

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

% **Date of decision: 8th December, 2017.**

+ **CS(COMM) 1181/2016 & IA No.10603/2016 (u/O XXXVIII R-5 CPC)**

S. BHUPINDER SINGH **Plaintiff**

Through: Mr. Ravi Chawla, Adv.

Versus

RAVI SOMANI **Defendant**

Through: Mr. Rajesh Banati, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for recovery of Rs.2,26,00,000/- from the defendant, pleading (i) that the defendant was a good friend of one of the Directors of M/s Utsav Safety Systems Pvt. Ltd. (hereinafter called as 'Company'); (ii) that in the year 2002, the plaintiff was a shareholder in the Company and the defendant was the Managing Director and majority shareholder of the Company; (iii) that the plaintiff has rendered his services as Director in the Company; however the plaintiff resigned from the Company and at the time of tendering his resignation, demanded the monies towards goodwill qua surrender of rights in the Company from the defendant; (iv) that the defendant expressed his inability to make any payment to the plaintiff but assured the plaintiff that he will pay as soon as the Company shall start the business; (v) that in order to give trust and confidence to the plaintiff, the defendant agreed to acknowledge the said promise of payment in writing; (vi) that the defendant entered into an agreement to pay royalty with the plaintiff; (vii)

that the agreement was named as “Payment of Royalty Agreement” and was executed on 19th September, 2002 between the plaintiff and the defendant; (viii) that as per the agreement, the plaintiff was to receive a royalty amount of Rs.1,50,00,000/- from the defendant towards the surrender of his rights and interest for the goodwill and reputation of the Company, which was duly acknowledged by the defendant; (ix) that however the royalty payment was to be paid by the defendant within the period starting after three months of the commencement of the business of the Company in any of the States and before expiry of one year from the day of commencement of such business; (x) that the plaintiff has been pursuing the defendant regarding payment but every time the defendant replied that since the work was yet to start, the same could not be paid; (xi) that on 17th August, 2013, the plaintiff wrote a letter to the defendant demanding the royalty and to which a reply dated 23rd August, 2013 was received and from which the plaintiff learnt that the defendant was no more a Director in the Company since 24th December, 2009; (xii) that the defendant however admitted the liability of payment of royalty to the plaintiff but pleaded that the Company had not generated any profits and had not started functioning and had not been awarded any contract directly by any State in the “HSRP project”; (xiii) that the plaintiff sent another letter dated 27th January, 2014 and to which a reply dated 24th April, 2014 was received; (xiv) that another letter dated 7th May, 2014 and reply dated 27th May, 2014 were exchanged between the parties; (xv) that the defendant is illegally withholding Rs.1,50,00,000/- of the plaintiff; (xvi) that the defendant is also liable to pay interest @ 24% per annum thereon

with effect from 19th September, 2002. Hence, the suit for recovery of Rs.2,26,00,000/-.

2. The suit was entertained by the Joint Registrar and summons thereof issued and pleadings completed and admission/denial effected.

3. At this stage, it is deemed appropriate to reproduce herein below the agreement executed on 19th September, 2002, on the basis of which the suit has been filed. The same is as under:

“PAYMENT OF ROYALTY AGREEMENT

(HEREINAFTER REFERRED TO AS THE “AGREEMENT”)

THE DISCRIPTION OF THE INTERESTED PARTIES:-

*Mr. Ravi Somani is the Managing Director and Majority Shareholder in M/s Utsav Safety Systems Pvt. Ltd. (Hereinafter referred to as **Company**), and is entering into this **Agreement** out of his free will and is hereinafter referred to as the **Party of the First Part**.*

*Mr. Bhupinder Singh is also an existing shareholder in M/s Utsav Safety Systems Pvt. Ltd. and has served the Company for a period of more than four years right from the time of the Company's inception and is entering into this agreement with his free will and is hereinafter referred to as **Party of the Second Part**.*

OBJECTIVE AND SCOPE OF THIS AGREEMENT:-

Whereas, the Party of the First Part has been the Managing Director of the Company and has enjoyed the services and help of the Party of Second Part in the course of carrying out the business activities of the Company from the last four years.

