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

***Date of decision: 4th July, 2019***

\+ **CS (OS) 3877/2014 & I.As. 1476/2017, 1478/2017, 1479/2017, 1481/2017**

RTDC LIMITED ..... Plaintiff

Through: Mr. Shafiq Khan & Ms. Sundri, Advocates (M-9910000574)

Versus

M/S LUXURY TRAINS PVT LTD & ORS ..... Defendants

Through: Mr. Vijay Shankar, Advocate for D-2 (M-9871064894, D/354/08).
Mr. Saurabh. S. Sinha & Mr. Shikhar Sareen, Advs. for D-4 (M-9560168819)

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. The Plaintiff, Rajasthan Tourism Development Corporation (*hereinafter, 'RTDC'*), has filed the present suit under Order XXXVII CPC seeking recovery of a sum of Rs.2,07,80,949/-, comprising of Rs.1,85,80,949/- as principal amount and Rs.22,00,000/- as interest.

2. RTDC's case is that Defendant No. 1 is M/s Luxury Trains Pvt. Ltd, which is engaged in the business of arranging/booking of luxury trains. Its promotee and Director, Mr. Sajivve Trehaan is Defendant No. 2. Mr. Rohen Trehaan, son of Mr. Sajivve Trehaan, and Ms. Romi Trehan, wife of Mr. Sajivve Trehaan, are also directors in the company and are Defendant Nos. 3 and 4 in the present suit.

3. The Plaintiff runs two luxury trains by the names "Palace on Wheels" and "Royal Rajasthan on Wheels" which gives tourists the opportunity to

visit various destinations in India such as Rajasthan and Uttar Pradesh, including Agra and Varanasi. Defendant No. 2 - Mr. Sajivve Trehaan had a sole proprietorship firm by the name of M/s Luxury Holiday and was a general sales agent with the Plaintiff Company since 1991. He was, therefore, well-versed with the enormous goodwill attached with the two luxury trains run by the Plaintiff.

4. Defendant No.1 Company was incorporated and various bookings were made by Defendant No.1 and Defendant No.2 during the course of business transactions with the Plaintiff. The details of the specific trains for which bookings were made are as under:

- *departure (Royal Rajasthan on Wheels) on 9th March, 2014 for Nos. 01 DBLL (Shared by 02 Adults) Cabin, 02 DBL (Shared by 04 Adults) Cabin, 01 TPL (Shared by 02 Adults) Cabin;*
- *departure (Palace on Wheels) on 13th March, 2014 for Nos. 24 DBL (Shared by 44 Adults) Cabin, 01 SGL (Shared by 01 Adult) Cabin;*
- *departure (Royal Rajasthan on Wheels) on 16th March, 2014 for Nos. 04 DBL (Shared by 08 Adults) Cabin, 01Sup. Dlx. (Shared by 02 Adults) Cabin;*
- *departure (Palace on Wheels) on 19th March, 2014 for Nos. 12 DBL (Shared by 18 Adults) Cabin.*

5. The Defendants were to make payments for the said bookings and had issued the following four cheques:

i. *Cheque bearing No. 087730 dated 08-03-2014 for Rs. 17,42,911/-,*
ii. *Cheque bearing No. 087731 dated 11-03-2014 for Rs. 97,02,510/-,*
iii. *Cheque bearing No. 087735 dated 14-03-2014 for Rs. 22,94,596/- and*
iv. *Cheque bearing No. 087753 dated 21-03-2014 for Rs. 48,40,932/-.*

6. All of the above cheques were issued from the bank account of the Defendants at Central Bank of India, Parliament Street, New Delhi- 110001. The cheques were duly signed by Defendant No.2, Mr. Sajivve Trehaan on behalf of the Defendant Company.

7. The Plaintiff has placed on record the original letters dated 8th March, 2014, 11th March, 2014, 14th March, 2014 and 18th March, 2014 which evidence the booking of tickets. The copies of the cheques have also been placed on record. The Plaintiff accordingly prays for a decree for a sum of Rs.1,85,80,949/- as principal and Rs.22,00,000/- as interest at 18% p.a. calculated from due date of payment till the date of filing the present suit along with pendente lite and future interest @ 18% p.a.

8. The Defendants entered appearance and the Plaintiff moved an application for summons for judgment. The Defendants then moved applications for leave to defend and for condonation of delay in filing leave to defend. On 11th October, 2018, the delay in filing of the application for leave do defend was condoned. Arguments were thereafter heard on the leave to defend applications. On 15th October, 2018, the Court was informed that the Defendant No.1 company has gone into liquidation and NCLT vide order dated 11th December, 2017 has even appointed an IRP. Since this fact was not brought to the notice of the Court earlier, Defendant No.4 who is the only person residing in India, was directed to appear in person. Notice was thereafter issued to the IRP. The Court was also informed that Defendant No.2 – Mr. Sajivve Trehaan is in Switzerland and is allegedly undergoing treatment and Defendant No.3 is working in Chicago, USA. On 28th January, 2019, the Ld. counsel for the Official Liquidator appeared. The Court was, however, informed that the Defendant No.1 company has no assets.

