*   IN THE HIGH COURT OF DELHI AT NEW DELHI

\+   CS(COMM) No. 402/2016

%   31st January, 2018

INDIAN AIRLINES LIMITED ..... Plaintiff
Through: Ms. Suruchi Suri, Advocate.

versus

SKYLINE NEPC LIMITED & ANR. ..... Defendants
Through: Mr. Danish Aftab Chowdhury and Mr. Suvir Sharma, Advocates for D-2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Plaintiff/Indian Airlines Ltd. has filed the present suit for recovery of Rs.1,24,51,412.50 against two defendants. The first defendant is Skyline NEPC Ltd. and the second defendant is NEPC India Ltd. Plaint is a joinder of two causes of action with one cause of action against the defendant no.1 towards charges claimed by the plaintiff for providing to the defendant no.1 maintenance, repairs etc with respect to aircrafts of the defendant no.1. The second cause of action against the defendant no.2 is on account of plaintiff providing

ground handling services to the aircrafts of the defendant no.2 in the North Eastern Region. At this stage itself it may be noted that defendant no.1 company has been admittedly wound up and in fact even during the pendency of the winding up proceedings no application was filed for seeking permission of the company court at Mumbai to sue the defendant no.1. Therefore, since defendant no.1 no longer exists, no decree can hence be passed against defendant no.1 and in favour of the plaintiff with respect to the dues claimed by the plaintiff from the defendant no.1 for providing services by the plaintiff to defendant no.1 of maintenance, repair of aircrafts etc. That leaves us only with the cause of action in the suit plaint of the claim against the defendant no.2 for the ground handling services provided by the plaintiff to defendant no.2 for the period from 1.8.1995 to 31.12.1995.

2. Defendant no.2 has filed its written statement and it does not dispute that ground handling services were provided. The defendant no.2 however claims an adjustment of its dues against the plaintiff and which dues are on account of plaintiff being liable to pay the defendant no.2 various charges under the heads of providing airline tickets, baggages etc under the Interline Agreement dated

13.5.1995 entered into by the plaintiff with the defendant no.2. As per the written statement defendant no.2 pleads entitlement to an amount of Rs.54,24,625.96/- as principal and to which after adding of interest defendant no.2 claims an amount of Rs.69,24,625.96/- against the plaintiff.

3. After pleadings were complete the following issues were framed:-

(i) Whether the suit is barred by limitation? OPD
(ii) Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
(iii) Whether this Court has jurisdiction to try and entertain the present suit? OPD
(iv) Whether the plaintiff is guilty of suppression of material facts as set out in Co. P. No. 195/2003 and if so, to what effect? OPD
(v) Whether the plaintiff is entitled to the relief claimed in the suit? OPP
(vi) Relief."

4. Counsels for the parties agree that this Court need not decide issue nos. 1 to 4 and which issues no. 1 to 4 are not pressed by the parties. That only leaves us with issue no.5 as to whether plaintiff is entitled to the suit amount against the defendant no.2 with respect to ground handling services provided by the plaintiff to the defendant no.2.

5. As already stated above, it is not disputed that plaintiff did provide ground handling services to the defendant no.2 with respect to aircrafts of the defendant no.2 in the North Eastern Region, however, the issue which will arise is as to what is the rate and the total amount which the plaintiff will be entitled to from the defendant no.2 on account of providing of the ground handling services by the plaintiff to the defendant no.2.

6. On the aspect of amount of ground handling charges which the plaintiff has claimed as its entitlement, it is seen that admittedly parties never entered into an agreement as to what will be the agreed rate of ground handling charges. What are the ground handling charges has however been admitted by the defendant no.2 in terms of its letter dated 12.5.1997. This document is marked as PW2/12, but in any case none of the counsels before me dispute that this was a letter which was sent by the defendant no.2 to the plaintiff and was received by the plaintiff. This letter dated 12.5.1997 reads as under:-

> "No.Sales/NE Sec/1153. 12th May, 1997
> Mr. P.J.Crasta,
> Dy. Managing Director,
> Indian Airlines Ltd.

Airlines House,
Parliament Street,
New Delhi-110001. FAX: 3719484
Sub: Handling of Flight in North Region.
Dear Sir,
We acknowledge 'receipt' of your letter No.HFD-8/NEPC/1600 dated 1st May, 1997 on the above subject requesting us to make payment of Rs.55 lakhs towards handling charges.
You have stated that the average handling charges per flight works out to Rs.9565/- which are acceptable to us as in the Invoice of Rs.77,64,720/-, Finance has charged @ Rs.36320/- for a transit flight and 30% extra is charged on a transit turn-round flight.
We accept your handling charge of Rs.9565/- per flight and request for a meeting with the concerned official to rework out the amount payable by us on the basis of Rs.9565/- per flight handling to enable us to come to a final amount payable by us with further discount of 20% on the total bill.
We are grateful to you for resolving the issue to our satisfaction and we assure you once this amount is reworked as stated by you we will settle the invoice without any further delay.
Thanking you,
Yours faithfully,
For NEPC Airlines,
sd/-
V. JAYANARAYANAN
President."

7. A reading of the aforesaid letter shows that defendant no.2 accepted the ground handling charges at Rs.9565/- per flight. Learned counsel for the plaintiff could not point out to me any other letter issued by the plaintiff to the defendant no.2 which was agreed to by the defendant no. 2 showing any agreement with respect to ground handling charges. I, therefore hold that the rate of ground handling charges between the parties has to be taken as Rs.9565/- in terms of the letter dated 12.5.1997 issued by the defendant no. 2 to the plaintiff

and which letter was in fact in response to the letter dated 1.5.1997 issued by the plaintiff to the defendant no.2.

