

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

% *Judgment Reserved on : September 08, 2015*
Judgment Delivered on : September 18, 2015

+ **RFA (OS) 83/2008**

MS SHOES EAST LTD.Appellant
Represented by: Mr.Pawan Sachdeva, Managing
Director of Appellant in person

versus

R.K.SINGH & CO.Respondent
Represented by: Mr.Karan Malhotra, Advocate with
Mr.R.K.Singh, Proprietor of the
Respondent in person

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Case of the appellant pleaded in the plaint is that the defendant is a broker and provides financial services, inter-alia, as broker to procure applications concerning public issues. As per the appellant it decided to raise capital by way of a public-cum-right issue aggregating ₹6,99,00,000/- as also a public issue of fully convertible debentures aggregating ₹3,49,93,75,200/-. SBI Capital Markets Ltd. (SBI Caps) was the Lead Manager. In consultation with the Lead Manager, the appellant had a scheme to provide incentive to brokers who gave firm commitment to bring investors i.e. procure applications for allotment of fully convertible debentures. The defendant committed to procure subscription amount of ₹31 crores towards the public issue of fully convertible

debentures. Appellant released 50% of the incentive amount i.e. ₹15,00,000/- by two cheques dated January 30, 1995 and February 07, 1995. Since the defendant failed to procure the committed subscription, refund of ₹15,00,000/- together with interest @ 18% per annum from April 18, 1995 till when suit was filed on April 17, 1998 i.e. ₹8,10,000/- was prayed for. Pendente lite and future interest @ 18% was prayed for.

2. In the written statement filed by the respondent admitting having received ₹15,00,000/- from the appellant it was pleaded that the suit filed on April 18, 1998 was barred by limitation. It was pleaded that the respondent never made any commitment at any point of time to procure any specific number of applications. It was pleaded that SEBI noticed various lapses committed by the appellant and withdrew the approval to the issue and as a consequence the appellant had to refund the application money to successful allottees who opted to withdraw their applications.

3. Relevant for the purposes to decide the appeal would be to note the averments made in paragraph 5 of the plaint and its corresponding reply in paragraph 5 of the written statement.

4. Paragraph 5 of the plaint reads as under:-

“5. SBI Capital Markets Ltd., (hereinafter referred to as CBI Caps) Lead Manager to the public issue, introduced the defendant to the plaintiff company as a strategy to marketing the public issue. The defendant represented that it was a broker and was providing the service of firm commitment for procurement of applications to the public issue. The plaintiff was required to pay consideration for the same and it was agreed that an incentive would be paid on procurement payable at allotment. Relying on the representations of the defendant the plaintiff entered into firm commitment with the defendant whereby the defendant undertook to procure subscription amount of ₹31 crores. Accordingly, as per the incentive scheme the plaintiff released an amount of 50% of incentive amount totaling to ₹15 lakhs to defendant by cheque

Nos.704203 and 704221 for ₹7.50 lakhs dated 30.1.95 and dated 7.2.1995 respectively.”

5. Paragraph 5 of the written statement reads as under:-

“5. The contents of para 5 are wrong and baseless and are, therefore denied. It is not true that the Defendant has provided any firm commitment for procurement of subscription to the Plaintiff. Neither the Defendant had any agreement with SBI Capital Markets Limited to this effect. It is agreed that the Defendant had received Cheque bearing Nos.704203 and 704221 dated 30.1.1995 and 7.2.1995 respectively for ₹15,00,000/- towards procurement charges. Generally, it is a practice that if indicative amount is not procured then such advance gets adjusted against statutory dues such as Brokerage/Underwriting Commission etc. Advance given to cover the cost of mailing and other costs that are incurred prior to Public Issue. Moreover, there is no proof/correspondence to show that the Defendant made any such commitment to the Plaintiff, as alleged.”

