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

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**CS(OS) No. 228/2010**

**6<sup>th</sup> May, 2016**

**SANJAY KHANNA**

..... Plaintiff

Through: Mr. Dinesh Kumar Seth, Advocate with  
plaintiff in person.

versus

**M/S VASU TECH LTD. & ORS**

..... Defendants

Through: Mr. Saksham Marwah, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

**I.A. No. 6165/2010 (under Order XXXVII Rule 3(5) CPC for grant of leave  
to defend)**

1. This application for leave to defend is filed by the defendants under Order XXXVII Rule 3(5) of the Code of Civil Procedure, 1908 (CPC). There are a total of four defendants in the suit. Defendant no.1/company is under liquidation, and therefore, counsel for the plaintiff does not press the suit against defendant no.1 but seeks and is granted liberty to file appropriate claims before the official liquidator, and accordingly, the suit will stand disposed of giving the aforesaid liberty to the plaintiff as regards the defendant no.1. Counsel for the plaintiff also prays for deletion of defendant nos. 3 and 4 from the array of defendants as no decree is sought against these defendants. Ordered

accordingly. The leave to defend application is therefore to be decided with respect to the rights of the plaintiff in this Order XXXVII suit as regards the defendant no.2, and which defendant no.2 as per the plaintiff was the *dramatis personae* with respect to the entire transactions and dealings between the parties.

2. By this suit filed under Order XXXVII CPC, plaintiff seeks recovery of Rs.6,90,26,340/- alongwith *pendente lite* and future interest at 24% per annum. Though the plaint sets out the entire history of transactions between the parties and which started from the year 2002, and which transactions were pertaining to the loans granted by the plaintiff to the family concerns of defendant no.2, the paras 8 to 23 of the plaint containing only historical facts of various payments due to the plaintiff, issuing of cheques and dishonouring of the same, filing of cases under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') etc are irrelevant inasmuch as the cause of action on the basis of which decree is sought in the present suit is on the basis of a later Corporate Guarantee given by the defendant no.1 on 4.9.2006 and with respect to which the defendant no.2 stood as a personal guarantor to repay the amount as stated in the corporate guarantee. The details as to the dues payable by the defendants to the plaintiff and cheques issued by the defendants to the plaintiff are stated in paras 24 to 26 of the suit plaint and these paras 24 to 26 read as under:-

- “24. Thereafter the Defendant No.1 and Defendant No.2’s family H.U.F. i.e. M/s RL Varma HUF, and its karta, member(s) and co-Parcenor(s) (which included the Defendant No.2) arranged for a fresh corporate guarantee dated September 4, 2006 (third guarantee), from Defendant No.1, wherein Defendant No.1 guaranteed the payments on behalf of the Defendant No.2’s family H.U.F. i.e. M/s RL Varma HUF, and its karta, member(s) and co-Parcenor(s) (which included the Defendant No.2). The Defendant No.1 agreed to guarantee and pay an amount of Rs.5,14,00,000/- (Rupees Five Crores And Fourteen Lacs Only), plus an additional amount of interest of Rs.2,01,26,340/- (Rupees Two Crores One Lac Twenty Six Thousand Three Hundred And Forty Only) in all amounting to Rs.7,15,26,340/- (Rupees Seven Crores Fifteen Lacs Twenty Six Thousand Three Hundred And Forty Only) in instalments between 1.4.2006 to 31.3.2007. In the aforesaid corporate guarantee dated September 4 2006, which was issued by Defendant No.1, it was also recorded that to secure the payments, which are payable, the Defendant No.1 has handed over cheques amounting to Rs.7,15,26,340/- to Plaintiff as per the following details:

| S.No. | Date       | Cheque No. | Amount(In Rs.) | Drawn on                                            |
|-------|------------|------------|----------------|-----------------------------------------------------|
| 1.    | 01.04.2006 | 100657     | 25,00,000/-    | UTI Bank, New Delhi                                 |
| 2.    | 01.10.2006 | 349324     | 4,89,00,000/-  | Central Bank of India, Parliament Street, New Delhi |
| 3.    | 01.10.2006 | 349326     | 44,01,000/-    | Central Bank of India, Parliament Street, New Delhi |
| 4.    | 01.10.2006 | 349327     | 47,97,090/-    | Central Bank of India, Parliament Street, New Delhi |
| 5.    | 01.01.2007 | 349328     | 52,28,828/-    | Central Bank of India, Parliament Street New Delhi  |
| 6.    | 31.03.2007 | 349329     | 56,99,422/-    | Central Bank of India, Parliament Street, New       |

