

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **I.A. No.6417/2014 in CS (OS) No.1232/2013**

Decided on : 19th October, 2015

ATLANTA LIMITED & ORS. Plaintiffs

Through: Mr. Kirti Uppal, Senior Advocate with
Mr. Chirag M. Shroff & Ms. Sahiba
Pantel, Advocates.

Versus

IFCI LIMITED Defendant

Through: Mr. P.S. Bindra, Mr. Ravi Kumar,
Ms. Rishika Arora, Ms. Ashmita &
Mr. Bhuvneshwar Tyagi, Advocates.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is an application filed by the plaintiffs under Section 151 CPC seeking recall of the order dated 2.4.2014.
2. The only question which is to be decided in the instant case is as to how much the balance amount is payable by the plaintiffs to the respondent. There is no dispute about the fact that Atlanta Limited had taken a loan from IFCI amounting to Rs.50 crores vide agreement dated 21.12.2010 and further loan of Rs.30 crores vide agreement dated

23.8.2011. It had pledged its securities/shares with IFCI. The plaintiffs had filed a suit for permanent injunction against the defendant and claimed the following reliefs :-

- “i. Pass an order and decree of permanent injunction restraining the defendant, its servants, officers, agents, assigns, representative or any person acting on its behalf from selling or in any other manner disposing of the shares pledged by the plaintiffs with the defendant under the agreement for pledge of shares dated 21.12.2010 and share pledge agreement dated 23.8.2011.*
- ii. restrain the defendant permanently from selling the property, address: 9th , Ground Floor Srikant Chamber Sion-Trombay Road, Chembur, Mumbai – 400071, belonging to defendant Nos.5 and 6 and given as security.*
- iii. Such other relief(s) as this Hon’ble Court deems fit and proper in light of the facts and circumstances of the present case.”*

3. During the pendency of the suit, following two orders dated 19.2.2014 and 6.3.2014 were passed :-

Order dated 19.2.2014

“1. A proposal sent by the plaintiffs to the defendant on 4.2.2014 in pursuance to the last order has been placed before this court which is reproduced as under :-

“Atlanta Ltd. proposes to initially pay Rs.20 crores to IFCI Ltd. within 15 days of the

acceptance of proposal by IFCI Ltd. and upon such payment of Rs.20 crores, IFCI will release the surplus security over and above the stipulated security as per the contract (shares or property at the option of IFCI Ltd.) within 5 working days. Thereafter, Atlanta Ltd. will again pay Rs.20 crores within 15 days and IFCI will in turn release surplus security over and above the stipulated security as per the contract within 5 working days. Finally, Atlanta will liquidate the entire loan within 15 days and in turn IFCI will release the entire balance security held within 5 working days and issue loan closure confirmation. This way, the entire loan repayment can be completed within 55 days after receiving approval from IFCI to this proposal. Thus, if this proposal is accepted forthwith by IFCI, the entire loan can be closed by 31st March, 2014.

Atlanta Ltd. would not be liable to pay any penal interest or legal costs to IFCI Ltd. since default is attributable to non-release of security by IFCI Ltd.”

2. *It has been pointed out by Mr. Bindra, the learned counsel for the defendant that this proposal was **in principal acceptable** to the Chairman of the defendant company but in addition to the aforesaid principal amount plus interest, the plaintiffs were required to pay the liquidated damages on account of having been defaulted in payment of instalments of the loan amount which as on date are stated to be to the tune of Rs.42 lacs.*

3. *Mr. Sethi, the learned senior counsel for the plaintiffs has stated since this was a mutual settlement which was being sought to be arrived at between the parties, the*

defendant is taking a too rigid stand to realise the liquidated damages.

4. The learned counsel for the defendant on instructions from Manager (Legal) has stated that although the proposal in principal was acceptable, however, so far as the question of waiver of liquidated damages or giving the relief in reduction of liquidated damages to the plaintiffs is concerned, he has received instructions that this cannot be done.

5. The Manager (Legal), who is present in court, has stated that although instructions on these lines have been received but a proposal in this regard is yet to be put up before the Board and it is only the Board which is competent to take the decision.

