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

% *Date of decision:* 20.11.2017

+ CS(OS) 553/2014 and I.A. 3615/2014

M/S BAKSHI THE DRILLER & ORS Plaintiffs
Through Mr. Shekhar Gehlot, Adv.

versus

JIAANGSU GOODENG ENGINEERING MACHINERY
ASSEMBLING CO LTD & ORS Defendants
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This suit is filed for recovery of commission and damages for breach of agreement by the plaintiffs against defendant No. 1 and defendant No. 2 and 3 who were employees of defendant No. 1.
2. It is averred in the plaint that plaintiff No. 1 is a proprietorship concern and plaintiff No. 2, namely, Sh. Harvinder Singh Bakshi is the sole proprietor of plaintiff no. 1. The plaintiffs entered into a representative agreement on 03.08.2011 with defendant No. 1 and defendant No. 2. Defendant No. 1 is a company located and registered in China having its registered office in Jiangsu, China. As per the terms of the agreement, the plaintiff was bestowed with the Representative Authority to represent defendant No. 1 throughout India as territory of sale. The contract was valid from 03.08.2011 for one year. The plaintiff was required to make sales target of value USD 2.5 million in the contract period. If the target was achieved, the representative contract automatically got extended for the second year.

3. It is the claim of the plaintiff that it managed to get two separate orders within a month of the agreement as it managed to sell one Mid rig-GD 1100 L and another Maxi Rig-GD 2800 L to M/s. South West Drilling & Infrastructure Limited for a total consideration of USD 924,700. Thereafter, on 04.09.2011 an Acceptance and Commitment Letter was signed by the parties in China. Defendant No. 1 undertook to pay to the plaintiff commission on sale of equipment in India, directly or through a trading agent. On 24.07.2012, plaintiff No. 1 obtained another sale order from M/s.Tecpro Systems Ltd. for USD 1,619,367. Another contract was also executed on 24.07.2012. Hence, it is pleaded that by 24.07.2012, the target of 2.5 million USD was achieved by the plaintiff within the subsistence of the contract and hence, there was an automatic extension of the contract for another year i.e. 03.08.2012 onwards.

4. On 27.11.2012, plaintiff No. 1 came to know that defendant no. 1 secretly sold one GD-3500 L, maxi rig to one Indian customer-M/s. Gypsum Structural India Pvt. Ltd. for an undisclosed amount and no commission was made to the plaintiff. Hence, it is pleaded that there is breach of the agreement by the defendants.

5. On 14.10.2013, the plaintiff received information of another direct sale by defendant No.1 to M/s. Trenchless Engineering Services (P) Limited.

6. The plaintiff on 09.01.2014 sent a legal notice pointing out that they have suffered a loss of USD 400,000 for commissions and damages. As there was no response the present suit was filed whereby the plaintiff seeks to recover commission of Rs.60 lakh for each sale being a sum of Rs.1.20 crore and compensation of Rs.1.20 crores for breach of the contract, loss of goodwill and mental trauma being a total of Rs.2.40 crore.

7. The defendants were duly served but none appeared for the defendants. On 8.12.2014, this court proceeded ex-parte against the

defendants. The plaintiff has also filed an affidavit by way of evidence of plaintiff No.2-Sh.Harvinder Singh Bakshi.