6. On the pleadings of the parties the following four issues were settled as per order dated September 06, 2002:-

“1. Whether the plaintiff is entitled to the suit amount on the grounds mentioned in the plaint? OPP

2. Whether the plaintiff is entitled to interest? If so, at what rate and for what period? OPP

3. Whether the suit is within limitation? OPP

4. Relief.”

7. Proceeding to trial, the appellant examined five witnesses and relevant would it be to highlight that Mr.Pawan Sachdeva PW-5 deposed facts as per the case pleaded in the plaint. The five witnesses of the appellant proved various documents and relevant for the purposes of the

appeal would be to highlight, with brief description of the contents, the following document:-

- a. Ex.PW-1/3 being a letter written by the appellant to SBI Capital Marketing Ltd. and all brokers that it would offer incentive to brokers, based on procurement payable on allotment as per the letter i.e. 0.25% brokerage if the broker procured applications between 0.15 to 0.5 crores. 0.5% brokerage if the broker procured applications between 0.5 to 1 crore. 0.75% brokerage if the broker procured applications between 1 crore to 5 crores. 1% brokerage if the broker procured applications between 5 crores to 10 crore. 1.5% brokerage if the broker procured applications between 10 crores to 15 crores. 2% brokerage if the broker procured applications between 15 crores to 25 crores. 2.5% brokerage if the broker procured applications above 25 crores. With further incentive of 1% further commission if procurement by the broker was above 30 crores.
- b. Ex.PW-1/4 (also Ex.P-1) being a letter dated January 31, 1995 addressed by the respondent to the appellant drawing attention of the appellant to the commitment made by the respondent to procure applications for up to 30 crores with a request that its commitment may be taken to be 31 crores.
- c. Ex.PW-1/5 being statement of account maintained by the appellant concerning the respondent showing ₹15,00,000/- paid by two cheques.
- d. Ex.PW-1/7 showing commitment made by underwriters, one of which was the respondent. The name of the respondent is at serial No.216 with an underwriter commitment to underwrite 25121 debentures.
- e. Ex.PW-1/8 being a letter written by SBI Capital Market to the appellant on April 21, 1995 to the effect that since the appellant has failed to receive 90% of the minimum subscription amount within 60 days of

the closure of the issue, as mentioned in the prospectus, it has become incumbent upon the company to refund the entire amount forthwith to all the applicants.

8. The respondent examined its sole proprietor Sh.R.K.Singh as the only witness and he deposed that he never made any firm commitment to procure subscription to the plaintiff. He deposed that whatever amount he received was partially towards procuring applicants and the remainder to get adjusted against statutory dues such as brokerage/underwriting commissions. Being relevant for the purposes of the appeal we reproduce the exact language of the respondent. It is in paragraph 8 of the affidavit by way of evidence filed by R.K.Singh. It reads as under:-

“8. I say that the Defendant never provided any firm Commitment for procurement of subscription to Plaintiff and that whatever amount is given for procurement and if the same is not procured the said amount gets adjusted against statutory dues such as Brokerage/underwriting Commission etc.”

9. The witness of the respondent also deposed that due to defaults committed by the appellant, SEBI issued directions to the appellant to refund the application money who had been successful allottees and were opting to withdraw their money.

10. Vide impugned decision dated July 01, 2008, noting that ₹15,00,00/- was given to the respondent by two cheques dated January 30, 1995 and February 07, 1995 and that the public issue remained open from February 14, 1995 to February 18, 1995, the learned Single Judge held that even if case pleaded by the appellant was accepted, since the issue was to close on February 24, 1995, the cause of action accrued on said date and the suit filed on April 18, 1998 would be barred by limitation. The learned Single Judge held that as per Article 47 of the 1st Schedule to the Limitation Act, period of limitation was three years for money paid

upon an existing consideration which afterward fails and the trigger date for limitation to commence is the date of the failure.

11. Considering Ex.PW-1/3, Ex.PW-1/4, Ex.PW-1/5 and Ex.PW-1/7 the learned Single Judge held in paragraphs 14 to 18 as under:-

“14. The defendant examined Shri R.K.Singh as DW-1. He denied the arrangement alleged by the plaintiff, about the incentive scheme. According to him, the amount of ₹15 lakh received by the defendant was towards the cost of mailing and other expenses, prior to public issue. He stated that the case is false and that the plaintiff did not keep the issue open for the full 10 days, but wrongly closed it on an earlier date. He further alleged that the SEBI determined lapses by the plaintiff, and decided to prosecute it. According to the witness, the prices of shares was artificially propped up by the plaintiff, who misled the general public and indulged in unlawful practices. He confirmed to the statements made in the affidavit, in his cross examination, and also stated that as against the underwritten extent of ₹49 lakhs, the defendant had secured subscriptions for the plaintiff in excess of ₹75 lakhs. He denied the suggestion about an arrangement of commitment, and having received ₹15 lakhs towards incentive alleged by the plaintiff.