Whereas, presently the Party of First Part is not in a financial position of paying adequately for the services rendered by the

Party of Second Part given the financial liquidity crunch which the company is inflicted with, the Party of First Part has agreed to pay a fixed royalty of Rupees 1,50,00,000/- to the Party of Second Part once the business of the Company of supplying the HSRP's starts in any of the States.

WITH THIS BACKGROUND THE FOLLOWING METHODOLOGY IS SETTELED AS ADOPTED FOR EXECUTING THIS AGREEMENT OF PAYMENT OF ROYALTY:-

- 1. Within the period starting after the three months of the commencement of the business of the Company in any of the States and before the expiry of one year from the day of such commencement of business the Party of First Part would pay a fixed royalty of Rupees 1,50,00,000/- (Rupees Fifteen Million Only) to the Party of Second Part.*

MODE OF PAYMENTS:-

- 1. The mode of payment whether in instalments or through the full and final down payment would be mutually decided, if the payments is agreed to be made in instalments then the same have to be in equal instalments at regular intervals. However all the payments have to be made on or before the due date i.e. before one year from the day of the commencement of the business.*

*EXECUTED as a Deed by Party of
First Part Mr. Ravi Somani in person*

*EXECUTED as a Deed by Party of
Second Part Mr. Bhupinder Singh
In person”*

5. On the pleadings of the parties, the following issues were framed in the suit on 13th October, 2017:

- i. Whether the suit is liable to be dismissed being barred by limitation? OPD
- ii. Whether the suit is liable to be dismissed for no cause of action? OPD
- iii. Whether the plaintiff is entitled to a decree for a sum of Rs.2.26 crores in terms of prayer A in the suit? OPD
- iv. Whether the plaintiff is entitled to interest, if so, at what rate and for what period? OPP
- v. Relief.”

6. The counsel for the defendant has contended that the suit claim is barred by time.

7. Being *prima facie* agreeable with the contention of the counsel for the defendant that the suit claim, on a reading of the averments in the plaint, is barred by time and further, on a reading of the agreement dated 19th September, 2002 being of the *prima facie* opinion that the plaintiff must have been a power broker, who must have assured award of some contracts by the State Governments to the Company, I have enquired so from the counsel for the plaintiff.

8. The counsel for the plaintiff agrees that the plaintiff was/is a power broker had had helped the defendant and the consideration for the agreement stated to be executed on 19th September, 2002 was the said help rendered by the plaintiff.

9. A shareholder of a company, on transfer of the said shares is entitled only to the price thereof from the purchaser thereof and is not entitled to any “monies towards goodwill qua surrender of rights” from the Managing Director of the company, as is pleaded. It is not even pleaded that the shares were transferred/sold to the said Managing Director. Contrary thereto, in the agreement it is pleaded that the monies were due from the defendant as Managing Director of company to which the plaintiff rendered services. It services were rendered to company, charges therefor would be payable by the company and not by the Managing Director. Moreover no terms on which the services were rendered are contained. It is also not the plea that the dues towards said services were reflected in books of accounts of company. I am of the opinion that the agreement does not disclose any consideration for the promise made by the defendant and recorded therein. Further, the consideration therefor being the efforts of the plaintiff to procure a Government contract for the Company of the defendant, would be illegal and the alleged contract would be hit by Section 23 of the Indian Contract Act, 1872 and void for that reason. However, since no issue has been framed on the said aspects, I refrain from elaborating thereon.

10. The counsel for the plaintiff, on being asked as to how the suit instituted on 10th August, 2016, on the basis of an agreement executed on

19th September, 2002, is within limitation, states that the limitation for making the claim was to start when the money was to become payable under the agreement i.e. on awarding of contract by any of the State Governments and non-payment of the amount promised within the time stipulated in the agreement.

