IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 12.09.2019

CP No.24 of 2014 (O&M)

M/s Govind Rubber Ltd. ...Petitioner

Vs.

M/s Safari Bikes Ltd. ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Nitin Thatai, Advocate, for the petitioner.

Mr. Vishal Gupta, Advocate, for the respondent.

RAJIV NARAIN RAINA, J. (ORAL)

1. The three important milestones in this case necessary for adjudication of the dispute are found in the correspondence exchanged between the parties to which reference will be made in the course of the order. Shorn off all previous facts and the history of the case which may not be necessary the dispute between the parties is resolved as under.

2. The first letter is dated 07.05.2013 sent by registered post by the respondent to the petitioner-company, where they raised issues regarding sub-standard quality of goods supplied, but the respondent agreed to send a draft of Rs.17,03,579/- in lieu of the bank cheques earlier handed over. They made it clear in this writing that it was agreed between the petitioner-company and the respondent-company that they are liable to pay the aforesaid amount only towards full and final settlement of all the claims/dues.

3. At this stage, petitioner-company points out to a previous letter from the respondent-company dated 24.04.2013 acknowledging receipt of

petitioner's letter dated 19.04.2013 by which the petitioner had asked for clearance of dues. The respondent stated that in this regard the petitioner-company would please note that they had already informed the representative of the company not to present these cheques, as they were not regularly maintaining this bank account. The respondent-company asked for a representative from the petitioner-company to collect the fresh cheques in lieu of the old ones from their Accounts Department. From this, the petitioner infers that the debt is admitted. Let us see, whether it is?

4. To answer the question, we need to go back to the first letter i.e. 07.05.2013 (Annex P-9) already adverted to above. The petitioner therein is at pains to deny that this letter was not replied to by the petitioner-company. Therefore, the admitted position is that this letter from the respondent company was not rebutted in writing by the petitioner-company, when it issued the second important milestone i.e. statutory notice under Section 434 of the Companies Act, 1956 dated 28.05.2013 to pay an admitted debt.

5. The third important milestone is the reply to the notice, which is letter dated 20.06.2013 from counsel to counsel in which the averments contained in the letter dated 07.05.2013 have been emphatically reiterated claiming that full amount had been paid and that the notice was on false pleas. It was denied that on 23.03.2012, an amount of Rs.36,36,181.95 was due against the respondent-company or that after adjustment Rs.15,61,408.43 were found to be payable by respondent-company as on 08.05.2003 as alleged. The letter also proceeds to state further as follows:

> "It may be pointed out that after settlement of all claims regarding quality, quantity, rates and discounts the amount that was arrived at my clients gave cheques for full and final settlement as stated above. Thus, nothing was left to

> be paid as the amount of cheque was towards full and final settlement of all claims. Thus, no amount was due against my clients.
>
> Your clients are aware that there are no debts due against my clients. My client's company is a vibrant company. They are one of the leading manufacturers of cycles & cycle parts in the country.
>
> Your clients under the garb of this false notice are trying to bully by clients and want to wriggle out of the settlement that had been arrived at and implemented.
>
> Please advise your client to withdraw this notice and treat as cancelled and should desist from taking any unfounded act. In case your clients take any unfounded act, it will be resisted at the risk and cost of your clients. In that case your clients shall be liable for all consequences and my clients would also be at liberty to take an appropriate action against your clients."

6. There is no rebuttal at this crucial stage of admission and denial of debt to the statements made by the respondent-company in this letter. At both stages, the petitioner-company remained silent and this conduct leads to an irresistible inference that the dispute raised by the petitioner had no firm legs to stand on. Any ordinary prudent businessman would have rebutted both these letters immediately to set the record straight and to claim its dues, but the petitioner-company failed to do so.

7. Learned counsel for the respondent-company relies on a judgment of the Supreme Court in Bhagwati Prasad Pawan Kumar Vs. Union of India, (2006) 5 SCC 311 pointing out to paras 18 & 19 of the judgment, which read as follows:

> "18. Section 8 of the Contract Act provides for acceptance by performing conditions of a proposal. In the instant case, the Railways made an offer to the appellant laying down the condition that if the offer was not acceptable the cheque should be returned forthwith, failing which it would be

deemed that the appellant accepted the offer in full and final satisfaction of its claim. This was further clarified by providing that the retention of the cheque and/ or encashment thereof will automatically amount to satisfaction in full and final settlement of the claim. Thus, if the appellant accepted the cheques and encashed them without anything more, it would amount to an acceptance of the offer made in the letters of the Railways dated April 7,. 1993. The offer prescribed the mode of acceptance, and by conduct the appellant must be held to have accepted the offer and therefore, could not make a claim later. However, if the appellant had not encashed the cheques and protested to the Railways calling upon them to pay the balance amount, and expressed its inability to accept the cheques remitted to it, the controversy would have acquired a different complexion. In that event, in view of the express non acceptance of the offer, the appellant could not be presumed to have accepted the offer. What, however, is significant is that the protest and non acceptance must be conveyed before the cheques are encashed. If the cheques are encashed without protest, then it must be held that the offer stood unequivocally accepted. An 'offeree' cannot be permitted to change his mind after the unequivocal acceptance of the offer.

19. It is well settled that an offer may be accepted by conduct. But conduct would only amount to acceptance if it is clear that the offeree did the act with the intention (actual or apparent) of accepting the offer. The decisions which we have noticed above also proceed on this principle. Each case must rest on its own facts. The courts must examine the evidence to find out whether in the facts and circumstances of the case the conduct of the "offeree" was such as amounted to an unequivocal acceptance of the offer made. If the facts of the case disclose that there was no reservation in signifying acceptance by conduct, it must follow that the offer has been accepted by conduct. On the other hand if the evidence disclose that the "offeree" had reservation in accepting the

> offer, his conduct may not amount to acceptance of the offer in terms of Section 8 of the Contract Act."

8. The judgment eminently applies to the facts of this case. The petitioner-company accepted the draft of Rs.17,03,579/- without prejudice to its rights against the respondent-company and by this conduct it be deemed to have accepted liability to that extent which stood discharged.

9. On the other hand, judgments relied upon by Mr. Thatai in Mosenthals Wool and Mohair S.A.Pvt. Ltd. Vs. C.L.Jain Woolens Mills Pvt. Ltd., 2013 (179) Company Cases 174 and Nirmala Devi Saraf Vs. Maheshwary Ispat Ltd., 2015 (189) Company Cases 501, have no application to the facts of this case and are distinguishable on facts and circumstances as unfolded in the correspondence.

10. In view of this discussion, it is not necessary to go into the antecedent question of dispute raised by the respondent-company as to quality of material supplied by the petitioner-company with the acceptance and encashment of cheque/s into its accounts without protest or demur and without prejudice to its rights. Prima facie, this is not a case of admitted liability on which the petition deserves to be admitted and the respondent company ordered to be wound up as there are serious disputes involved which may require a trial on evidence for which the company court is not the appropriate remedy.

11. I would, therefore, find no merit in this petition and would dismiss it.

12.09.2019 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes/No*