15. From the evidence, and the pleadings, particularly the plaint averments, it is clear that the defendant agreed to underwrite the issue to an extent of about ₹49 lakhs. Up to that stage, there is no dispute between the parties. The question however, is whether the amount of ₹15 lakhs, received by the defendant, was towards an additional commitment, for procuring ₹31 crores, in respect of which the plaintiff paid 50% consideration.

16. The plaintiff relies to a great extent on the letter written to SBI Caps on 23 January, 1995 (Ex.PW-1/3). It sets out, inter alia, a scheme whereby if the debentures in excess of ₹30 crore value was procured, 1% incentive was payable. The last sentence of that letter reads as follows:

“Deviation of 10% allowed.

For deviation beyond – 10% the said incentive percentage of the confirmed slab will be deducted from the percentage payable as per scheme 1 above.”

Earlier, the letter had outlined procurement rate commission payable on allotment; for allotments above ₹25 crores procured, 2.5% was held out to be payable (Though the letter does not explicitly mention it, presumably this is the Scheme 1 mentioned later at the end of the document). The letter went on to say that a kitty of ₹1 crore was to be shared proportionately amongst the top 40 brokers in the issue.

16. The plaintiff's version about the agreement has been denied by the defendant, as is evident from the above discussion. The mainstays of the plaintiff's claim are PW-1/3 (letter written to SBI Caps) and PW-1/4, the fax addressed by the defendant. To prove the debentures worth the committed ₹31 crores were not procured, the plaintiff relies on PW-1/7 statement. There is no written document executed between the parties, evidencing the terms of the contract, the relative commitments made by the contracting parties or even when it was entered into. The plaintiff is a public limited company. It has also not averred who entered into such an agreement on its behalf. The document primarily relied on, PW-1/3 outlining the details of the scheme – is written to SBI Caps. Even facially, it is not addressed to the defendant. Although the standard of pleadings in implied or oral contracts is not very high (See Order VI Rule 12, CPC) yet, at the stage of trial the onus of proving such contract, through conversations, letters or series of circumstances is squarely upon the plaintiff. All that the plaintiff has to support its allegations is a letter outlining the scheme written by it to a third party (SBI Caps); even that parties evidence has not been adduced. As far as the defendant is concerned, it does not deny Ex.PW-1/4, a fax which states about its agreement to commit to procuring ₹31 crores worth subscription. Yet, that fax also adverts to a commitment letter by it to the plaintiff. The plaintiff's witness PW-5, also alluded to such a letter. However, that has not been produced. In the circumstances, all that the court is left with – or rather, invited to find, is that such letter by the defendant admits its

commitment, and therefore, its having received ₹15 lakhs for the purpose. The plaintiff further suggest that since the defendant was unable to procure subscription for ₹31 crores, the contract failed and it has to refund the amount.

17. *Section 101 of the Evidence Act enacts*

*“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must **prove that those facts exist.**”*

Therefore, the burden is initially upon the plaintiff, who, in this case has to prove that the contract alleged by it, was entered into with the defendant and that in its terms, upon failure of the latter to procure, applicants worth ₹31 crores, the amount of ₹15 lakhs was to be refunded. The materials, i.e. Ex.PW-1/3 and PW-1/4 do not prove the contract and the attendant circumstances, relating to the transaction alleged by the plaintiff. No doubt, PW-1/4 suggests some dealing concerning procurement of applications in excess of ₹30 crores. That evidence is fragmentary at best; in fact is also reveals that some letter was written by the defendant in that regard. This is also supported by the plaintiff's evidence – PW-5 mentions about such a document. Nevertheless, for reasons best known, the plaintiff has chosen not to produce that letter. If indeed the transaction is as alleged by the plaintiff, the document would support it. Its withholding amounts to, in the opinion of the court, withholding of a material piece of evidence.

