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

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Date of Decision: 21st December, 2018

+ CS(COMM) 355/2018 & I.As.10975-10976/2018

IFCI FACTORS LIMITED

..... Plaintiff

Through: Mr.Anupam Srivastava, Ms.Shreya
Mehta, Mr.Dhairya Gupta, Advocates.

versus

M/S MVL LIMITED & ANR

..... Defendants

Through: Mr.Sudhir Nandrajog, Senior
Advocate with Mr.Kushal Gupta,
Mr.Kaushal Sharma, Advocates.

J U D G E M E N T (O R A L)

1. The plaintiff instituted this suit for recovery of Rs.24,91,34,568/- against the defendants.
2. The defendants received the summons on 05th March, 2018 and they appeared before the learned Joint Registrar on 27th April, 2018 and submitted that they did not receive the complete copies of the documents. According to the defendants, they received the complete set of documents from the plaintiff on 15th May, 2018 and the statutory period of 30 days for filing the written statement expired on 14th June, 2018.
3. The defendants filed the written statement on 13th August, 2018 along with an application I.A.10975/2018 for seeking condonation of delay of 60 days in filing the written statement on the ground that they received the complete set of documents from the plaintiff on 15th May, 2018. However,

no satisfactory explanation has been given in the application for the period 14th June, 2018 to 13th August, 2018 and therefore, no case for condonation of 60 days is made out.

4. On 10th September, 2018, this Court partly heard the arguments and directed the Managing Director and all the Directors of the defendants to remain present on 18th September, 2018 along with all original documents and records relating to this case within their power and possession including the statement of the bank accounts in which the loan given by the plaintiff was deposited as well as the statement of loan account. The competent officer of the plaintiff was also directed to remain present in Court along with the relevant records.

5. On 18th September, 2018, defendant No.2, Managing Director of defendant No.1 and Director (Finance) of defendant No.1 appeared and expressed the willingness to settle the matter and sought reference of the matter to mediation whereupon this matter was referred to the Delhi High Court Mediation and Conciliation Centre. However, no settlement took place between the parties in the mediation.

6. On 01st November, 2018, defendant No.2 (Managing Director of defendant No.1) admitted the receipt of Rs.15,46,32,000/- from the plaintiff out of which only Rs.83,80,860/- was repaid. Defendant No.2 sought six weeks time for repayment of the loan amount to the plaintiff through the Assets Reconstruction Company. Defendant No.2 undertook that if he was unable to repay the loan within six weeks, the decree be passed against the defendants on the next date of hearing. Order dated 01st November, 2018 is reproduced hereunder:

“1. The plaintiff has filed this suit for recovery of Rs.24,91,34,568/-

along with interest thereon. The plaintiff's case is that the plaintiff advanced a sum of Rs.15,46,32,000/- to defendant No.1 who repaid Rs.83,80,860/- only and the balance outstanding amount along with interest at the time of filing of the suit is Rs.24,91,34,568/- Defendant No.2, Managing Director of defendant No.1 has given a personal guarantee dated 27th June, 2014 to the plaintiff.

2. Mr.Prem Adip Rishi, Managing Director of Defendant No.1 present in Court today admits the receipt of Rs.15,46,32,000/- by defendant No.1 from the plaintiff. He also admits that Rs.83,80,860/- was repaid by defendant No.1 to the plaintiff. He does not dispute the personal guarantee given by him to the plaintiff. He submits that the provisional liquidator has been appointed by this Court in Company Petition No.668/2014 vide order dated 05th July, 2018. He further submits that defendants have appointed CFM Limited as an Assets Reconstruction Company for taking over the loan liability of defendant No.1 along with certain projects. He further submits that he is hopeful that the aforesaid Assets Reconstruction Company would be in a position to take over and repay the loan of defendant No.1 to the plaintiff. He seeks six weeks time for the aforesaid Assets Reconstruction Company to negotiate the repayment of the loan amount to the plaintiff. He further submits that if aforesaid efforts of the repayment of the loan by the Assets Reconstruction Company to the plaintiff are not successful, he would not object to the decree being passed in favour of the plaintiff.

3. Learned counsel for the plaintiff submits that the undertaking of defendant No.2 be recorded that the deferment of the proceedings today is not a ploy to misuse the process of law. It is submitted that in a similar case being CS(COMM) 4/2018 titled **IFCI Factors Limited v. Noesis Industries Limited and Ors.**, the defendants sought deferment of the proceedings and in the meantime procured the order of appointment of IRP under the Insolvency Act.

4. Defendant No.2 present in Court submits that there is no such move and the plea for deferment is an honest prayer made to this Court purely for the purpose of making an effort for repayment to the plaintiff through Assets Reconstruction Company. It is further submitted that the passing of the decree today would cause impediment to the restructuring efforts. The undertaking of defendant No.2 is recorded to this effect.