6. I have considered the submissions. Since the payment plan as envisaged in the said proposal has been stated to be acceptable to the defendant in principal except the reservation of payment of entire liquidated damages by the plaintiff, it prima facie seems to be a too rigid stand to be taken by an organization without the approval of the Board.

7. This court also feels that as the plaintiffs are paying the entire principal amount plus interest in a time bound manner and the entire loan amount prima facie is intending to be liquidated by 31.3.2014, the plaintiffs deserve to be given some concession on the payment of liquidated damages. These observations of the court are not on merits of the case or without prejudice to the rights of the parties and without being taken as reflection on the merits of the case.

8. Since the decision at a higher level will have to be taken in this regard, Mr. Bindra has sought some time to obtain instructions as to whether the defendant can give some relaxation so far as realisation of the liquidated damages is concerned.

9. *List on 28th February, 2014 at 3 p.m.*

10. *A copy of the order be given dasti to the learned counsel for the parties for necessary action at their end.”*

*Sd/-
(V.K.Shali, J.)
19.02.2014*

Order dated 6.3.2014

“1. It has been agreed by both the learned counsel for the parties after obtaining instructions from their respective clients that the plaintiffs shall pay an amount of Rs.20 crores to the defendant within a period of 15 days from today, i.e., by 21.3.2014 and on clearance of the cheque/draft, the defendant shall release the excess security to the plaintiffs over and above the stipulated cover in terms of the agreement, immediately, i.e., the date of clearance or the next day.

2. The second instalment of Rs.20 crores shall be paid by the plaintiffs by way of a cheque dated 31.3.2014 on or before 31.3.2014; however, the said cheque is undertaken by the defendant to be presented on 4.4.2014 for clearance on 5.4.2014 or thereafter. On clearance of the said cheque, the excess security shall be released by the defendant to the plaintiffs immediately, i.e., the date of clearance or the next day.

3. On receipt of the excess security, the plaintiffs shall pay the remaining outstanding amount due and payable to the defendant as per the agreement except the liquidated damages and the legal cost within a period of 15 days from the date of receipt of the excess security.

4. Once this third instalment of outstanding amount is paid, both the learned counsel have agreed that the entire

outstanding amount shall stand settled and the only dispute between the parties which would subsist thereafter would be regarding the quantum about the liquidated damages and the legal cost to be paid to the defendant, which shall be decided on merits by this court.

5. *List for directions on 2nd April, 2014.*”

*Sd/-
(V.K.Shali, J.)
06.03.2014*

4. A perusal of the aforesaid two orders would show that the proposal for compromise given by the plaintiffs had been voluntarily and without any reservation accepted by the defendant. When the proposal was accepted, the only understanding which was arrived at between the parties was that apart from the loan amount what was payable was approximately the penalty amount which was quantified at that point of time to the tune of Rs.42 lacs. However, after having received the major, almost the entire principal amount, the defendant started claiming the penal interest and stated that they are entitled to an amount of well over a crore of rupee. It is because of this reason that the aforesaid application came to be filed on which fresh instructions were directed to be sought by the defendant.

5. However, Mr. Bindra, after obtaining instructions, had stated that the court may pass an order and they would abide by the same.

6. Mr. Uppal, the learned senior counsel appearing for the plaintiffs has taken the court through the various orders including the aforesaid two orders which have been reproduced herein and contended that although at a given point of time an amount of Rs.42 lacs was quantified to be paid by way of a penal interest; however, in order to purchase peace, he has agreed to pay a total amount of Rs.50 lacs. This fact of payment of Rs.50 lacs has also been recorded by the court in its orders dated 18.12.2014 and 9.9.2015.

7. In the light of the aforesaid facts and circumstances and especially the two orders which were passed on 19.2.2014 and 6.3.2014 which clearly indicate that the defendant had accepted the proposal given by the plaintiffs of taking the principal amount and by agreeing to give him certain relief and the balance amount of payment of penalty amount. It is totally unfair on the part of the plaintiffs now to have tried to retrace their steps to wriggle out of the said commitment. I, therefore, feel that the interest of justice would require that the plaintiffs should pay an amount

of Rs.50 lacs to the defendant, which, if paid within a period of eight weeks from today, shall finally close the matter between the parties.

8. With these directions, the application stands disposed of.

V.K. SHALI, J.

OCTOBER 19, 2015
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