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25. That The aforesaid 6 cheques were issued by Defendant No.1 in discharge of the liabilities of Defendant No.2's family H.U.F. i.e. M/s R.L. Varma HUF, and its karta, member(s) and co-parcenor(s) (which included the Defendant No.2) and in discharge of the Corporate Guarantee dated September 4, 2006 given by Defendant No.1. The Corporate Guarantee given by the Defendant No.1 was supported by the Board Resolution of the Defendant No.1 dated September 4, 2006 which authorizes Defendant No.2 as Director of Defendant No.1 to give the corporate guarantee and secure payments for the Plaintiff along with covering note dated September 4, 2006 and Board Resolution also dated September 4, 2006. Moreover it is/was expressly clarified that the Defendant No.2 also personally guaranteed the transaction by signing and endorsing the factum of providing and issuing his personal guarantee on the last page of the Corporate Guarantee dated September 4, 2006, issued by Defendant No.1.
26. That except for the cheque listed at serial No.1, amounting to Rs.25,00,000/- (Rupees Twenty Five Lacs Only), which was paid as a consulting fee by Vasu Tech Limited, all other cheques were returned unpaid by the banker of the Defendant No.1 on account of "insufficient funds" in the accounts. The Plaintiff states that the cheques listed at Serial 2 to 5 above were dishonoured on 9.2.2007 and the cheque listed at Serial No.6 above was dishonoured on 20.4.2007. The Plaintiff received information about the dishonour of the cheques by way of the Cheque Return Memos dated 9.2.2007 and 20.4.2007 issued by his Bankers M/s ABN Amro Bank, Hansalaya Branch Barakhamba Road, New Delhi 110001."

3. The subject suit is filed therefore for the recovery of the balance amount due under the Corporate Guarantee dated 4.9.2006 after reducing therefrom the amount of the first cheque stated in paras 24 and 26 of the plaint which was given towards consultancy charges.

4. In the leave to defend application, the defendant no.2 has not disputed the signing and execution of the Corporate Guarantee Agreement dated 4.9.2006. Defendant no.2 only pleads existence of duress and pressure from the

plaintiff, as also pressure on account of pendency of criminal cases, thus having to forcibly sign the Corporate Guarantee dated 4.9.2006.

5. The principles with respect to grant of leave to defend are now well settled. If an arguable case is raised by the defendant then unconditional leave to defend has to be granted. If the defences however raised in the application for leave to defend are only a moonshine, then the leave to defend is to be declined. In my opinion, the facts in the present case are such that defence raised is a complete moonshine and therefore, the leave to defend is liable to be and is accordingly dismissed. The reasons for the same are given hereinafter.

6. I have already noted above that defendant no.2 does not dispute the execution of the Corporate Guarantee Agreement dated 4.9.2006. I have examined this Corporate Guarantee dated 4.9.2006 qua the liability of the defendant no.2 and which is only now in issue and it is seen that at the last page of this corporate guarantee, it is specifically written as under:-

“I, Mr. Dhruv Varma as specified above, also Guarantee the above in my individual capacity.

For VASU TECH LIMITED

Sd/-

Authorised Signatory

Dhruv Varma

September 4, 2006, New Delhi”

Thus, it is seen that defendant no.2 also agreed to his personal liability as a guarantor.

7. The details of how the liability of the defendant no.1 and the defendant no.2 arose towards the amounts are stated in the following terms in the Corporate Guarantee Agreement dated 4.9.2006:-