8. Admittedly, the total number of flights with respect to which ground handling charges are claimed by the plaintiff from the defendant no. 2 are 577 in number and this is an admitted position arising out of the letter dated 17.7.1997 written by the plaintiff to the Under-Secretary to the Ministry of Civil Aviation. This letter dated 17.7.1997 is filed by the plaintiff itself and therefore can be used against the plaintiff. Counsel for the defendant no.2 admits that defendant no.2 is liable only with respect to 577 flights with respect to which ground handling services were provided by plaintiff to defendant no.2. When the figure of 577 is multiplied by Rs.9565/- this amount comes to Rs.55,19,005/- and therefore the same is rounded to Rs.55,00,000/-. I may note that even as per the suit the plaintiff admits that plaintiff had asked from the defendant no.2 a total amount of Rs.55,00,000/- after giving discount to the defendant no.2. The case of the plaintiff of giving discount from a rate higher than Rs.9565/- cannot be accepted by this Court for giving a rate higher than Rs. 9565/- because in the first place there is no agreement for any

rate of ground handling charges and therefore the rate of ground handling charges has to be taken at Rs.9565/- per flight as stated vide letter of the plaintiff dated 1.5.1997 and accepted by defendant no.2 by its letter dated 12.5.1997 to the plaintiff and which has been reproduced above.

9. I, therefore, hold that the rate of ground handling charges between the parties is to be taken as Rs.9565/- in terms of the letter dated 12.5.1997 issued by the defendant no.2 to the plaintiff and which letter was in fact in response to the letter dated 1.5.1997 issued by the plaintiff to the defendant no.2.

10. Accordingly, I hold that the plaintiff is entitled to a sum of Rs.55,00,000/- from the defendant no.2. I may note that no pre-suit interest can be granted because there is no agreement between the parties for claiming of interest and plaintiff has not proved any legal notice being served upon defendant no. 2 claiming interest.

11. That takes us to what would be the amount that the defendant no.2 will be entitled to adjust from the claim of the plaintiff for a sum of Rs.55,00,000/-. In this regard the admission of the plaintiff is seen from the plaintiff's letter dated 15.4.1998 filed by the

plaintiff itself and this letter admits the liability of the plaintiff towards the defendant no.2 for a sum of Rs.49,35,000/-. This letter dated 15.4.1998 reads as under:-

> "The Director
> M/s. NEPC Airlines,
> G.R. Complex,
> 407 & 408, Anna Salai,
> Nandanam,
> <u>MADRAS-600 035</u>
> Dear Sir,
> Reference HFD-8/NEPC/834 Date 15.04.1998
> Sub: Settlement of Mutual Dues between IAL and NEPC
> Please refer to your letter No. NEPCAL/98 dated 1st April, 1998 on the subject.
> At the outset, we may clarify that the amount payable towards Interline dues is Rs.49.35 lakhs, not Rs. 75 lakhs as mentioned in your above letter. It was never intended to provide Handling services on complementary basis.
> You are kindly aware that an amount of Rs.77.76 lakhs is payable by you towards Ground Handling of your flights. This amount has now been outstanding for a long time. Several letters have been exchanged and a number of meetings have taken place between the two airlines to explain the basis of billing and clarify various other points raised by you. Our efforts to reach to a mutual understanding have proved infructous. In the circumstances, you would appreciate, we are left with no choice but to withhold the interline/payment.
> It will be observed that there still remains a balance of Rs.28.41 lakhs even if we adjust your interline dues of Rs. 49.35 lakhs. We, therefore, seek your cooperation in early settlement of our dues.
> Thanking you,
>
> Yours faithfully,
> for Indian Airlines Ltd.
> sd/-
> (A.K. Saxena)
> General Manager(Finance)
>
> To:Shri R.S. Meena, under Secretary, Min. of Civil Aviation, N. Delhi."

12. In law, the defendant no. 2 is always entitled to adjust amount lying with it of the plaintiff inasmuch as once plaintiff has a claim against the defendant no. 2, and defendant no. 2 has in its pocket moneys of the plaintiff, then the defendant no. 2 can surely adjust the claim of the plaintiff against the amount due to the defendant no.2 from the plaintiff because of the defendant no. 2 already having with it moneys of the plaintiff. This is the law in view of the judgment of the Division Bench of this Court in the case of ***Walchandnagar Industries Ltd. vs. Cement Corporation of India (2012) 2 ArbLR 219 (DB).*** Adjusting by a person moneys due to another person from the amounts of another person lying with the first person in law is an adjustment because a person takes out money from his one pocket and puts it in another pocket wherein the claim of the other person's amount is.

13. Accordingly, I hold that defendant no. 2 is entitled to adjust a sum of Rs.49,35,000/- from the suit amount to be decreed of Rs.55,00,000/-.

14. The net effect of the aforesaid discussion is that the suit of the plaintiff will stand decreed for the difference of Rs.55,00,000/-

minus Rs.49,35,000/- i.e Rs.5,65,000/-. Plaintiff is also held entitled to *pendente lite* and future interest at 9% per annum simple till the date of payment. Parties are left to bear their own costs. Decree sheet be prepared accordingly.

JANUARY 31, 2018 **VALMIKI J. MEHTA, J**