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

Date of decision: 23rd July, 2018

+ **CS(COMM) 599/2017**

RAMA KRISHNA ELECTRO COMPONENTS PVT

LTD

..... Plaintiff

Through: Mr. A.K. Gupta, Advocate (M-9811105872).

versus

M/S HIGH GROUND ENTERPRISES LTD

..... Defendant

Through: Mr. Ravi Gupta, Senior Advocate with Mr. Anil Kaushik & Mr. Abhishek Mishra (M-9582788520).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CS(COMM) 599/2017 and I.A. 21483/2014

1. This is an application under Order XXXVII CPC seeking unconditional leave to defend.

2. The Plaintiff has filed the present suit on the basis of MoU/term sheet dated 27th April, 2011. As per the said MoU, the Plaintiff invested a sum of Rs.2 crores in the Defendant's project for their forthcoming film '*Bhindi Baazaar Inc.*'. There is no dispute that the sum of Rs.2 crores was paid to the Defendants. It is the submission of the Plaintiff that after the MoU dated 27th April, 2011 was executed, further amounts of Rs.25 lakhs each were also paid by cheques dated 13th June, 2011 and 15th June, 2011. Thus the

total payment made was a sum of Rs. 2.5 crores. The Defendant did not repay the amounts despite repeated requests, as per the Plaintiff, leading to the filing of the present suit for recovery under Order XXXVII.

3. Upon the Plaintiff moving summons for judgment, the Defendant filed a Leave to Defendant application and claimed that it had repaid a sum of Rs.1.5 crores. This fact was suppressed by the Plaintiff. It was further submitted that the additional sum of Rs.50 lakhs being outside the scope of the MoU which mentioned only a sum of Rs. 2 crores, the Order XXXVII suit cannot be extended to the said sum of Rs.50 lakhs.

4. On 9th March, 2018, the Plaintiff agreed to restrict the suit for a sum of Rs.1.74 crores as recorded in the order therein.

5. The counsel for the Plaintiff relies on the clauses of the agreement to argue that the Plaintiff is entitled to the minimum guaranteed sum as stated in clause 5. Since he has already agreed to restrict the claim in the present suit, a decree deserves to be passed.

6. On the other hand, Mr. Ravi Gupta, Senior Counsel for the Defendant submits that the fact that Plaintiff now agrees to restrict the amount, itself shows that a triable issue has been raised. It is further submitted that since facts relating to the various payments made have been suppressed, the suit is not maintainable. He has pointed out the various e-mails exchanged between the parties filed along with the leave to defend application, to submit that unconditional leave deserves to be granted.

7. The law in respect of Order XXXVII suits is well settled. In ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd., (2017) 1 SCC 568***, the Supreme Court held as under:

“17. Accordingly, the principles stated in para 8

of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36] , as follows:

17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to

defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”

8. This court has perused the MoU and the various e-mails. A reading of the e-mails makes it clear that there is no serious dispute between the parties in respect of the transaction itself. The e-mails exchanged between the parties repeatedly show demands having been made for the outstanding amounts and part payments being made by the Defendant. Therefore, neither party can dispute the factum of the loan having been given and the part payments having been made. As per the e-mails and also as admitted by the Plaintiff, a total sum of Rs.1.5 crores has been repaid by the Defendant on the following dates:

- i. 12th August, 2011 – Rs.50 lakhs;
- ii. 24th October, 2011 – Rs.50 lakhs;
- iii. 10th November, 2011 – Rs. 25 lakhs;
- iv. 16th January, 2012 – Rs.25 lakhs.

9. In fact, in the e-mail dated 10th November, 2011, the outstanding balance is also mentioned as Rs.1.25 crores. Further, three cheques dated 31st December 2011, 15th January 2012 and 1st February 2012, have also been issued by the Defendant to the Plaintiff for a sum of Rs.1.25 crores. This shows that out of the total payment of Rs.2.5 crores, the Defendant admits to Rs.1.25 crores being due which is also in line with the averments made above. However, since a sum of Rs. 25 lakhs has been paid

subsequently, i.e., on 16th January 2012, Defendant is entitled to credit of the same. Thus the outstanding is Rs. 1 crore.

10. The Defendant having repaid a sum of Rs.1.5 crores and the same being admitted now, the claim relating to Rs.1.5 crores and for proportionate interest is not maintainable. Insofar as the outstanding sum of Rs.1 crore is concerned, the cheques issued by the Defendant make it abundantly clear that as of 1st February 2012, Rs. 1 crore is due from the Defendant to the Plaintiff. No triable issues thus arise in this case in respect of the outstanding sum of Rs. 1 crore. However, since the Plaintiff had not candidly disclosed to the court in its plaint that it had received part payments, no interest is liable to be granted to the Plaintiff. A decree for a sum of Rs.1 crore is passed in favour of the Plaintiff against the Defendant. The same shall be paid within 8 weeks, failing which, interest @ 12% would be liable to be paid by the Defendant to the Plaintiff on the decretal amount.

11. The suit is decreed in the above terms with no orders as to costs. Suit is disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

JULY 23, 2018

Rahul