**“WHEREAS:**

1. R.L.Varma & Sons (HUF) and its Members/Co-parcener(s), namely Mr. R.L.Varma, Karta, R.L.Varma & Sons, (HUF), Ms. Aruna Varma, Mr. Dhruv Varma (together herein referred to as the “**Borrowers**”), owe a sum of Rs.4,10,00,000/- (Rupees four crore and ten lakhs only) to the Beneficiary as per details contained in the Borrowers letter dated February 3,2004, which is attached herewith as **Exhibit 1**.
- 1.a) It is expressly confirmed, agreed and recorded by and between the Parties of the both parts that the amount of Rs.4,10,00,000/- (Rupees four crores and ten lacs only) includes consultancy charges payable to the Beneficiary by the Borrowers amounting to Rs.65,00,000/- (Rupees sixty five lacs only).
2. The Borrowers had entered into an agreement (for a compromise settlement at a reduced amount, with time being the essence of the compromise settlement) with the Beneficiary for the payment of the legitimate dues of Rs.2,65,00,000/- (Rupees two crores sixty five lacs only) to the Beneficiary as per the settlement dated 4<sup>th</sup> February 2004 filed in the Court of Ms. Pinki, Metropolitan Magistrate, Patiala House Courts, New Delhi, a copy whereof, is attached herewith as **Exhibit 2**. The Borrowers did not adhere to the financial discipline and to the Schedule of repayments attached with the Deed of Settlement dated 4<sup>th</sup> February 2004 and except for one installment dated 26<sup>th</sup> February 2004, amounting to Rs.10,00,000/- (Rupees ten lacs only), towards consultancy charges, which was duly paid, the Borrowers defaulted in the payment of the rest of the installments from March 2004 onwards.
- 2.a) It is expressly confirmed, agreed and recorded by and between the Parties of the both parts that the total amount of Rs.2,65,00,000/- (Rupees two crores and sixty five lacs only) payable to the Beneficiary includes a reduced amount of consultancy charges payable to the Beneficiary by the Borrowers amounting to Rs.44,60,000/- (Rupees forty four lacs sixty thousand only), which was set out in para (xii) of the settlement dated 4<sup>th</sup> February, 2004, filed in the court of Ms. Pinky, Metropolitan Magistrate, Patiala House Court, New Delhi.
3. On account of default at their end, the Borrowers approached the Beneficiary Mr. Sanjay Khanna, with a revised payment schedule for the payment of the outstanding dues and after discussions and

deliberations it was agreed by and between the Borrowers and the Beneficiary that the entire outstanding dues payable by the Borrowers to the Beneficiary, amounting to Rs.4,10,00,000/- (Rupees four crore ten lacs only) less the amount of Rs.10,00,000/- (Rupees ten lacs only) paid on 26 February, 2004, as per para 2 above, shall be paid by 31<sup>st</sup> December 2004 and in the event of payments not being made by the Borrowers by 31<sup>st</sup> December 2004 then positively by and not later than 31<sup>st</sup> March 2005. It was represented and undertaken by the Borrowers that under any circumstances whatsoever the repayment of the outstanding dues shall not be delayed beyond 31<sup>st</sup> March 2005. This arrangement as agreed to between the Borrowers and the Beneficiary was recorded separately before the Court of Ms. Pinki, Metropolitan Magistrate, Patiala House Courts, New Delhi by way of an application, a copy whereof is attached herewith as **Exhibit 3**. However, the obligations could not be fulfilled by the Borrowers.

- 3a) It is expressly confirmed, agreed and recorded by and between the Parties of the both parts that the amount of Rs.4,10,00,000/- (Rupees four crores and ten lacs only) includes consultancy charges payable to the Beneficiary by the Borrowers amounting to Rs.65,00,000/- (Rupees sixty five lacs only).
- 4. At the behest of the **Borrowers** and in consideration of the amount owed by the Borrowers to the Beneficiary, and the Guarantor having agreed to provide its Guarantee, the Beneficiary has agreed to accept the payments of the entire outstanding amounts due and payable by the Borrowers as per compromise terms filed in Criminal Complaint No. 370/1/2003 at Patiala House Court on 30/8/04 a copy whereof is attached herewith as **Exhibit 4**, subject to the condition that the said entire outstanding dues are not paid to the Beneficiary on or before 31<sup>st</sup> March 2006, the Beneficiary shall be entitled to recover and receive the full amount of Rs.5,44,00,000/- (Rupees five crores forty four lacs only) from the Borrower and the Guarantor, jointly and severally, together with accrued interest @ 4% per month for the period from 1<sup>st</sup> April 2006 onwards.
- 4a) The Borrowers did not adhere to the financial discipline and to the Schedule of repayments as per compromise terms dated 30<sup>th</sup> August 2004 filed in court as per para 4 above except for one installment dated 5<sup>th</sup> October 2005, amounting to Rs.30,00,000/- (Rupees thirty lacs only), towards consultancy charges, which was duly paid. The Borrowers defaulted in the payment of the rest of the installments as per Exhibit 4 above filed at Patiala Court House in CC No. 370/1/2003 on 30/08/04.”