18. *As far as Ex.PW-1/7 is concerned, in the light of the above observations, that does not advance the plaintiff's case in any manner; in fact it supports the defendant's version that it procured subscription in excess of the underwritten amount. Similarly, Ex.PW-1/8 and Ex.PW-1/9 do not relate to the defendant; they are directions to the plaintiff, to refund subscription amounts to applicants, since the minimum subscription prescribed had not been obtained.”*

12. In the appeal the appellant was granted liberty to lead additional evidence and the appellant has proved four documents. Ex.PW-1/10 proved in the appeal is a certified copy of memo of parties of a suit

instituted by the appellant numbered as Suit No.119A of 1998 in which there are 36 defendants, one of which is the respondent and the written statement filed by the respondent to the plaint. The relevance of said document is the admission by the respondent that *‘the notice of devolvment dated 15th March 1995 served on the respondents, had been issued pursuant to the above said clauses of the agreement. However clause 10 and 11 of the agreement became operative only if the issue is undersubscribed’*. As also the further pleading of the respondent *‘further, the modification of paragraph 8 of the communication of March 15, 1995 by the setting communication dated March 24, 1995, is clearly to get out of the legal difficulties arising out of the failure to send the communication within time’*. Ex.PW-1/11 is a letter dated April 17, 1995 sent by the appellant to the respondent informing that since the public issue had not been successful and therefore the notice of devolvment dated March 15, 1995 was rightfully sent and hence the respondent was called upon to subscribe or procure subscription to the fully convertible debentures as underwritten by the respondent. Ex.PW-1/12 is the courier receipt evincing dispatch of Ex.PW-1/11 by courier to the respondent.

13. In the backdrop of the evidence led before the learned Single Judge and the additional evidence led, the issue arises whether the view taken by the learned Single Judge that the suit filed by the appellant was barred by limitation and that the appellant has failed to establish that it gave ₹15,00,000/- to the respondent as advance pertaining to a brokerage agreement is correct.

14. Since the issue of limitation, as would be noted hereinafter, is intertwined with the issue : What was the jural relationship between the parties? We proceed firstly to discuss what was the jural relationship between the parties, and this would subsume the issue : Whether the

appellant has successfully proved its case that the respondent, towards discharge of its obligation as a broker with liability undertaken to procure applications to subscribe to ₹31 crore debentures, was advanced ₹15,00,000/- by the appellant and since the respondent failed to measure up to its commitment, the sum of ₹15,00,000/- was liable to be refunded.

15. A perusal of the reasoning of the learned Single Judge which has been extracted by us in paragraph 11 above would evince that the learned Single Judge has taken note of Ex.PW-1/3 and Ex.PW-1/4, but therefrom has found that the appellant has not led sufficient evidence to discharge the onus upon the appellant, and for which reasoning the learned Single Judge has highlighted that Ex.PW-1/4 written by the respondent had made a reference to its letter dated January 13, 1995, which has not been proved by the appellant. The learned Single Judge has therefore held : *No doubt, PW-1/4 suggests some dealing concerning procurement of applications in excess of ₹30 crores. That evidence is fragmentary at best; in fact it also reveals that some letter was written by the defendant in that regard. This is also supported by the plaintiff's evidence – PW-5 mentions about such a document. Nevertheless, for reasons best known, the plaintiff has chosen not to produce that letter. If indeed the transaction is as alleged by the plaintiff, the document would support it. Its withholding amounts to, in the opinion of the court, withholding of a material piece of evidence.*

16. In our opinion the reasoning of the learned Single Judge is faulty for the reason the learned Single Judge has not taken note of appellant's pleading in paragraph 5 of the plaint and its reply in paragraph 5 of the written statement, which pleadings we have noted in paragraph 4 and paragraph 5 above. A perusal of paragraph 5 of the plaint would evince that the case pleaded by the appellant was that the defendant represented that it was a broker and was providing the service of firm commitment for

procurement of applications to public issues. The appellant agreed that an incentive would be provided on procurement payable at allotment. Respondent gave a firm commitment to procure subscription amount of ₹31 crores and as per the incentive scheme appellant released ₹15,00,000/- to the respondent. In reply the respondent denied having made any firm commitment for procurement of subscriptions, but admitted '*it is agreed that the defendant had received cheque bearing Nos.704203 and 704221 dated 30.1.1995 and 7.2.1995 respectively for ₹15,00,000/- towards procurement charges*'. Thus, the respondent admitted having received ₹15,00,000/- towards procurement charges. What were these procurement charges? The respondent has not pleaded anything, and we find that even in the evidence led the respondent has not proved as to what the procurement charges were. Further, in the written statement it is pleaded that *Generally, it is a practice that if indicative amount is not procured then such advance gets adjusted against statutory dues such as Brokerage/Underwriting Commission etc. Advance given to cover the cost of mailing and other costs that are incurred prior to Public Issue.* Meaningfully read, in light of the plea which we have just noted in paragraph 5 of the written statement, the respondent admits that the money which is received from the appellant was towards a guaranteed procurement and the justification to retain the amount i.e. ₹15,00,000/- is that if the amount indicated as guaranteed to be procured is not achieved then the advance gets adjusted against statutory dues such as brokerage/underwriting commission etc. In light of the aforesaid pleadings it becomes irrelevant that the appellant did not prove respondent's letter dated January 30, 1995 referred to in the respondent's letter Ex.PW-1/4 dated January 31, 1995. Ex.PW-1/4 reads as under:-

