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

% Decided on:15th November, 2019

\+ **CS(OS) 660/2017**

TUMLARE SOFTWARES PVT. LTD ..... Plaintiff

Represented by: Mr. Ajay Bhargava, Mr. Arvind Kr. Ray, Mr. Karan Gupta, Advocates

versus

MR. ANURAG MAHAJAN & ORS. ..... Defendant

Represented by: No Appearance Given

\+ **CS(OS) 662/2017**

TUMLARE TRAVELS PVT. LTD ..... Plaintiff

Represented by: Mr. Ajay Bhargava, Mr. Arvind Kr. Ray, Mr. Karan Gupta, Advocates.

versus

MR. ANURAG MAHAJAN & ORS. ..... Defendant

Represented by: No Appearance Given

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present two suits, the plaintiffs seek decree against defendant for recovery of ₹ 5,37,51,906/- and ₹ 7,42,23,500/- with interest @ 18% per annum to be passed in favour of the plaintiffs.

2. Summons in the present suit were issued on 11th December 2017. The defendants were granted several opportunities to file their written statements, last of which being on 26th April 2018 whereby they were directed to file their written statements within two weeks. Defendants did

not file their written statement, therefore, right of Defendant No. 1 to 3 to file written statement was closed vide order dated 13th November 2019.

3. Case of the plaintiffs is that they are Private Limited Companies and are wholly owned subsidiaries of Tumlare Corporation A/S, a company incorporated under the laws of Denmark. Defendant No. 1, Mr. Anurag Mahajan, is the ex-employee and was appointed as the Director of the said companies vide employment agreement dated 31st January 1999. Defendant No. 2, Mrs. Anu Mahajan, is the wife of Defendant No. 1 while Defendant No. 3, Mr. Dharam Pal Mahajan is his father.

4. The Defendant No. 1 was responsible for running affairs of the Plaintiff companies according to the activity plan and job description, and he was also performing the responsibilities of the Chief Accountant and was the sole-in-charge of the accounting and finance book keeping functions of the plaintiff. He was further entrusted with the assets of the plaintiff and was also bound to perform his duties in the interest of the plaintiff.

5. Further, the plaintiffs appointed an accounts executive named Rahul Rawat in June 2016 to assist and support the Defendant No. 1 in reporting Plaintiff's financial transactions into the global accounting software that is AX. However, he was not given the access to Tally and his role was only limited to recording the daily transactions level data in AX on the basis of day book provided to him by Defendant No. 1 from Tally.

6. In the months of March-April,2017, the Plaintiffs became aware about the involvement of Defendant No. 1 in malpractices and financial irregularities for embezzlement of funds from bank accounts of the Plaintiffs to his personal bank account. Further a discussion was initiated

by the Plaintiffs with Defendant No. 1 wherein, upon being confronted he admitted that he was involved in such malpractices.

7. On 5th May 2017 a meeting was held between the parties wherein Defendant No. 1 while admitting to have committed financial illegalities of around ₹3 crores issued a confession Letter duly signed by him which was witnessed by Defendant No. 2 and 3, letter signed by Defendant No. 1 wherein a request was made by him to the Plaintiff for adjustment of his salary and gratuity of April 2017 towards the embezzled amounts, letter signed by Defendant No. 1 whereby he enclosed eight postdated cheques for a total of ₹ 2.70 lakhs towards repayment of embezzled amounts, and resignation letter dated 5th May 2017.

8. Plaintiffs, in order to unearth the illegalities committed by the Defendant No. 1, appointed Deloitte Touche Tohmatsu India LLP for investigation into the books of accounts of the Plaintiff vide letter of engagement dated 25th May 2017. In furtherance a report was submitted by the LLP for the period of 1st January 2011 to 30th April 2017 whereby various misdoings, misconduct and criminalities committed by Defendant no. 1 came into light.

