

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

+ **RFA No. 335/2018**

% **23<sup>rd</sup> April, 2018**

M/S O-ZONE NETWORKS PRIVATE LIMITED & ANR.

..... Appellants

Through: Mr. Piyush Sharma, Advocate.

versus

LT. COL. PAWAN S. YADAV (RETIRED) ..... Respondent

Through: Mr. P. Bashista and Mr.  
Mukesh Kumar, Advocates.

**CORAM:**

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

To be referred to the Reporter or not?

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

**Caveat No. 345/2018**

Counsel appears for the caveator. Caveat accordingly stands  
discharged.

**RFA No. 335/2018 & CM Nos. 15673/2018 (stay) & 15674-77/2018  
(Exemption)**

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant nos. 1 and 2 against the impugned order of the trial court dated 15.2.2018 by which the trial court has decreed the suit filed by the respondent/plaintiff

under Order XXXVII CPC on account of non-compliance by the appellants/defendants of a conditional order of grant of leave to defend which was passed on 15.11.2016. By the conditional order granting leave to defend the appellants/defendants were directed to deposit in Court a sum of Rs.35,71,854/- within three weeks and since this condition was not complied with, the impugned order has been passed decreeing the suit under Order XXXVII Rule 3 Sub-Rule 6 CPC.

2. It is not disputed by the appellants/defendants before this Court that the appellants/defendants not only have not complied with the order dated 15.11.2016 granting conditional leave to defend, but that even a review application filed by the appellants/defendants for reviewing of the order dated 15.11.2016 has been dismissed. A challenge laid by CM(M) petition under Article 227 of the Constitution of India was filed by the appellants/defendants to this Court against the order dated 4.12.2017 dismissing the review petition, and this petition, counsel for the appellants/defendants states, stands disposed of as not pressed.

3. I may note that there is an additional issue of the appellants/defendants filing an application under Section 8 of the

Arbitration and Conciliation Act, 1996 however, that was also the subject matter of the order dated 15.11.2016, and a challenge to which filed by the CM (Main) petition also stands withdrawn.

4. In view of the aforesaid discussion, ordinarily there was no reason why the impugned order should be set aside, however there is one issue which arises is that liability towards an employee can only be of the employer only and not of any CEO of the company viz the appellant no.1/defendant no.1 would only be liable and the CEO of appellant no.1/defendant no.1/company being the appellant no.2/defendant no.2, can only be liable in case he stands as a personal guarantor. In this regard, appellant no.2/defendant no.2 stood as a personal guarantor in terms of a letter dated 4.9.2013 issued in favour of the respondent/plaintiff and this letter reads as under:-

“Pawan S. Yadav  
Chief Operating officer  
House number 914, Sector-4, Urban Estate  
Gurgaon-122001  
4<sup>th</sup> September 2013

Dear Pawan,

Salary Payment Due From March 2013-Personal Commitment.

As you and I have discussed, I recognize the significant effort and loyalty you have shown to O-Zone during the last 9 months. You have voluntarily forgone salary from 1<sup>st</sup> March 2013, and continued to strive to grow the company. I would like to ensure I recognize the faith you have shown to O-zone and compensate accordingly.

As discussed the company can only pay you back dated salary due at the pay scale when you stopped drawing a salary. Therefore, I will personally

make voluntary one-time payment to you to compensate you for these months of forgone salary (up to the point where we receive new funding). The payment will be based on half of the rate of your original monthly salary when you joined O-zone. This will be subject to receiving second round of funding from investors, and I will make the staged payments from my salary to you. There will be a payment schedule made from a date I mutually agree with you after funding closes.

Personally, once again thanks for your efforts, faith and loyalty to O-zone. I hope this personal commitment, which I am only making to you is sign of good faith in you and your long term future in O-zone.

Yours Sincerely

sd/-

Bobby Sarin.”

5. It is clear from the aforesaid letter dated 4.9.2013 that appellant no.2/defendant no.2 is only liable for 50% of the salary dues and liability of the appellants/defendants will arise only when the funding is received by the appellant no.1/defendant no.1/company from the proposed investors.

6. Learned counsel for the respondent/plaintiff does not dispute the contents of the aforesaid letter dated 4.9.2013 and agrees that the decree against the appellant no.2/defendant no.2 as passed by the impugned order can be modified as per the contents of this letter dated 4.9.2013.

7. In view of the aforesaid discussion, while the impugned order dated 15.2.2018 is sustained and a money decree will stand

passed against the appellants/defendants, however the money decree against the appellant no.2/defendant no.2 will not be for the entire suit amount but will be only for 50% of the total salary dues which total are an amount of Rs.35,71,854/-, of course with further interest as stated in the impugned order.

8. The appeal is accordingly dismissed so far as appellant no.1/defendant no.1 is concerned, but so far as appellant no.2/defendant no.2 is concerned, the same is modified for the liability of the appellant no.2/defendant no.2 to be for the principal amount being 50% of Rs.35,71,854/-, with the further interest thereon in terms of the impugned order.

9. The appeal is disposed of in accordance with law, leaving the parties to bear their own costs.

**APRIL 23, 2018/ib**

**VALMIKI J. MEHTA, J**