalments on or before 06.11.2006. This court on 19.07.2006 directed the defendants to bring the amount towards the instalments which was payable up to 31.07.2006. The defendants failed to comply with the said order. Subsequently, this application was dismissed in default on 03.08.2007. On 28.07.2009 the defendants stopped appearing and they were proceeded *ex parte*.

15. The plaintiff has filed an affidavit by way of evidence of Sh. Sudhir Rustagi, Promoter Director of the plaintiff company. In his affidavit by way of evidence, he has stated that the Board of Directors of the plaintiff company

authorised him to sign and verify the suit on behalf of the plaintiff company and against the defendants for recovery of outstanding. He has reiterated the submissions. He has clarified that by order dated 21.05.1997, Delhi High Court had allowed amalgamation/merger of M/s Rustagi Engineering Pvt. Ltd. with M/s Essaar Electronic Controls Pvt. Ltd. M/s Essaar Electronic Controls Pvt. Ltd. has been renamed as the plaintiff company. The certificate is exhibited as Ex.PW1/3. He has admitted that M/s Vardhman Sales Corporation paid a security deposit of Rs.5 lac. He however stated that the said amount was adjusted by the plaintiff company alongwith accrued interest thereon by 09.12.96. The relevant adjustment is in the ledger for the financial year ending 01.04.1996 – 31.03.1997 which has been exhibited as Ex.PW1/4. He has confirmed that after the death of Sh. Mahender Jain, defendant Nos.4 and 5 approached him and informed that defendant No.1 is the sole proprietor of M/s Vardhman Sales Corporation on paper only and also made a request for resumption of supplies on the terms and condition already settled. It was also clarified that as per their family arrangement, defendant Nos.1, 4 and 5 have succeeded to the said business and which was required to be carried out as such in the name of defendant Nos.1, 2 and 3 jointly. As per details of the family Arrangement, defendant No.1, for formalities, remains the sole proprietor of M/s Vardhman Sales Corporation and M/s Vardhman Enterprises more over defendant Nos. 1, 4 and 5 became the recorded partners in M/s D.B. Sales Corporation /defendant No.3. It is in these facts the plaintiff company accepted the defendants as stockist. They remained one unit for the purpose of record of the plaintiff company. The plaintiff company has accepted the aforesaid arrangement offered by defendant Nos.4 and 5 and has begun to make supplies

and received payments as well for and on account of the aforesaid three firms. Supplies have been made to defendant No.2 on 23/25.05.2002 and in the name of defendant No.3 between 29.05.2002 to 15.07.2002. It is stated that the outstanding balance as on 31.03.2002 is of Rs.82.55 lacs and was reconciled on 04.04.2002. It is stated that the said reconciliation took place between defendant Nos.1, 4 and 5 and one family member Sh. Kamal Jain and includes representative of the plaintiff as well as Sh. A.K. Chaubey.

16. I have heard the learned counsel for the plaintiff. He has urged that Ex. PW1/5 is the reconciliation of the accounts of plaintiff and M/s Vardhman Sales Corporation where a balance of Rs.86,39,777.34/- is accepted by M/s Vardhman Sales Corporation. It is stated that in para 4 of the plaint, there is a clear averment that late Sh. Mahender Jain and defendant No.5 are two brothers and have joined hands and brought capital to do business and due to both being members of the same family having nucleus funds, the name under the partnership firm was only for strategic reason. This is not denied in the written statements of defendants Nos.1 to 5 respectively. It is also pointed out that defendant Nos. 1 and 2 have themselves filed the reconciliation of accounts of M/s Vardhman Sales Corporation with the plaintiff where it is admitted that balance as per books of accounts of M/s Vardhman Sales Corporation payable to the plaintiff is Rs.57,79,867.44/-. He has also urged that while disposing of the suit, this Court may continue the restraint on the properties which was passed by this Court on 22.11.2005 and 04.12.2007.

17. I will now deal with the issues. The onus to prove issue Nos.3, 4, 5 and 7 was on the defendants. As no evidence has been led by the defendants, these issues are decided against the defendants.

18. Coming to issue No.1 regarding territorial jurisdiction. As per the plaint, stockist agreement was entered into between the parties at Delhi and orders were accepted at Delhi. Challans-cum- invoices specially mentions that “sale was subject to the jurisdiction of Delhi Courts”. It is also urged that payments were received by the plaintiff from the defendants in Delhi. These facts have been reiterated by PW1 - Sh. Sudhir Rustagi in his affidavit by way of evidence. Hence this court has territorial jurisdiction to decide the suit.

