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

\+ **CO.APP. 21/2018, C.M. No. 42294/2018 & C.M. No. 45165/2018**

MAKE INDIA SMART PVT LTD. ..... Appellant

Through: Ms. Anita Sahani, Advocate with Sh. Shivom Garg, Advocate.

versus

M/S RST SEMI CONDUCTORS PVT.LTD ..... Respondent

Through: Mr. Pranaynath Jha, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

O R D E R

% 29.10.2018

1. This is an appeal directed against an order dated 5th September 2018 passed by the learned Single Judge in Company Petition No.770/2015 wherein *inter alia* it has been directed that:

(i) subject to the Appellant herein depositing Rs.21,79,997/- within four weeks, the Respondent (which is the petitioner before the Company Court) could be free to commence appropriate civil proceedings before a Civil Court;

(ii) in case such proceedings are commenced within six weeks of deposit of the amount by the Appellant herein, the deposit would be subject to the outcome of the civil proceedings;

(iii) in the said civil proceedings, the Respondent herein would be free to make an application under Section 14 of the Limitation Act "which will not be opposed" by the Appellant herein;

(iv) in case the Appellant herein fails to deposit the amount as directed within four weeks, this Court would proceed to appoint Official Liquidator ('OL') as the liquidator of the Appellant herein.

2. When this appeal was first heard on 10th October 2018, the following order was passed:

> "1. After addressing arguments on admission for some time, Ms. Sahani, learned counsel for the appellant states that she may be permitted to obtain instructions from her client.
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> 2. Before the next date of hearing, learned counsel for the appellant shall give a written intimation of the pendency of the present appeal to the counsel appearing for the respondent before the learned Company Court, along with a complete set of the paper book.
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> 3. List on 29.10.2018."

3. The question that the learned Single Judge was asked to address, as framed by the Respondent, was whether the present Appellant owed the Respondent Rs.21,79,997/- being the unpaid sum for the electronic chips that were to be supplied by the Respondent to the Appellant.

4. The Respondent relied heavily on a signature with stamp affixed on its ledger account on 3rd March 2014 by the Appellant which, according to the Respondent, acknowledged a liability of Rs.58,79,997.62/- as of that date, i.e. 3rd March 2014.

5. In the para wise reply to the petition before the learned Company Court, it

was *inter alia* stated by the Appellant that as per the agreement between the parties, for the Rashtriya Swastha Beema Yojna ('RSBY cards'), the Respondent would supply the Appellant with chips of Samsung/Infineon/NXP (from Philips) make. The case of the Appellant is that the Respondent failed to do so and accordingly the Appellant raised a debit note on 31st March 2014.

6. As regards the ledger account of the Respondent showing the balance of Rs. 58,79,997.62/-, the Appellant *inter alia* stated in its reply as under:

> "It is stated that the respondent made total payment of a sum of Rs. 5,00,000/- on 15.3.2014, Rs. 5 lakh from the respondent company on 08.05.2014, Rs. 10 Lakh on 21.05.2014, Rs. 2 Lakh on 16.07.2014 and a sum of Rs. 5 lakh on 12.08.2014 and Rs. 10 Lakh on 14.08.2014. Total sum of Rs. 37,00,000/-. The petitioner has filed statement of account upto 24th February 2014 and as per the said statement of account the balance has been shown to Rs. 58,79,997.62. The petitioner has not shown the payments made thereafter. The petitioner made the payment of Rs. 37 lakhs as detailed herein above. After the said payment the remaining amount was Rs. 21,79,997/- and the respondent had issued debit note of Rs. 5,37,004,07/- dated 31.03.2014 and debit note of Rs. 18,93,453/- dated 31.03.2014 and after the adjustment of Rs. 24,30,957/- towards debit notes the respondent is entitled to get a sum of Rs. 2,50,460/- from the petitioner."

7. The learned Single Judge however, considered the raising of the debit note by the present Appellant on 31st March 2014 to be an afterthought. According to the learned Single Judge, nothing had been placed on record by the Appellant "that these chips and cards were returned as have been claimed in the debit notes".