11. There is no plea in the plaint of any contract having been awarded.

12. If the logic stated by the counsel for the plaintiff is to be applied, the suit is pre-mature.

13. The counsel for the plaintiff contends that the suit is not pre-mature because the defendant, vide letter dated 24th April, 2014 informed the plaintiff for the first time that the defendant had sold his shares in the Company.

14. The Company is not a defendant in the suit. The agreement nowhere required the defendant to continue holding shares in the Company. The agreement also does not provide that on the defendant selling his shares, the money would become payable. The said argument is thus of no avail.

15. I have also enquired from the counsel for the plaintiff, which Article of the Schedule to the Limitation Act, 1963 would apply to a claim for which the suit has been filed.

16. The counsel for the plaintiff states that the matter be adjourned to enable him to find so.

17. The plaintiff ought to have considered all the said aspects before expending court fees and other expenses in institution of the suit and if not, then at least when a plea to that effect was taken in the written statement

and on which the preliminary issue No.(i) has been framed and if not then even, at least after the preliminary issue was framed and the suit posted for hearing thereon for today. If the plaintiff till now has not done so, no adjournment therefor can be granted.

18. What emerges is that the amount of Rs.1,50,00,000/-, according to the plaintiff, was due from the defendant to the plaintiff in the year 2002. The said amount is claimed to be due as brokerage or liaison services rendered by the plaintiff to the defendant.

19. Article 18 of the Schedule to the Limitation Act provides the limitation of three years for a suit for the price of work done by the plaintiff for the defendant, where no time has been fixed for payment, commencing from the date when the work is done. In the present case, the work was admittedly done prior to or latest by 2002 and the limitation of three years, as per Article 18 of the Schedule to the Limitation Act, would commence, even if we were to take the last date of 2002 and the three years thereafter, would expire in the end of the year 2005. The suit, as aforesaid, has been filed on 10th August, 2016.

20. The counsel for the plaintiff next contends that there is an admission of the defendant in the replies dated 27th April, 2014 and 27th May, 2014 of the defendant.

21. A reading of the replies also does not show the defendant to have made any admission as is claimed.

22. The counsel for the plaintiff has pointed out to Para A of the reply to the letter dated 17th August, 2013 and which is as under:

“A. It is a matter of fact that I am no more the Director in M/s Utsav Safety Systems Pvt. Ltd. w.e.f. 24th Dec 2009, however realising your concern would surely like to bring the matter to the notice of the Board of the Company for the needful to be undertaken at Company’s end.”

23. I am unable to see as to how the same by any stretch of imagination can be construed as an admission of the defendant of his liability to the plaintiff. All that the defendant has stated therein is that he will bring the matter to the notice of the Board of the Company for the needful to be undertaken at the Company’s end. Even if it were to be held that the defendant was in a position to bind the Company, the plaintiff has not sued the Company. Statement disputing own liability and claiming that the liability is of somebody else who can be informed, cannot be construed as an admission.

24. The counsel for the plaintiff has next referred to the reply dated 24th April, 2014 where the defendant has stated as under:

“I hope you will appreciate that we need to amicably close our issues, if any, taking into account all aspects of our relations vis-a-vis each other and vis-a-vis M/s Utsav Safety Systems (P) Ltd., wherein both of us have ceased to remain shareholders. I would look forward, to receiving the copy of the agreement dt. 26th Aug 2003 that you had entered into with M/s Road Sketch Pvt. Ltd. to enable our understanding to be arrived on the basis of transparency and mutual trust.”

25. The same is also not an admission within the meaning of Section 18 of the Limitation Act.

26. For the reasons aforesaid it has but to be held that either the plaintiff has no cause of action for the suit or the suit claim is barred by time.

27. The Preliminary Issues No.(i) & (ii) are thus decided in favour of the defendant and against the plaintiff.

28. Once it is so, the need to post the suit for trial on other issues does not arise. The suit is dismissed.

I refrain from imposing costs.

DECEMBER 08, 2017

bs

RAJIV SAHAI ENDLAW, J.

