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

% **Date of decision:27th April, 2017.**

\+ **CS(COMM) No.211/2016**

DARA PROJECTS PRIVATE LIMITED ..... **Plaintiff**

Through: Mr Sanjeev Sindhwani, Sr. Adv. with Mr. Sanjay Dua, Adv.

Versus

BUSINESS INDIA EXHIBITIONS PVT. LIMITED & ANR. ..... **Defendants**

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for recovery of Rs.2,35,30,495.70p jointly and severally from the defendant No.1 Business India Exhibitions Pvt. Limited (BIEPL) and defendant No.2 Ashok H. Advani, pleading:

(i) that the defendant No.2 Ashok H. Advani had approached and represented to the plaintiff that he is the founder and chairman of Business India Group and the defendant No.1 BIEPL is under his complete control and he is one of the Directors of the defendant No.1 BIEPL and in exclusive charge and control of the defendant No.1 BIEPL and responsible for the conduct of day to day affairs and functioning of the defendant No.1 BIEPL;

(ii) that the defendant No.2 called upon the plaintiff to enter into the business transactions with the defendant No.1 BIEPL and assured the plaintiff that he would be personally liable and responsible for all acts, omissions, liabilities etc. of defendant No.1 BIEPL and promised to stand as guarantor for the same;

(iii) that the defendant No.1 BIEPL is a mere alter ego of the defendant No.2 which has been created by the defendant No.2 for his own personal benefit and to evade payment of legitimate dues of the business associates of the defendant No.1 and to defraud the creditors of the defendant No.1 BIEPL; the defendant No.2 is the real person behind the veil and facade of the defendant No.1 BIEPL and is jointly and severally liable and responsible for the debts and liabilities of the defendant No.1 BIEPL;

(iv) that with the aforesaid assurances and representations, the defendant No.2 requested the plaintiff to provide its goods, articles, services, transport etc. for the various projects, shows and exhibitions undertaken and organised by the defendants;

(v) that the plaintiff, believing the aforesaid assurances and representations of the defendant No.2, provided to the defendants the services of installation of outdoor superstructures, air-conditioning of superstructures, stall constructions, general lighting, furniture, panels, carpeting, wooden platforms, landscaping etc. as ordered by the defendants from time to time and the defendants were completely satisfied with respect thereto;

(vi) that the defendants have been making on-account payments to the plaintiff for the bills / invoices raised by the plaintiff from time to time;

(vii) that the plaintiff has been maintaining an open and running account of defendant No.1 BIEPL in this regard;

(viii) that the ledger statements of the defendant No.1 BIEPL for the financial year 2007-2008 till 2013-2014 containing entries of the transactions during the said financial years are filed before this Court;

(ix) that for the financial year 1st April, 2012-31st March, 2013, the ledger account maintained by the plaintiff reflects an opening debit balance of Rs.2,24,03,781/-;

(x) that the defendants made certain on-account payments in acknowledgement of their liability towards the plaintiff, the last of such payments being the payment of Rs.1,96,000/- vide cheque bearing No.0868588 dated 16th March, 2013 drawn on HDFC Bank;

(xi) that the plaintiff thereafter raised another invoice dated 26th March, 2013 for an amount of Rs.21,59,117/-;

(xii) that after duly crediting the payments made by the defendant No.1 BIEPL during the financial year 2012-2013, there was a closing debit balance of Rs.2,35,30,495.70p as on 31st March, 2013 and which the defendants have failed pay inspite of repeated reminders and assurances to pay;

(xiii) that the defendant No.1 BIEPL, with regard to part of the aforesaid amount payable to the plaintiff has even deposited Tax Deducted at Source (TDS) and issued TDS certificates without actually making the full payment to the plaintiff; such act of the defendant No.1 BIEPL tantamount to admission of its liability towards the plaintiff;

(xiv) that it is now apparent that the defendant No.2 Ashok H. Advani has played a fraud upon the plaintiff;

(xv) that the plaintiff got served on the defendants a legal notice dated 8th February, 2016 demanding the payment but the defendants have not responded thereto also;

(xvi) that the defendants have been notified in the legal notice that they would be liable to pay interest on the outstanding @ 24% per annum; accordingly, the plaintiff besides the sum of Rs.2,35,30,495.70p, is also entitled to *pendente lite* and future interest at the said rate.

2. The suit was entertained and summons thereof ordered to be issued to the defendants. The order dated 9th May, 2016 of the Joint Registrar records that both the defendants had been served by registered post A.D.; though none appeared for the defendants before the Joint Registrar on 9th May, 2016, written statement was awaited. None appeared for the defendants before the Joint Registrar on 12th August, 2016 also and accordingly the suit was ordered to be listed before the Bench on 7th October, 2016.

3. None appeared for the defendants on 7th October, 2016 also. Though a formal order proceeding *ex-parte* against the defendants remained to be passed on that date but it was the contention of the senior counsel for the plaintiff on 7th October, 2016 that this being a commercial suit, is entitled to be decreed without requiring the plaintiff to lead *ex-parte* evidence.

4. The defendants are now formally proceeded against *ex-parte*.

5. It was enquired from the senior counsel for the plaintiff on 7th October, 2016, as to how the suit claim was within time.

