

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

+ CS(OS) No. 1870/2003

% 23rd November, 2015

SH. VINAY TALWAR Plaintiff

Through: Mr. Ashish Virmani, Advocate.

versus

M/S VITAL COMMUNICATIONS LTD. & ORS. Defendants

Through: Defendants are *ex parte*.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The subject suit has been filed by the plaintiff for recovery of Rs.25,00,000/- and for mandatory injunction against the defendants to return to the plaintiff 3,38,900 shares of the plaintiff lying in the defendant no.1/Company.

2. The suit is coming for *ex parte* final arguments and counsel for the plaintiff has been heard.

3. The case as set out in the plaint is that the plaintiff owned shares in the defendant no.1/Company M/s Vital Communications Ltd. The plaintiff owned 3,38,900 shares in the company. Plaintiff was appointed as a Managing Director of the company on 17.5.1995 for a period of five years and was re-appointed for another five years w.e.f 17.5.2000. The plaintiff entered into an MOU dated 16.4.1998 with the defendant no.2 when the defendant no.2 promised to infuse funds. Defendant no.2 introduced defendant no.3 who initially brought in Rs.24 lacs. One Company M/s Research Engineers, Inc. California, USA now known as M/s Net Guru Inc. approached the defendant no.1/Company for purchase of 30% stake in the defendant no.1/Company and a Letter of Intent (LOI) dated 14.4.2000 was executed between M/s Research Engineers Pvt. Ltd. (in short 'REPL') a 100% subsidiary of M/s Net Guru Inc. and the defendant no.1/Company whereby REPL transferred a sum of Rs.2.5 crores to the defendant no.1/Company on 18.4.2000 and two nominees of REPL Sh. Gurudas Sarkar and Sh. Amrit Dass were inducted as the Additional Directors in the defendant no.1/Company. Plaintiff further pleads that defendant nos. 2 and 3 wrongly and surreptitiously misappropriated amounts of the defendant no.1/Company by transferring a sum of Rs.1.75 crores to other private companies and individuals. It is pleaded that since defendant no.2 brought

in a sum of Rs.55 lacs, actually therefore, the misappropriation would be Rs.1.2 crores by defendant nos. 2 and 3. Plaintiff further pleads that defendant nos.2 and 3 illegally and unlawfully got allotted 72 lac shares of the defendant no.1/Company to the companies controlled by them. It is further pleaded that the funds which were misappropriated by the defendant nos. 2 and 3 were rotated to purchase 72 lac shares of the defendant no.1/Company. It is pleaded that though defendant no.1/Company in the books received an amount of Rs. 9 crores towards the allotment of 72 lac shares of Rs.10/- each at premium of Rs.2.5 per share however, defendant no.1 actually did not receive any amount against the shares allotted. It is further pleaded that defendant nos. 2 and 3 have unlawfully made a gain of approximately Rs.90 crores. Plaintiff further pleads that his 3,38,900 shares were lying in the office premises of defendant no.1/Company and that plaintiff was however locked out from the office of the defendant no.1/Company by illegally removing him from the post of Managing Director and was not allowed to take back the shares from his office. Plaintiff pleads that at the relevant time the shares of defendant no.1 were being traded at approximately Rs.100 per share.

4. Plaintiff further pleads that he was wrongly removed from the post of Managing Director and Director of the defendant no.1/Company in the Board Meeting held on 6.9.2000. Plaintiff alleges that no Board meetings took place of the defendant no.1/Company on 19.7.2000, 6.9.2000 and 8.9.2000 as alleged and therefore, there is wrong removal of the plaintiff from the Board of Directors of the defendant no.1/Company and the defendants are also liable for the loss caused to the plaintiff on account of non-return of the shares owned by the plaintiff of the defendant no.1/Company. Plaintiff has restricted his claim in the suit to Rs.25 lacs although it is stated that he has suffered more losses.

5. No doubt, ordinarily once the defendant/Company is *ex parte*, a court would on filing of affidavit by way of evidence supported by the documents decree the suit, however, it is not that in law merely because the defendant/Company is *ex parte* and the plaintiff has filed affidavit by way of evidence, the suit should necessarily be decreed. Even in the absence of contest by the defendants, the plaintiff has to lead such evidence which will satisfy the judicial conscience of this Court that the plaintiff has proved his case so as to decree the suit.

6. On reading of the plaint alongwith the affidavit by way of evidence, it is seen that though the plaintiff originally was the Managing Director of the defendant no.1/Company and had 3,38,900 shares, subsequently, as many as 72 lac shares of the defendant no.1/Company were allotted to the defendant nos.2 and 3. Self-serving averments and deposition of the plaintiff will not result in any illegality in allotment of the 72 lac shares of the defendant no.1/Company to the defendant nos. 2 and 3. How the allotment of 72 lac shares of the defendant no.1/Company to defendant nos. 2 and 3 are illegal being against the provisions of the Companies Act, 2013 is not stated or proved. A reading of the plaint shows illegality of purchase of 72 lac shares of the defendant no.1/Company by defendant nos. 2 and 3 on the ground that no monies came in for such allotment, however, in the same breadth plaintiff talks of 'misappropriation' by the defendant nos. 2 and 3 of Rs. 1.75 crores and which amount is stated to have been brought back to the defendant no.1/Company for getting the shares allotted to the dummy companies owned by the defendant nos.2 and 3 as also to certain individuals. Therefore, on such self-serving averments and deposition of the plaintiff, it cannot be held that allotment of 72 lac shares to the defendant nos. 2 and 3 of the defendant no.1/Company is illegal. Once the defendant nos. 2 and 3 are majority owners of the defendant

no.1/Company, on the principle of corporate democracy, they were entitled to issue the necessary additional shares in their favour. It cannot therefore be held that defendant nos. 2 and 3 have wrongly allotted shares to themselves or that the defendant no.1/Company has not received the amounts for allotment of the shares.

7. So far as the case of the plaintiff that in the defendant no.1/Company his original share certificates for 3,38,900 shares were lying is concerned, once again except self-serving statements in the deposition there is nothing in fact and reality to show that these shares were in fact lying in the office of the defendant no.1/Company. Even assuming the shares were lying with the defendant no.1/Company and were not returned to the plaintiff, before loss is established for being decreed in favour of the plaintiff and against the defendants, plaintiff had to prove the market value of his shares and the date on which he would have allegedly sold the shares, so that the difference can be claimed as loss, however, in the affidavit by way of evidence there is no credible evidence in the form of documents of the stock exchange to give the value of the shares on the date of the presumed sale for the loss to be calculated and proved. Therefore, since the plaintiff has failed to

prove loss by leading credible evidence, the suit cannot be decreed for a huge amount of Rs.25 lacs as prayed by the plaintiff.

8. Also, the plaintiff is not entitled to mandatory injunction once the plaintiff is only a minority shareholder in the defendant no.1/Company and defendant nos. 2 and 3 are in overwhelming control owning majority shares of the defendant no.1/Company.

9. In view of the above, since the plaintiff has failed to prove his case, the suit is therefore dismissed. Parties are left to bear their own costs.

NOVEMBER 23, 2015
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VALMIKI J. MEHTA, J.