8. The exact amount of liability in monetary terms is specified in paras 1(a) and (b) of this corporate guarantee agreement and the same read as

under:-

**“NOW THESE PRESENTS WITNESSETH as follows:**

- 1.(a) The Guarantor doth hereby irrevocably and unconditionally Guarantee the due repayment to the Beneficiary on the due date without demur and/or contestation and notwithstanding any dispute between the Beneficiary and the Borrowers, all indebtedness due and payable by the Borrowers to the Beneficiary or any one or more or all of them or any part thereof for the time being outstanding and all interest, commission, costs, charges and expenses and all other moneys whatsoever due owing and payable by the Borrower to the Beneficiary thereunder for the sum of Rs.5,14,00,000/- (Rupees five crores fourteen lacs only) [i.e. Rs.5,44,00,000/- less Rs.30,00,000/- received on October 5,2005] hereinafter referred to as the “**said Dues**”, along with interest at 36% (thirty six percent) per annum, compounded at quarterly rests, till repayment of consultancy charges, interest and principle, in the event of failure on the part of the Borrower in repaying the same to the Beneficiary or discharging its liability thereunder when the same are due and payable, the Guarantor shall pay to the Beneficiary forthwith on the first demand made by the Beneficiary (the decision of the Beneficiary as to such default/failure of the Borrower and the amount claimed therein, being final, conclusive and binding on the Guarantor).
- (b) In order to secure the payment of the said Dues and performances of the obligation hereunder by the Guarantor, the Guarantor has **ALREADY** provided the following security/(ies) in the form of cheques in favour of the Beneficiary:

| Date                             | Cheque No. | Amount           | Drawn on                                                                                              |
|----------------------------------|------------|------------------|-------------------------------------------------------------------------------------------------------|
| I) 1.4.2006                      | 100657     | Rs.25,00,000/-   | UTI Bank, New Delhi<br>(including TDS deducted: actual cheque for Rs.23,59,750/- after deducting TDS) |
| II a) 1.10.2006                  | 349324     | Rs.4,89,00,000/- | Central Bank of India<br>Parliament Street, New Delhi.                                                |
| II b) 1.10.2006                  | 349326     | Rs.44,01,000/-   | -do-                                                                                                  |
| II c) 1.10.2006                  | 349327     | Rs.47,97,090/-   | -do-                                                                                                  |
| II d) 1.1.2007                   | 349328     | Rs.52,28,828/-   | -do-                                                                                                  |
| II e) 31.3.2007                  | 349329     | Rs.56,99,422/-   | -do-                                                                                                  |
| <b>Total Rs.7,15,26,340.00.”</b> |            |                  |                                                                                                       |

9. Learned counsel for the defendant no.2 basically has argued two

aspects. First is with respect to the corporate guarantee having been signed under duress and pressure from the plaintiff as also on account of pending criminal cases under Section 138 of the NI Act and hence not binding on the defendant no. 2, and secondly that the endorsement of the defendant no.2/Mr. Dhruv Varma given at the end of corporate guarantee document as reproduced above is not a written contract and also not a guarantee for the same to fall under Order XXXVII CPC. Reliance is placed by the counsel for defendant no. 2 upon the judgment of a learned Single Judge of this Court in the case of ***Shri J.S. Sood Vs. Mrs. Prem Lata Mehta & Another ILR (1984) II Delhi 716***. The paras of this judgment which are relied upon, and would be relevant, are paras 2 and 12 and these paras read as under:-

“(2) The plaintiff has alleged that there was a verbal agreement under which he agreed to finance the production of the aforesaid film. He has further alleged that in pursuance thereto he made various payments to the defendants from time to time for this purpose. It is specifically averred that though the whole finance for the production of this picture was given by the plaintiff there existed no writing between the parties to that effect. It is further stated that sometime in July, 1983, the plaintiff requested the defendants to go into the accounts and confirm the payments received by them so that the plaintiff could have an exact idea of his investments. This plea appears to be rather strange when the money was advanced by the plaintiff and there could be no question of defendants going into the accounts and confirming the payments received by them from the plaintiff. It is then stated that after great persuasion the defendants agreed to acknowledge only receipt of Rs. 2,00,000 though the plaintiff could trace out payment of Rs. 2,08,000 "from whatever little bank accounts he was having". The plaintiff has also stated that in fact the payments made by him were more than this amount of Rs. 2,08,000 as he also made payments by means of bearer cheques and cash as well. On the basis of the following writing of the defendants, the plaintiff has filed the present suit under Order XXXVII of the Code of Civil Procedure:

"J. S. Sood  
GLOBE FILM DELHI  
Regarding: Nadaniyan

This is to certify that you have paid a sum of Rs. 2 LAKH in completion of picture Nadaniyan till date which will be repaid to you before release of the picture 'NANDANIYAN'.