6. The senior counsel for the plaintiff contended that the last payment made by the defendant No.1 BIEPL to the plaintiff was on 16th March, 2013 and this suit was instituted on 14th March, 2016 and listed first before the Joint Registrar on 16th March, 2016. Reference was also made to the judgment of the Division Bench of this Court in ***Bharath Skins Corporation Vs. Taneja Skins Company Pvt. Ltd.*** 2012 (186) DLT 290 to contend that Article 113 of the Schedule to the Limitation Act, 1963 would apply.

7. Qua the claim of the plaintiff against the defendant No.2, the senior counsel for the plaintiff contended that though according to him the plaintiff was not required to be relegated to *ex-parte* evidence but if this Court felt the need therefor, the plaintiff was willing.

8. The senior counsel for the plaintiff on 7th October, 2016 also informed that out of the plaintiff's claim of Rs.2,35,30,495.70p, liability in the sum of Rs.1.60 crores stood admitted by issuance of TDS certificates.

9. After hearing the senior counsel for the plaintiff on 7th October, 2016, orders in the suit were reserved.

10. The plaintiff, along with the plaint has filed photocopies *inter alia* of the ledger account maintained by the plaintiff of the defendant No.1 BIEPL and referred to in the plaint, copies of the bills raised by the plaintiff on the defendant No.1 BIEPL from time to time and copies of TDS certificates issued by the defendant No.1 BIEPL to the plaintiff from time to time.

11. The contents of the plaint, as per the procedure prescribed, are supported by an affidavit and is accompanied with a statement of truth by way of affidavit on behalf of the plaintiff.

12. I am of the view that in such circumstances, no purpose is served by requiring the plaintiff to lead *ex-parte* evidence which is nothing more than a repetition of the contents of the plaint. I have already in ***Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.*** 2013 SCC Online Del 508 held that in such cases, the plaintiffs are not required to be relegated to *ex-parte* evidence and have consistently been taking the said view. Thus, the case of the plaintiff has been evaluated on the basis of the contents of the plaint and the documents filed therewith.

13. This Court in ***Saurabh Exports Vs. Blaze Finlease & Credits Pvt. Ltd.*** (2006) 129 DLT 429 has held that on the pleas as made in the plaint, a case of piercing the corporate veil is made out. Thus, in the event of any

amounts being found due to the plaintiff from the defendant No.1 BIEPL, the decree against the defendant No.2 for the said amount, jointly and severally with the defendant No.1 BIEPL, will also follow.

14. The defendants having chosen not to contest the suit and rebut the case of the plaintiff, the plaintiff on the basis of the pleadings and the documents has made out a case for a decree for recovery of money.

15. Qua the aspect of limitation, a perusal of the ledgers for the different financial years shows the following amounts to be due from the defendant No.1 BIEPL to the plaintiff at the end of the financial year indicated thereagainst:

Financial Year	Amount Due (Rs.)
2007-2008	86,30,351.01
2008-2009	1,82,37,315/-
2009-2010	2,14,38,563/-
2010-2011	2,24,53,781/-
2011-2012	2,24,03,781/-
2012-2013	2,35,30,495.70

16. The Article of the Schedule to the Limitation Act applicable to the services claimed to have been provided by the plaintiff to the defendants, in my opinion, would be Article 18 i.e. a suit for the price of work done by the

plaintiff for the defendant at the request of the defendant, where no time is fixed for payment, limitation provided wherefor is three years commencing from the date when the work is done. Applying the said Article 18, the bulk of the claim of the plaintiff in the suit would be barred by time.

17. The plaintiff however relies on the account maintained by it of the defendant No.1.

18. Article 1 of the Schedule to the Limitation Act providing for suits relating to account, however would also not be attracted, the account being not a mutual one.

19. However, the Division Bench of this Court in ***Bharath Skins Corporation*** supra has held that where the account between the parties is an open, running and non-mutual account, as is in the present case also, there being no Article in the Schedule to the Limitation Act dealing with suits for recovery of due on a open, current and non-mutual account, the residuary Article vis Article 113 would apply and the period of three years would begin running from the date when the claim is denied in response to the legal notice and/or from the date of the last payment. Applying the said dicta, the claim in the present suit would be within time.

20. The senior counsel for the plaintiff, after the order had been reserved has also submitted photocopy of the judgment in ***Sanjeev Chopra Vs. All Wear Clothing (India) P. Ltd.*** 2012 SCC Online Del 640. However, in the light of the judgment of the Division Bench supra, need to discuss the same is not felt.

21. The suit for recovery of the principal amount thus succeeds.

22. As far as the claim of the plaintiff for *pendente lite* and future interest is concerned, considering the falling interest rates, the plaintiff is not found entitled to interest @ 24% per annum as claimed and a decree for *pendente lite* and future interest @ 11% per annum is deemed appropriate.

23. A decree is accordingly passed in favour of the plaintiff and against the defendants jointly and severally for recovery of Rs.2,35,30,495.70p with interest @ 11% per annum from the date of institution of the suit till realisation. The plaintiff shall also be entitled to costs of the suit.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

APRIL 27, 2017
'bs'..