5. *This Court is of the view that the decree can be passed against defendant No.2 today. However, believing that defendant No.2 is genuinely interested to arrange for repayment through Assets Reconstruction Company, the passing of the decree is deferred for six weeks to enable defendant No.2 to arrange the repayment.*

6. *List on 19th December, 2018.*

7. *If the repayment of the loan is not arranged by defendant No.2 within six weeks, defendant No.2 shall file an affidavit of his assets, income and expenditure as on the date of the cause of action as well as on today and on the date of filing of the affidavit along with the documents in the form attached hereby as Annexure 'A' along with the documents mentioned therein before the next date of hearing.*

8. *Defendant No.2 shall not dispose of, alienate, encumber either directly or indirectly or otherwise part with the possession of any assets to the tune of Rs.25,00,00,000/- till the next date of hearing.*

9. *Defendant No.2 present in Court undertakes to comply with the aforesaid directions of this Court. The undertaking of defendant No.2 is hereby accepted. Defendant No.2 shall sign the ordersheet before leaving the Court.*

(Emphasis supplied)

7. On 19th December, 2018, the defendants sought further time for repayment of the loan which is in clear violation of the undertaking given on 01st November, 2018. Defendant No.2 did not file the affidavit of assets, income and expenditure in terms of order dated 01st November, 2018. The case was adjourned to 21st December, 2018 on the request of the defendants.

8. The defendants seek further time upto March 2019 for re-payment of the loan amount to the plaintiff. Defendant No.2, Managing Director of defendant No.1 handed over the affidavit of his assets, income and expenditure in terms of the order dated 01st November, 2018. Defendant No.2 also handed over an additional affidavit to place on record the action taken by him for re-payment of the loan. The affidavits are taken on record.

Findings

9. The defendants admitted their liability to pay the suit amount during the course of the hearing dated 01st November, 2018. Defendant No.2 undertook that he would not object to the decree being passed against them if they could not arrange the re-payment by 19th December, 2018. The defendants are in clear violation of the undertaking given to this Court on 01st November, 2018 by seeking further deferment of the proceedings. No case is made out whatsoever for further deferring the proceedings.

10. The defendants are dishonest litigants which is clear from their conduct. Defendant No.2 sought deferment of proceedings on 01st November, 2018 for arranging re-payment of loan within six weeks through Assets Reconstruction Company. The least expected from defendant No.2 was to have made a clear written proposal to the Assets Reconstruction Company within one week of 01st November, 2018 and to have brought the order dated 01st November, 2018 to the notice of the Assets Reconstruction Company that he has to arrange the re-payment within six weeks. Although the plaintiff strongly objected to the dishonest motives of the defendants, the defendants succeeded in persuading this Court to believe that defendant No.2 would be able to arrange re-payment of loan within six weeks. From the affidavit filed by defendants today, it is clear that the defendants played fraud upon this Court on 01st November, 2018 onwards. The conduct of the defendants amount to interference with the administration of justice and warrants imposition of heavy cost as well as initiating proceedings for contempt of Court.

11. This Court is of the view that the defendants had no intention to repay the loan amount on 01st November, 2018 and they abused and misused the

process of law by seeking deferment of the proceedings on 01st November, 2018 which is clear from the defendants' affidavit. The defendants claim to be in constant touch with CFM Asset Reconstruction Pvt. Ltd. However, no document has been placed on record with respect to their communication with CFM Asset Reconstruction Pvt. Ltd. The only document filed along with the affidavit is the letter dated 19th December, 2018 in which defendant No.2 is seeking a meeting of Vice-President of CFM with Managing Director of the plaintiff on 26th December, 2018 or 27th December, 2018 to discuss possibility of taking over defendants accounts. No document whatsoever has been placed on record to show the action taken by the defendants for repayment of the loan immediately after 01st November, 2018. If the intention of the defendants were *bonafide* then the defendants would have taken action immediately after 01st November, 2018 and would not have waited till 19th December, 2018.

12. I.A.10975/2018 is liable to be dismissed as the defendants have failed to show sufficient cause for condonation of delay of 60 days in filing the written statement.

Conclusion

13. The defendants admitted before this Court on 1st November, 2018 the plaintiff advanced a sum of Rs.15,46,32,000/- to them against which they repaid Rs.83,80,860/- only. The Plaintiff advanced the aforesaid amount to the defendants at an interest of 14.75% per annum. Defendant No.2, Managing Director of the defendant No.1 had given a personal guarantee dated 27th June, 2014 to the plaintiff. The defendants agreed to arrange repayment of loan within six weeks failing which they had no objection to the suit being decreed against them. The admissions of the plaintiff made before

this Court on 01st November, 2018 are sufficient to pass a decree in favour of the plaintiff and against the defendants under Order XII Rule 6 of the Code of Civil Procedure.

14. I.A. 10975/2018 seeking condonation of delay of 60 days in filing the written statement is dismissed and the written statement is not taken on record.

15. The plaintiff suit is decreed for Rs.24,91,34,568/- along with *pendente lite* and future interest at the rate of 14.75% per annum along with actual legal cost incurred by the plaintiff including the lawyer's fee. The plaintiff is permitted to file the actual costs on an affidavit within four weeks.

16. Cost of Rs.1,00,000/- is imposed on the defendants for abusing and misuse the process of law and seeking deferment of the proceedings on frivolous grounds and violating the undertaking given by them to this Court. The cost be paid by the Plaintiff to the defendants within four weeks.

17. Pending application is disposed of.

18. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

भारतमेव जयते

J.R. MIDHA, J.

DECEMBER 21, 2018

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