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

% *Date of Judgment: 24th April, 2019*

+ **FAO(OS) (COMM) 75/2019 & CM.APPL 15888/2019**

M/S ARIHANT ENGINEERING INDUSTRIES & ORS.

..... Appellants

Through **Mr. K.G. Sharma, Advocate**

versus

M/S LEO ISPAT LTD. & ANR.

..... Respondents

Through **Mr. Shakeel Sarwar Wani, Advocate**
for respondent no.1.

+ **FAO(OS) (COMM) 76/2019 & CM.APPL 15909/2019**

M/S ARIHANT ENGINEERING INDUSTRIES & ORSAppellant

Through **Mr. K.G. Sharma, Advocate**

versus

M/S LEO INFRACAPITAL LTD. & ANR.

..... Respondents

Through **Mr. Shakeel Sarwar Wani, Advocate**
for respondent no.1.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. Challenge in these appeals is to the order dated 30.01.2019 by which two separate applications filed in two separate suits seeking leave to defend have been allowed in part. The respondents/plaintiffs had instituted two suits for recovery. The learned Single Judge has

granted conditional leave to defend subject to deposit of a sum of Rs.1,16,98,138/- with interest @ 10% per annum from 30.04.2013 till the date of deposit within eight weeks from the date of the order. The reasons for grant of leave to defend find mentioned in paras 5 to 9 of the order 30.01.2019 passed in CS(OS).650/2016, which read as under:

“5. The counsel for the defendants has argued that the entire transaction took place at Faridabad, Haryana and this Court does not have territorial jurisdiction to entertain the suit. Attention in this regard is drawn to page 37 of Part-III file of CS(COMM) No.650/2016 being the purchase order dated 27th August, 2011 placed by the defendant No.1 on the plaintiff. Therefrom, it is shown that the address of the defendant No.1 as well as the plaintiff is of Faridabad and the purchase order on behalf of the defendant No.1 was issued by Ajay Nahata who was then an employee of the defendant No.1 and who is now no longer any employee of the defendant No.1. It is argued that the said purchase order and other purchase order for recovery of amounts with respect where to this suit is filed, were never issued.

6. I have already in the order dated 28th January, 2019 observed that the admitted factum of the defendants, in spite of pendency of complaint of offence under Section 138 of the Negotiable Instruments Act, 1881 issuing cheques in the total sum of Rs.1,16,98,138/-, at least at this stage shows that the said cheques were given for consideration. The version set up by the defendants, of the said cheques having been given as security for fresh supplies to be made by the plaintiff, does not inspire confidence. When the disputes have already arisen between parties and cases are pending, it is unbelievable that cheques by way of security for payment of price of goods to

be supplied in future, would be given, that too without any writing.

7. As far as the challenge to the territorial jurisdiction of this Court is concerned, admittedly the registered office of the plaintiff at all times has been at Delhi, within the territorial jurisdiction of this Court. The invoices raised by the plaintiff on the defendant No.1 also contain a clause “subject to New Delhi jurisdiction”. It is not as if, in spite of the plaintiff having registered office at Delhi, no part of the cause of action would accrue within the territory of Delhi. The Courts at Delhi would have territorial jurisdiction, also on the principle of „debtor must seek the creditor“. Moreover the territorial jurisdiction clause on the invoices under which the goods are claimed to be supplied would be determinative. Reference in this regard may be made to *Shradha Wassan Vs. Anil Goel* 2009 SCC OnLine Del 1285 and *IUP Jindal Metals & Alloys Ltd. Vs. Conee Chains Private Ltd.* 2013 SCC OnLine Del 1454.

8. However, as far as the claim of the plaintiff for balance principal amount, on account of interest @ 4% per mensem is concerned, at least at this stage such claim appears to be unconscionable and neither can be decreed nor security can be directed to be furnished therefor.

9. Accordingly, leave to defend is granted to the defendants No.1, 3 & 4, subject to the defendants No.1, 3 & 4 depositing in this Court a sum of Rs.1,16,98,138/- together with interest therein @ 10% per annum from 30th April, 2013 till the date of deposit, within eight weeks of today, as sought.”

2. The learned Single Judge further observed that the reasons which prevailed in the order on leave to defend in CS(COMM).650/2016 would apply to the present suit as well. Thus, leave to defend was

granted to the defendants no.1, 3 and 4, subject to the defendants no.1, 3 and 4 depositing in Court a sum of Rs.45,80,406/- with interest @ 10% per annum from 30.11.2013 till the date of deposit within eight weeks from the date of the order in the second suit. The only submission made before us by the learned counsel for the appellants is that the order is extremely harsh in nature. The learned counsel submits that the financial condition of the appellants is such that they are unable to deposit the amount and resultantly, the purpose of granting leave to defend would be lost. Counsel seeks modification of the order as far as it relates to deposit of the amounts with interest.

3. Learned counsel for the respondent no.1 submits that he is the contesting party and has been pursuing the matters for recovery of money. He submits that complaints pertaining to Section 138 of the N.I. Act were filed in the year 2012 and the civil suits were filed in the year 2016 and till date he has not received any amount.
4. We have heard the learned counsels for the parties. Having regard to the financial condition of the appellants and to meet the ends of justice, we deem it appropriate to modify the order of the learned Single Judge as far as it relates to deposit subject to the defendants no.1, 3 and 4 depositing in Court 50% of the principal amount in both the suits and a bank guarantee for the remaining amount. Subject to the above modification, leave to contest is granted as directed by the learned Single Judge. The order be complied with within six weeks from today, failing which the consequences will follow.

5. It is made clear that the order will apply to the present appellants alone and would not apply to defendant no.2 in the suit as no appeal has been filed by him.
6. With these directions, both the appeals are disposed of.
7. All pending applications also stand disposed of.

G.S.SISTANI, J.

JYOTI SINGH, J.

APRIL 24, 2019

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