8. In the present appeal, additional documents have been sought to be placed on record by the Appellant to show that 66,500 cards were in fact returned. In support of this plea, reliance is placed by Ms. Sahani, learned counsel for the Appellant, on an email dated 16th December 2013 written by the Appellant to the Respondent asking them to collect "66,500 no's MF & without chip serial number cards from our Delhi office". She also relies on the copy of a receipt dated 23rd December 2013 whereby the aforementioned 66,500 cards were purportedly returned. There is an endorsement by hand on the said document on the right hand side which reads 'Received' alongside someone's initials. While according to the Appellant those initials are that of an employee of the Respondent, there is a complete denial on instructions by the learned counsel for the Respondent of any such document having been signed by any of its employees. In other words, the Respondent is point-blank denying that 66,500 chips were in fact returned by the Appellant for not meeting the requisite specification.

9. Having heard the learned counsel for the parities, the Court finds that the aforementioned receipt dated 23rd December 2013 has not been spoken of by the Appellant at any stage before the learned Single Judge or even in its entire reply. In fact, in the crucial part of the reply filed by the Appellant before the learned Single Judge, part of which has been extracted hereinbefore, there is no categorical averment that 66,500 chips were in fact returned on any particular date by the Appellant to the Respondent. If in fact there was this document dated 23rd December 2013 in existence, it is unusual for the Appellant not to have made a reference to it in the

aforementioned reply.

10. Consequently, the Court is unable to be persuaded that the learned Single Judge committed any error in construing the debit note raised by the appellant on 31st March 2014 regarding the aforesaid 66,500 chips to be an afterthought.

11. Ms. Sahani then drew the Court's attention to the Appellant's books of accounts and a particular page therein pertaining to the outstanding amounts *qua* the supplies made by the Respondent.

12. The Court finds that this ledger account maintained by the Appellant is for the period 1st April 2013 to 10th October 2014. Clearly, this is a document prepared after 10th October 2014 by which time the dispute between the parties had already arisen. The Court cannot construe this to be a contemporaneous document which reflects the correct position as on the date of the signing on the ledger account maintained by the Respondent, i.e. on 3rd March 2014.

13. Ms. Sahani then submitted that the Appellant disputes having signed such ledger account maintained by the Respondent and that it, in any event, shows entries only up to 22nd February 2014. As far as this submission is concerned, the Court finds that even in its reply filed before the learned Single Judge, the Appellant proceeded on the basis that the outstanding as of 3rd March 2014 as reflected in the ledger account maintained by the Respondent was indeed Rs.58,79,997.62/-. The Appellant was in fact offering an explanation as to why the remaining Rs.21,79,997/-, after

accounting the payment of Rs.37 lakhs, was not due to the Respondent.

14. Consequently, the Court is not inclined to interfere with the direction issued by the learned Single Judge in so far as it required the Appellant to deposit Rs.21,79,997/- and subject to such deposit, permitted the Respondent to initiate civil proceedings.

15. However, the Court finds that there was no warrant in law for the learned Single Judge to have further ordered that in such civil proceedings, the Appellant would be precluded from opposing the invocation by the Respondent of Section 14 of the Limitation Act. The Bombay High Court in ***Rajan Products v. Jayant Vegoiles and Chemicals (1991) 72 Company Cases 181***, held that Section 14 of the Limitation Act cannot be invoked to avoid limitation where the party was pursuing a remedy before the Company Court.

16. Be that as it may, the Court is of the view that no party can be deprived of a legal defence which it might otherwise have and it is for the Court concerned to deal with such defence in accordance with law.

17. Consequently, the Court hereby sets aside only that direction of the learned Single Judge in the impugned order which precludes the Appellant from opposing the invocation of Section 14 of the Limitations Act by the Respondent in the civil proceedings.

18. The time for the Appellant to comply with the remaining part of the learned Single Judge's impugned order, upheld by this Court in the manner

indicated hereinbefore, is extended to 22nd December 2018.

19. Nothing stated merits in the present order should be construed to be an expression of an opinion on the merits of the case of either party and will not influence the decision in the civil proceedings in accordance with law.

20. The appeal is accordingly allowed in part with the above directions but with no order as to costs. The applications are disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

OCTOBER 29, 2018
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