19. Coming to issue No.6, PW1 in his affidavit by way of evidence has pointed out that M/s Rustagi Engineering Pvt. Ltd. was amalgamated/merged with M/s Essaar Electronic Controls Pvt. Ltd. by an order dated 21.05.1997 passed by this court which has been renamed as plaintiff company. He has exhibited certified copy of the order of this court dated 04.04.1997 passed in CP No.336/1996. He has also placed on record fresh certificate of incorporation consequent upon change of name dated 09.12.1996 which is exhibited as Ex.PW1/1 to show that the name of M/s Essaar Electronic Controls Pvt. Ltd. was changed to the present name of the plaintiff. Hence, M/s Rustagi Engineering Udyog Pvt. Ltd. was amalgamated with the plaintiff. The issue is decided in favour of the plaintiff.

20. Coming to issue No.9 about court fee, the suit is filed for decree of Rs. 81,80,275.00/- alongwith interest. The ad valorem requisite court fee of Rs.82,230.0/- has been paid. Hence, it is held that adequate court fee has been paid.

21. Coming to issue No.10, whether the suit was filed within time. The issue is a mixed question of law and fact and no evidence has been led by the defendants. As per the plaint, the account has been confirmed on 03.01.2002.

In May 2002, the defendants have liquidated a part of the liability. The agreement was terminated on 17.07.2002. The suit is filed in 2002. Hence, the suit is filed well within time.

22. As there is no opposition from the defendant, rest of the issues can be disposed of together. Alongwith written statement, defendant Nos.1 and 2 have attached reconciliation of M/s Essaar Electronic Controls Pvt. Ltd. with M/s Vardhman Sales Corporation. This admits the balance of Rs.57,79,867.44/- payable to the plaintiff though it tries to explain it away. PW1 has proved that the accounts were reconciled on 03.01.2002 when the accountant of M/s Vardhman Sales Corporation/ defendant No.2 Sh. Khurshid Alam under his own hand writing reproduced all the relevant details on a sheet of paper from the books of accounts as maintained in the records of defendant No.2 in normal course of business and confirmed the balance of Rs. 86,39,777.34/- as due and payable to the plaintiff company. The account statement has been proved by Ex. PW1/5. PW1 has also proved that as per statement of accounts the balance was Rs.64.21 lacs as on 17.07.2002.

23. On the liability of the defendants, PW1 has proved that defendant Nos.4 and 5 approached him in the administrative office of the plaintiff company to inform that as per family arrangement, defendant Nos.1, 4 and 5 have succeeded to the business which is required to be carried out as such in the name of defendant Nos.1, 2 and 3 jointly. They have confirmed that all other terms and conditions prior to demise of Sh. Mahender Jain shall remain unaltered. Defendant No.1 remains for formalities the sole proprietor of M/s. Vardhaman Sales Corporation and M/s. Vardhman Enterprise and defendant Nos. 1, 4 & 5 became the recorded partners in M/s D.B. Sales Corporation. The

PW1 has also confirmed that pursuant to the aforesaid arrangement, supplies have been made to the three firms as per requirement on 23/25.05.2002 and in the name of defendant No.3 between 29.05.2002 till 15.07.2002. Hence, the un-rebutted evidence of the plaintiff proves that the defendants are liable for the dues.

24. The plaintiff has also in their unchallenged evidence proved that total amount of Rs.64, 21,251.00 is due and payable from the date of filing of the plaint. Further, interest @ 24% p.a. has been claimed on the expiry of 45 days till 16.09.2002 based on usage of market rate. Hence, total sum of Rs.81,80,275.00 is payable by the defendants. Issues Nos.8, 12 to 24 are answered accordingly.

25. In view of the above, a decree is passed in favour of the plaintiff and against the defendants for Rs.81.80,275/-. The plaintiff will also be entitled to the interest @ 10% p.a. from the date of filing of the suit till recovery. Costs of the suit are also awarded. Defendants shall remain bound by the interim order passed by this court on 22.11.2005 and 04.12.2007 till execution petition is filed by the plaintiff.

JAYANT NATH, J.

MAY 07, 2015

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