“Please refer to our Commitment to you for 30 crores (Letter dated 30th January 1995). Please note that now we are interested in extending our commitment to ₹31 crores. Hence kindly amend the same and send us the cheque of balance immediately. Also required 1,00,000 more forms urgently.”

17. Irrespective of the letter dated January 30, 1995 written by the respondent not being proved by the appellant, Ex.PW-1/4 written by the respondent to the appellant is a clear admission that it had committed to procure applications subscribing to debentures worth at least ₹30 crores.

18. We reiterate. Read in light of the pleadings of the parties, the contents of Ex.PW-1/4, in light of Ex.PW-1/3 and Ex.PW-1/7, Ex.PW-1/8 and Ex.PW-1/9 as also the oral testimony of the parties there is sufficient evidence that ₹15,00,000/- was received by the respondent from the appellant as advance with a commitment by the respondent to procure applications subscribing to the issue in sum of ₹30 crores as the minimum guaranteed amount.

19. Ex.PW-1/7 shows that the respondent, apart from a broker had also agreed to be one of the underwriters of the issue and had agreed to subscribe to 21521 debentures in case of a short fall. Though neither parties had pleaded the dual role of the respondent, but Ex.PW-1/7 establishes said fact and the line of cross-examination adopted by the respondent to cross examine Mr.Pawan Sachdeva the Director of the appellant also suggests the same. The importance of this dual role of the respondent links itself to the issue of limitation. Ex.DW-P1 proved by the respondent reads as under:-

“We hereby certify that :

(1) That our Securities and Exchange Board of India (SEBI) authorization number to act as Underwriters and Brokers under terms proviso to Section 12 (1) of the Securities and Exchange Board of India Act, 1992 is INB 160195011

(2) *As on 31st March, 1994 our net worth is more than adequate to fulfill under writing commitments.*

(3) *As on 22.12.1994 my/our outstanding underwriting commitments aggregate to ₹24.39 lacs.*

(4) *The underwriting support extended by me/us to the captioned issue is within my/our means and I/we undertake to fulfill all my/our obligations which may arise thereon.”*

20. The letter in question has been addressed to SBI Capital Marketing Ltd. and concerns the public issue of the appellant. Letter Ex.DW1/P2 dated December 23, 1994 written by the respondent to the SBI Capital Markets Ltd. concerns the public issue and reads as under:-

*“The Asst.General Manager (CFG)
SBI Capital Markets Ltd.
Tower Block
World Trade Centre Complex
Barakhamba Road,
New Delhi-110001*

Dear Sir,

Re: Public Issue of Equity Shares/Fully/Partly/Non-Convertible Debentures by MS Shoes East Ltd.

We thank you for your letter No.CFG/94 dated 14.12.1994 received on 22.12.1994 appointing us as one of the Underwriters/Brokers to the above mentioned Public Issue.

As desired we are forwarding herewith Eight sets of Underwriting Agreement and Broker Consent. The permission of Jaipur Stock Exchange Ltd., net worth certificate, SEBI's registration and devolvment statement are also enclosed. The quantum of underwriting allowed by Jaipur Stock Exchange Ltd., is `100.00 lakhs.

Our minimum requirement of the stationery for marketing the above issue is as under:-

<i>Prospectus</i>	70
<i>Application Forms</i>	40,000
<i>NRI Forms</i>	5,000
<i>Posters</i>	5
<i>Banners</i>	5

Kindly supply us the above mentioned stationery at least three weeks in advance.”