9. Thereafter, submissions were again heard today. On behalf of Defendant No.4, it is submitted by Mr. Saurabh. S. Sinha, Ld. counsel that she was never a Director in the Defendant No.1 company nor was she in any manner involved in the affairs of the company. It is submitted by Ld. counsel that since both the Directors i.e. Defendants No. 2 and 3 are the ones who are running the company she should not be saddled with any liability. In fact, Defendant No.2 has abandoned her.

10. It is submitted by Mr. Shafiq Khan, ld. counsel for the Plaintiff that complaints under Section 138 of the Negotiable Instruments Act, 1881 have also been filed in respect of the same very cheques. It is submitted that the Defendants have together duped various financial institutions and banks of huge sums of money. There are more than 55 cases pending against the Defendants. Defendant No.2 is in fact a proclaimed offender. The leave to defend applications are not duly authorized by the Defendants. The Plaintiff had itself filed nine other complaints under Section 138 wherein the sum involved is more than Rs.12 crores against the Defendants. Various criminal complaints have also been filed against the Defendants.

11. The Court has heard the Ld. counsels for the Plaintiff and Defendant No.4. None appears for Defendant Nos.1 and 3. On behalf of Defendant No.2, Mr. Vijay Shankar has put in appearance today. However, he does not have any *vakalatnama.* Ld. counsel undertook to file the *vakalatnama* in two weeks. On behalf of Defendant No.2 – Mr. Sajivve Trehaan, it is submitted by the Ld. counsel that his client is in Switzerland. He submits that his client cannot be held liable for liabilities of the company, which is Defendant No.1, even though, he may have signed the cheques. Under Order XXXVII CPC, there cannot be vicarious liability of the Directors. Since the payments

were to be made only by the company, the Director cannot be held liable. Since the vicarious liability is not created by statute like Section 138 of the Negotiable Instruments Act, under Order XXXVII CPC the Director cannot be held liable. On behalf of Defendant No.4, it is submitted that Mrs. Romi Trehan was never a Director in the Defendant No.1 company and has been impleaded wrongly. The liability of the company cannot be saddled upon her. In fact, her husband and her son both are now residing abroad and she is facing all litigation in respect of the company. So, no decree is liable to be passed against her.

12. The leave to defend application on behalf of Defendant No.1 and Defendant No. 2 has been signed by one Mr. Neeraj. The primary defense in the said application is that since Defendant No.1 is no longer operational and Defendant No.2 is abroad, no records are available. It is further claimed that all the outstanding amounts have been paid and no amount is due.

13. What is significant is that there is no denial of the issuance of cheques by Defendant No.1 signed by Defendant No.2. The cheques therefore ought to be deemed as admitted. The booking letters which are in original on record have also not been denied. The relationship between the parties is duly admitted. The issuance of the legal notices cannot be disputed as the original notices are on record along with the original speed post receipts. The application for leave to defend is completely sketchy and has no details whatsoever. The order dated $6^{th}$ May, 2019 of the NCLT which has been placed on record shows that the Serious Fraud Investigation Office has also been directed to undertake investigation against the Defendants including their other entities, namely, M/s Luxury Holidays, M/s Swiss Hospitality Gmbh and M/s Swiss Holidays Pvt. Ltd. Allegations have also been levelled

by various third parties who have lent money to the Defendants and criminal complaints are pending.

14. Moreover, the company is already under liquidation and is not even represented despite notices having been issued and served on the Official Liquidator who had even appeared on one occasion. The Plaintiff is a Government of Rajasthan undertaking which is running two well-known trains. The relationship between the parties being admitted and the Defendants having made bookings on the said trains and having availed services on behalf of the clients were bound to remit the money due to the Plaintiff. There is not even an iota of defence which has been put up - let alone a moon shine defence. The applications for leave to defend filed by Defendant Nos. 1 to 3 are accordingly dismissed.

15. In so far as Defendant No. 4 is concerned, no documents have been placed on record to show that she was a director of Defendant No.1 or a promoter thereof at any point in time. Accordingly, a decree is passed against Defendant Nos.1 to 3 for a sum of Rs. 1,85,80,949/- along with simple interest @ 9% per annum from the date of filing of the suit till date of payment.

16. The suit is disposed of. All pending I.As. are disposed of. Decree sheet be drawn.

**PRATHIBA M. SINGH**
**JUDGE**

**JULY 04, 2019**
*Rahul/dj*