9. The detailed modus-operandi of Defendant No. 1 was found to be as under:

> a. It was discovered from the bank statement of Defendant No. 1 for the period of 1st January 2011 to April 2017 that various payment transaction made to defendant no. 1 were not recorded in the bank books maintained in Tally. The breakdown of ₹ 94,19,410/- which were transferred from Punjab National Bank account of Tumlare Software Services Pvt. Ltd. bearing no. 3072002100081981 and ₹58,335,600 from the Citibank account of Tumlare Travels Pvt. Ltd.

bearing no. 0344277001 that were not recorded in books of accounts of plaintiff are as under:

Period	***Punjab National Bank*** ***bearing no. 3072002100081981***	***Citi Bank*** ***Bearing no*** ***0344277001***
2012	-	₹ 2,355,000
2013	-	₹ 1,733,000
2014	-	₹ 10,972,000
2015	-	₹ 8,200,000
2016	-	₹ 23,685,600
2017	9,419,410	₹ 11,390,00
Total	**9,419,410**	**₹ 58,335,600**

Payments were made by the Defendant no. 1 through online banking facility of PNB with Plaintiff's Account, credentials of which were only known to him. The amount of ₹49,459,600 and ₹8,866,000 were transferred via NEFT and cheque respectively from the Citibank account.

b. Defendant No. 1 fraudulently made several payment transactions to himself and recorded the same as payment of statutory liabilities such as tax deducted at source, employee provident fund, etc. in the books of accounts. The money transferred to Defendant No. 1 recorded as statutory payments in the books of accounts of the Tumlare Software Pvt. Ltd. aggregating to ₹1,43,29,496/- and ₹12,90,900 in books of accounts of Tumlare travels Pvt. Ltd are as follows:

Nature of Purported Transaction from account of Tumlare Software Pvt. Ltd.	**Year**	**Plaintiff- PNB Account No. 3072002100081981**	**Plaintiff- Citibank (₹)** **0302297231**

Advance Tax	2012	-	4,75,000
Advance Tax	2013	-	13,00,000
Advance Tax	2014	-	23,90,680
Advance Tax	2015	-	11,81,520
Provident Fund	2016	-	19,79,828
TDS	2016	13,20,410	-
TDS	2017	7,23,910	-
Total		**2,044,320**	**7,327,028**

Nature of Purported Transaction from account of Tumlare Travels Pvt. Ltd.	**Year**	**Plaintiff- Citibank (Rs.)** **0344277001**
Advance Tax	2012	1,50,000
Advance Tax	2013	3,35,000
Advance Tax	2014	4,30,940
Advance Tax	2015	11,81,520
Provident Fund	2016	3,74,960
TDS	2016	-
TDS	2017	-
Total		**1,290,900**

The aforementioned statutory payments which were made through NEFT and cheques, were not made to the concerned government authorities when they were recorded in the books. Certain transactions were shown as payment to Defendant No. 1 towards Provident Fund and Tax Deducted at Source, that is the accounting entry was recorded as payment of statutory liabilities and not as payment of amounts to Defendant. Further, four payment transactions from Plaintiff's Citibank Account bearing no. 0302297231 amounting to ₹49,58,148/- were recorded as lesser amount that is ₹15,39,326/-.

c. Plaintiff, Tumlare Software Services Pvt. Ltd., further discovered a total of 37 transactions of a lesser value, in its bank statements Citibank account bearing no. 0302297231 for transfer of money to Defendant No. 1 that is wrongful payment transactions aggregating to ₹240,44,912/- were recorded as ₹6,66,912/- as shown below:

Period	**No. of Transactions**	**Nature**	**Amount as per Bank statement (A) (in ₹)**	**Amount recorded in books of accounts (B) (in ₹)**	**Excess Payment (C=A-B) (in ₹)**
2011	1	ERA	70,500	7,500	63,000
2012	2	ERA	141,000	15,000	126,000
2014	4	ERA	828,900	39,900	789,000
2015	3	ERA	1,456,760	56,760	1,400,000
2016	6	ERA	5,128,160	128,160	5,000,000
2017	3	ERA	3,069,120	69,120	3,000,000
Total ERA:			**10,694,440**	**316,440**	**10,378,000**
2014	2	Interest Redemption	901,953	1,953	900,000
2015	5	Interest Redemption	1,701,855	1,855	1,700,000
Total Interest Redemption:			**2,603,808**	**3,808**	**2,600,000**
2015	1	Other	641,271	41,271	600,000
2016	9	Other	7,985,393	185,393	7,800,000
Total Others:			**8,626,664**	**226,664**	**8,400,000**
2016		Advance	2,120,000	120,000	2,000,000
Total	**37**		**24,044,912**	**666,912**	**23,378,000**

Cheques were issued for the abovementioned payments by Defendant No.1 and were signed by Puneet Dahiya, Managing Director of Plaintiff. It is averred by Plaintiff that the amounts were modified by the Defendant No. 1 after signing of the cheques by the Managing Director. Further, the Defendant No. 1 was also not entitled to receive ERA.

d. The plaintiff, Tumlare Travels Pvt. Ltd., discovered three transactions in the bank statements for illegal transfer of amounts to Defendant No. 1 which were recorded as fund transfer of ₹15,00,000 for payment transaction of ₹17,32,000 which are shown below.