21. Letter dated Ex.DW-1/P3 dated December 22, 1994 written by the respondent to the Jaipur Stock Exchange concerning the public issue in question reads as under:-

*“The Secretary,
Jaipur Stock Exchange Limited
Rajasthan Chamber Bhawan,
M.I.Road
Jaipur-302001*

Dear Sir,

Re: Consent for Underwriting assistance and to act as Broker to Public Issue of Equity Shares/Fully/Partly/Non Convertible Debentures by MS Shoes East Ltd.

We have received an offer from SBI Capital Markets Ltd., New Delhi for underwriting assistance and consent to act as Broker to the Public Issue under reference.

The Lead Managers to the issue have asked for our consent and approval of the Stock Exchange. We, therefore, request for conveying your approval to us for conveying your approval to us for Underwriting assistance to an amount of ₹1.00 crores as per the new guidelines.

Our Underwriter/Broker Code Number is 16/0192-0.

The matter may kindly be treated as MOST URGENT.”

22. Apart from aforesaid documents written statement Ex.PW-1/10 filed by the respondent in suit No.1199A/1998 filed by the appellant also shows that it agreed to it acting as an underwriter.

23. While cross-examining PW-5 the respondent itself suggested that the public issue could be closed earlier to 10 days if it was subscribed to the extent of 90% and that the issue was fully subscribed by February 18, 1995, but due to heavy withdrawals the issue became undersubscribed and had thus devolved on March 15, 1995 as per the letter dated April 17, 1995, Ex.PW-1/11. Though two earlier notices dated March 15, 1995 and March 24, 1995, the former being referred to in Ex.PW-1/11 have not been proved but receipt thereof has been admitted by the respondent while replying to paragraph 10 and 11 of the plaint. While narrating the facts in paragraph 12 hereinabove, we have extracted the relevant portions of para 10-11 (a composite paragraph) of the written statement.

24. Thus, as per SEBI guidelines the respondent could bring in subscriptions up till April 18, 1995 i.e. within 60 days of the closure of the issue as per SEBI guidelines.

25. Therefore, the suit which was instituted on April 18, 1998 was filed on last date of limitation and thus the view taken by the learned Single Judge that the suit is barred by limitation is incorrect.

26. On merits, we have already held that the appellant successfully established having paid ₹15,00,000/- to the respondent as brokerage incentive on the assurance that the respondent would bring investors to invest at least ₹30 crores in the issue. With reference to paragraph 5 of the written statement we have already highlighted in paragraph 15 above that the case of the respondent was that it received ₹15,00,000/- towards procurement charges as a broker and justified retention thereof by pleading that it is a practice that if indicated amount is not procured then

such advance gets adjusted against statutory dues such as brokerage/underwriting commission or cost towards mailing and other expenses incurred.

27. The respondent has led no evidence of any such alleged general practice.

28. That apart, Rule 13(2) in Chapter 2 of the SEBI Rules provide that the underwriting commission shall be payable by a company within 15 days of the date of finalization of the allotment and would arise only upon the underwriter fulfilling the underwriting obligation by duly subscribing to the share/debentures which have devolved on him. As per Chapter 5 (523) of the SEBI Rules an underwriter is debarred from deriving any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable. Under Chapter 5 (524) of the SEBI Rules the mailing cost and other out of pocket expenses for canvassing of public issues etc. have to be borne by the stock broker and no payment on that account can be made by a company. Thus, in view of SEBI Rules the respondent was not entitled to any adjustment as claimed for and could not even prove any such market practice, for assuming any such existing, it would be contrary to the SEBI guidelines and hence not enforceable.

29. We thus hold that on issue No.3, the suit filed was within limitation. On issue No.1 we hold that the appellant is entitled to receive back from the respondent ₹15,00,000/- because the respondent has not proved that in its role as a broker it got applicants which paid ₹30 crores to the appellant and received the debentures in said sum. On issue No.2 we hold that the appellant would be entitled to interest because ₹15,00,000/- was retained by the respondent without any justification and entitlement. The brokerage commission being a commercial transaction we hold that the appellant would be entitled to interest @ 12% per annum.

30. Thus we would decree the suit filed by the appellant against the respondent by allowing the appeal and setting aside the impugned judgment and decree passed by the learned Single Judge; the decree would be in favour of the appellant and against the respondent in sum of ₹15,00,000/- together with interest @ 12% per annum thereon from 18th April, 1995 till realization of the amount decreed. The appellant would be entitled to costs all throughout against the respondent.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 18, 2015
mamta