XXXXX

XXXXX

(12) As to whether the written contract may be signed by both the parties does not call for decision in the present case though it appears that the words "written contract" envisage some sort of a formal document between the contracting parties. I would rather think that it would be a condition, precedent that there should be a formal agreement executed by (ha parties and signed by them. plaintiff's own version is that it was a verbal contract and the document on the basis of which the suit has been filed merely acknowledges the money due under the aforesaid verbal contract. Such a writing may at best be a written acknowledgement which extends the period of limitation under Section 18 of the Limitation Act, 1963, but no more. Thus I do not think that such a document would fall within the definition of written contract and the provisions of Order XXXVII would not apply. It must, Therefore be held that the present suit is not maintainable under the summary procedure prescribed under Order XXXII."

10. In my opinion, the defence raised by the defendant no.2 is clearly a moonshine because defendant no.2 does not dispute that he did execute the Corporate Guarantee Agreement dated 4.9.2006 for the defendant no.1 and also gave his endorsement agreeing to the defendant no. 2 being personally liable as a guarantor at the end of the corporate guarantee document which has been reproduced above. The defence of the agreement having been signed on account of duress and pressure is a totally frivolous defence inasmuch as till the date of filing of the present suit and the leave to defend application no suit has been filed by the defendant no.2 for cancelling the Corporate Guarantee Agreement dated 4.9.2006 on the ground that this document has been got signed by duress and pressure and therefore is void. The first defence and argument of the defendant no.2 is accordingly rejected.

11. The second argument of the defendant no.2 that the endorsement given above is not a written contract and is also not the contract of guarantee once again is a totally frivolous argument inasmuch as endorsement given by Mr. Dhruv Varma/defendant no.2 has to be read in continuation of and forming part of the entire letter of Corporate Guarantee dated 4.9.2006. I have already reproduced above the relevant paras of the corporate guarantee which show existent liability towards plaintiff and consequently of the defendant nos. 1 and 2 executing the corporate guarantee specifying the specific amounts in para 1(b) of the corporate guarantee. Accordingly, the endorsement given in categorical terms at the end of this corporate guarantee by the defendant no.2 in my opinion when read as a part and parcel of the entire Agreement of Corporate Guarantee dated 4.9.2006, the same clearly is a written contract as also a guarantee executed by the defendant no.2 with respect to the liability specified in para 1(b) of the corporate guarantee agreement. The second argument urged on behalf of the defendant no.2 is therefore rejected.

12. The argument of the defendant no.2 that the endorsement of the defendant no.2 is not a written contract by placing reliance upon the judgment of *Shri J.S. Sood (supra)* is again a misconceived argument for the self same reasons given for rejecting the second argument inasmuch as the endorsement not only specifies that the defendant no.2 has stood as a guarantor, the liquidated amount due is also mentioned in the corporate guarantee document,

and therefore corporate guarantee document is a formal document specifically containing the liability of defendant nos. 1 and 2, and obliging the defendant nos. 1 and 2 by this written document to make payments to the plaintiff. The corporate guarantee therefore is a written contract falling under Order XXXVII Rule 1 CPC containing a liquidated amount and hence the suit under Order XXXVII CPC is clearly maintainable on the basis of this Corporate Guarantee Agreement dated 4.9.2006.

13. In view of the above, there is no merit in the leave to defend application which is rejected.

**CS(OS) No.228/2010**

14. Since the application for leave to defend is rejected, the suit of the plaintiff against the defendant no. 2 is decreed for a sum of Rs. 6,90,26,340/- alongwith *pendente lite* and future interest at 9% per annum simple. Plaintiff will also be entitled to costs of the suit. Decree sheet be drawn. Suit is decreed and disposed of accordingly.

**MAY 06, 2015**  
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**VALMIKI J. MEHTA, J.**