Period	Mode	From	To	Amount (in ₹)

2013	Cheque	Tumlare Travels Pvt. Ltd – Citibank A/c	Tumlare Software Services Pvt. Ltd- J&K Bank A/c	500,000
2014	Cheque	Tumlare Travels Pvt. Ltd – Citibank A/c	Tumlare Software Services Pvt. Ltd- J&K Bank A/c	750,000
2015	Cheque	Tumlare Travels Pvt. Ltd – Citibank A/c	Tumlare Software Services Pvt. Ltd- J&K Bank A/c	250,000
Total				1,500,000

e. Plaintiff also discovered certain transactions in the bank statements representing withdrawal of cash from the bank accounts but the same were not recorded in the bank books by Plaintiff in Tally which are as under:

Period	**Tumlare Software Services Pvt. Ltd. (Citibank Account) (₹)**	**Tumlare Travels Pvt. Ltd. (Citibank Account) (₹)**
2011	175,000	450,000
2012	-	1,060,000
2013	200,000	2,120,000
2014	100,000	1,325,000
2015	-	2,950,000
2016	-	3,910,000
2017	-	750,000
Total	**475,000**	**12,565,000**

Furthermore, Plaintiff, also discovered various transactions amounting to ₹78,75,500/- recorded as ₹21,75,000/- which indicates unrecorded cash withdrawal of ₹57,00,000/- from accounts of Tumlare Software Services Pvt. Ltd. and transactions amounting to ₹5,15,500/- recorded as ₹2,15,000/- which indicates unrecorded cash withdrawal of ₹3,00,000/- from Tumlare Travels Pvt. Ltd. as shown below:

Period	**No. of Transactions**	**Cash withdrawn as per Bank statement (A)**	**Cash withdrawal recorded in books of accounts (B)**	**Excess payment (C=A-B)**
Tumlare Software Services Pvt. Ltd.				
2014	13	2,550,000	650,000	1,900,000
2015	5	625,000	525,000	100,000
2016	12	2,800,000	600,000	2,200,000
2017		1,900,000	400,000	1,500,000
Total	38	7,875,000	2,175,000	5,700,000
Tumlare Travels Pvt. Ltd.				
2012	2	65,000	65,000	-
2014	2	150,000	100,000	50,000
2017	2	300,000	50,000	250,000
Total	4	515,000	2,15,000	300,000

10. Plaintiff Company also filed a complaint against Defendant No. 1 before the Economic Offences Wing but the FIR was not registered. Thereafter, on 24th November 2017, the Plaintiff moved an application under Section 156(3) Cr.P.C before the court of Ld. CMM, Patiala House seeking registration of FIR.

11. Further, when the Plaintiffs contacted the Defendants for encashment of postdated cheques issued by him and his wife, the Plaintiffs were informed that the balance in bank accounts of Defendant No. 1 and 2 was insufficient which indicates the malafide intentions of the Defendants.

12. Plaintiff does not press the prayers (B) and (D). Hence no decree in terms of prayer (B) and (D) can be passed.

13. From the pleadings of the Plaintiff, the Plaintiffs have made out their case that Defendant No. 1 committed illegalities and fraudulently made payments from the accounts of Plaintiffs to his personal account. He also misappropriated entries in the books of accounts, altered the cheque amounts and also made fraudulent online transfer of money to his personal accounts.

14. Consequently, CS(OS) 660/2017 is decreed in favour of the plaintiff therein and against the defendant No.1 directing the defendant No.1 to pay a sum of ₹5,37,51,906/- with an interest @12% from the date of decree till the date of actual payment and CS(OS) 662/2017 is decreed in favour of the plaintiff therein and against the defendant No.1 directing the defendant No.1 to pay a sum of ₹7,42,23,500/- with an interest @12% from the date of decree till the date of actual payment.

15. Suits are disposed of. Decree sheets be drawn accordingly.

<u>I.A. Nos. 14645/2017, 14646/2017, 8682/2018 in CS(OS) 660/2017</u>
<u>I.A. Nos. 14688/2017, 14689/2017, 8698/2018 in CS(OS) 662/2017</u>

Applications are disposed of as infructuous.

(MUKTA GUPTA)
JUDGE

NOVEMBER 15, 2019
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