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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.96 OF 2014

IN

SUMMARY SUIT NO.2575 OF 2012

Fabtech Technologies International Pvt. Ltd. ...Plaintiff

vs

Vispi Rusi Jokhi ...Defendant

.....

Mr. Nilesh Acharya, i/b. Moin Khan, for the Plaintiff.

Ms. Usha Andewar, i/b. Nilesh Patil, for the Defendant.

.....

CORAM : S.C. GUPTE, J.

DATED : JANUARY 12, 2016

P.C. :

. The Summary Suit is filed by the Plaintiff seeking a decree in the sum of Rs.1,69,52,220/- as per particulars of claim, being **Exhibit - J** to the plaint, together with interest at the rate of 24% per annum till payment or realisation.

2. The suit is on the basis of an agreement of profit sharing between the parties, which is termed as a partnership agreement by the Plaintiff in the suit. It is the case of the Plaintiff that the operation of this partnership started in the month of September 2009 and the same was reduced into writing in the form of an agreement on 20 November 2010. It is the Plaintiff's case that the Defendant, on behalf of the

International Trade Division started in partnership between the parties through this agreement, did import and export business from September 2009 to August 2010; that he was given authority to deal in aluminum scrap of the Company and, for that purpose, a bank account was opened in the name of the Plaintiff Company, which the Defendant was authorised to operate jointly; that the Defendant assumed the entire responsibility of the International Trade Division of the Plaintiff, and particularly for collection of dues payable to the Plaintiff by, or payments to be made by the Plaintiff to, two parties, namely, RAS Exports, UK and Grit Overseas Pte Limited, Singapore. It is the Plaintiff's case that, a sum of Rs.43,97,256/- was payable to M/s. RAS Exports Pvt. Ltd., whereas a sum of Rs.82,54,964/- was due and receivable by the Plaintiff Company on account with M/s. Oak Enterprises, Ivory Coast, West Africa for settlement liabilities of Grit Overseas Pte Limited and Reliance Industries Group Hongkong Company Limited, China. Apart from these liabilities, a sum of Rs.43,00,000/- was recoverable from M/s. Luminum Metaltech, a partnership in which the Defendant was a partner. The Plaintiff submits that the Defendant has acknowledged his personal responsibility for collection/recovery of money from Oak Enterprises to settle the account of M/s. Grit Overseas and also to settle the dues payable by the Plaintiff to M/s. RAS Exports Ltd., England by affirming an affidavit to that effect.

3. In reply, it is submitted by the Defendant that the agreement between the parties is not a partnership agreement. It is submitted that there were several business problems in the months of March to November 2010, which are set out in the reply to the

Summons for Judgment. It is submitted that the agreement of 20 November 2010 as well as the affidavit of 28 January 2011, were procured by the Plaintiff from the Defendant after giving threats of criminal prosecution, forcing the Defendant to sign the same. It is also submitted by the Defendant in his reply that, eventually, the Plaintiff did file an FIR against the Defendant. The Defendant has also referred to various disputes concerning the dues payable by M/s. Luminum. The Defendant submits that the Plaintiff has not paid till date 40% share of the Defendant in the profits and has also not given any account for the period the Defendant has worked as a Consultant to the Plaintiff. It is also claimed by the Defendant that the Plaintiff has adjusted various amounts due by M/s. Luminum Metaltec, where the Defendant is a partner, towards 40% of the profit payable to the Defendant. The Defendant also disputes the dues of M/s. Oak Enterprises and M/s. RAS Exports.

4. These are all disputed questions of fact, which give rise to several triable issues in the suit. The Defendant is entitled to an unconditional leave to defend on the basis of these issues.

5. Accordingly, the Defendant is granted an unconditional leave to defend the suit. Written statement to be filed within a period of six weeks from today. The suit transferred to the list of commercial causes. Place the suit for directions after six weeks.

(S.C. GUPTE, J.)