8. Mr. Harvinder Singh Bakshi plaintiff no. 2 has led his evidence as PW1. He stated that plaintiff No.1 is a proprietorship firm. Plaintiff no. 1 is represented by plaintiff no. 2. He also states that the plaintiff No.1 is HDD (Horizontal Directional Drilling) Consultant for laying of steel pipes under rivers & canals for gas & oil sector. Defendant No.1 is a company located and registered in China in the name and style of Jiangsu Goodeng Engineering Machinery Assembling Co. Ltd, having registered office at North West Gongjian rd., Changzhou Gaoxin Industry Garden, Dafeng, Jiangsu, China. The defendant no.1 was represented by defendant no.2 Chen Fenggang, as general manager and defendant no.3 Chen Ting, as Head of Indian business in China. A copy of "Representative Agreement" along with quotation list of rigs has been filed and marked as PW1/ E(colly). It is stated that the said agreement was valid for one year i.e. from 3.8.2011 to 3.8.2012. Further, on successful completion of the agreement the said agreement would get renewed automatically for another one year i.e from 2012 to 2013. Plaintiff No.1 managed to sell one Midi rig -GD 1100 L and another Maxi Rig -GD2800 L to M/s South West Drilling & Infrastructure Limited, an Indian buyer, for a consideration amount for 924,700.00 USD. It is also stated that a copy of the sales contract is marked as PW1/G and PW1/H. Further, on 24.7.2012 another sale was made to M/S Techpro Systems Limited, an Indian firm for GD-2800-L, for USD 1,619,367.00. A Copy of the correspondence and sale/purchase order for the HDD rig sold to M/S Techpro Systems Limited dated 09.07.2012 is marked as PW-1/N. A copy of receipts of part commission paid to plaintiff by defendant no. 1 for the above said sale is marked as PW-1/O. A copy of the invoice of the HDD rig sold to M/S Techpro Systems Limited by defendants is marked as PW-1/Q. Added

altogether the sales made totalled 2,544,067.00 USD. Therefore, the target of making sales target of at least 2.5 Million USD was achieved within the 'Contract Period' by plaintiff No.1. PW1 further states that on 27.11.2012 he came to know that defendant No.1 had secretly sold one GD-3500 L, maxi rig to one Indian customer namely M/S Gypsum Structural India Pvt. Ltd for an undisclosed amount and no-commission was paid to him. Once more on 14th October 2013 a direct sale was made by defendant no.1 of GD-3500 L Maxi Rig to M/S Trenchless Engineering Services (P) LTD an Indian Customer, yet again by passing the exclusive authority of the plaintiff No.1. Copy of the custom clearance slip for the import is marked as PW1/W. Again no commission was paid on this sale also.

9. The fact that emerge is that clause 4.1 of the agreement dated 03.08.2011 provided that on achieving target of 2.5 Million USD the agreement would be automatically renewed for one year. Plaintiff achieved the said target and the contract stood automatically renewed. After the renewal, two sales have been made in India. The plaintiff has become entitled to his commission for the said sales. In my opinion, in view of the un-rebutted evidence, it is quite clear that defendant No. 1 is liable to pay to the plaintiff the aforementioned amount of Rs. 1.20 crore as commission for sales made in India during currency of the agreement between the parties claimed in the suit. However, defendant no. 2 and 3 are only employees of defendant no. 1. There are no personal allegations against the said two defendants. The privity of contract is also between the plaintiff and defendant No. 1. Hence, no liability is made out against defendant Nos. 2 and 3.

10. A perusal of affidavit by way of evidence of Mr. Harvinder Singh Bakshi shows that he has dealt at large regarding the breach of the contract by defendant No. 1. However, there are no averments made as to how the plaintiff claims sum of Rs. 1.20 crore on account of loss of goodwill, mental

trauma and agony. This is only mentioned in passing. The claim as sought is totally unconnected with the main claim of the plaintiff, namely, recovery for breach of the contract.

11. In my opinion, the plaintiff would be entitled to a sum of Rs.1.20 crore from defendant No. 1 on account of breach of the contract i.e. for the commission payable to the plaintiff.

12. Accordingly, a decree is passed in favour of the plaintiffs and against defendant No.1 for a sum of Rs.1.20 crore. The plaintiff shall also be entitled to simple interest @10% p.a. from the date of filing of the suit till the date of decree. The plaintiff shall also be entitled to simple interest @10% p.a. from the date of decree till the date of recovery. The plaintiffs shall also be entitled to costs.

13. The suit stands disposed of. All pending applications also stand disposed of.

NOVEMBER 20, 2017

Corrected & released on 10.5.2018

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JAYANT NATH, J.