**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Order Reserved on : 12.08.2021**

**Order Passed on : 09/09/2021**

**W.P.(227) No. 782 of 2019**

M/s Sujyoti India (P) Ltd., a company registered under the Companies Act, 1956, having its office at 2nd Floor, Nexus Point, Vidhan Bhavan Square, Civil Lines, Nagpur 440 001 (Maharashtra), through its authorized representative/Director Shri Atul Doshi, S/o. Shir Dalichand Doshi, aged about 54 years. (Defendant No. 2)

**---- Petitioner**

**Versus**

1. South Eastern Coalfields Ltd., (A Mini Ratna Public Sector Undertaking) (A subsidiary of Coal India Ltd. ), Through : its O/o. the General Manager (MM), SECL Bhawan, Post Box No. 60, Seepat Road, Bilaspur 495006 Chhattisgarh. (Plaintiff).

2. M/s. SKF India Limited, Mahatma Gandhi Memorial Building, Netaji Subhash Road, Mumbai 400 002 (Maharashtra) (Defendant No. 1).

**---- Respondents**

**AND**

**W.P.(227) No. 901 of 2019**

SKF India Limited, having its registered office at Mahatma Gandhi Memorial Building, Netaji Subhash Road, Mumbai - 400002, Through Rani Varghese, Sr. Legal Counsel, Duly Authorized By S K F India Ltd.

**---- Petitioner**

**Versus**

1. South Eastern Coal Fields Ltd., through its Chairman-cum-Managing Director, S.E.C.L. Head Quarters, Post Office No. 60, Seepat Road, Bilaspur Chhattisgarh.

2. M/s. Sujyoti Bearing India Pvt. Ltd., through : its Director, having its office at 2nd Floor, Nexus Point, Vidhan Bhawan Square, Civil Lines, Nagpur - 440001.

**---- Respondents**

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| For Petitioner (in W.P.227) No. 782 of 2019) | : | Mr. Shashank Thakur, Advocate |
| For Petitioner {In W.P.(227) No. 901 of 2019} | : | Mr. Jatin Joshi, Advocate |
| For Respondent No.1 {In W.P.(227) No.782 and W.P.(227) 901 of 2019} | : | Mr. Vivek Chopda, Advocate. |
| For Respondent No.2 {In W.P.(227) No. 782 of 2019} | : | Mr. Jatin Joshi, Advocate |
| For Respondent No.2 {In W.P.(227) No. 901 of 2019} | : | Mr. Shashank Thakur, Advocate |

**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**C A V Order**

1. Both the petitions have been brought being aggrieved by the order dated 05.07.2019, passed in Civil Suit No.2-B/2018, passed by the learned Commercial Court at Naya Raipur, District – Raipur (C.G.).

2. Respondent No.1 has instituted a civil suit against the petitioners in both the cases, which is registered as Civil Suit No.2-B/2018 making a claim of amount of Rs.2,06,75,810.89 and interest Rs.2,71,76,339.00 along with other reliefs.

3. The petitioners/defendant No.1 and 2 filed a separate applications under Order 7 Rule 11 of C.P.C. that no cause of action has arisen and secondly the civil suit filed is barred by limitation. The learned Commercial Court has passed common order which is impugned on both the applications and dismissed both the applications filed by the petitioners.

4. Learned counsel for the petitioner (in W.P.(227) No. 782 of 2019) would submit that the impugned order is erroneous, arbitrary and

illegal. Rate contract for supply of goods between the parties is dated 11.12.1995. The agreement was between Western Coal Fields Limited and the petitioner- S.K.F. Bearings India Limited. After the supplies were made, on the basis of the report of Central Vigilance Commission dated 05.05.2016, the civil suit has been filed in the Court of Commercial Court, which is highly belated. The supply order was placed on 01.12.1998 to the M/s. S.K.F. Bearings India Limited, in which the petitioner M/s. Sujyoti India (P) Ltd. was not a party. Respondent No.1 issued a notice dated 17.12.2018 against the petitioner Sujyoti India (P) Ltd. and petitioner in other case S.K.F. India seeking refund of differential amount of Rs.4,78,52,149.89. The petitioner preferred a W.P.(C) No. 248 of 2019 against this notice, on which the preliminary order has been passed on 30.01.2019 and the proceeding on the notice dated 17.12.2018 has been stayed.

5. Referring to Section 230 of Contract Act, 1872, it is submitted that petitioner Sujyoti India (P) Ltd. was an agent of S.K.F. India (P) Ltd., therefore, he is not personally bound by the contract, which was between the respondent No.1 and the S.K.F. Bearing India Ltd. The petitioner has placed reliance on the judgment of Supreme Court in case of **Board of Control for Cricket India & Anr. Vs. Netaji Cricket Club & Ors**, reported in **(2005) 4 SCC 741**, in case of **Vivek Automobiles Ltd. Vs. Indian INC**, reported in **(2009) 17 SCC 657**, and in case of **Shakti Bhog Food Industries Ltd. Vs. Central Bank of India & Anr.**, reported in **2020 SCC OnLine SC 482** and the order of this Court in **Review Petition No.5 of 2021,** passed in case of **Navkar Trade Links Vs.**

**Sharda Energy & Minerals Pvt. Ltd. and Anr.**, decided on **24.02.2021**. It is submitted that the impugned order is not sustainable, therefore, relief be granted to the petitioner -M/s. Sujyoti India (P) Ltd.

6. Learned counsel for the petitioner appearing in W.P.(227) No. 901 of 2019 submits that the impugned order is against the provisions of law and thus perverse. It was burden of the respondent No.1 to issue price fall certificate but the same was never issued to the petitioner. The rate contract was in force till 30.06.2010, therefore, after termination of the contract in the year 2010, the suit that has been filed on 14.02.2018 by the respondent No.1 is much beyond the limitation. The pleading in the plaint that the cause of action arose on 05.05.2016 is a baseless statement. Reliance has been placed on the judgment of Supreme Court in case of **State of Gujrat Vs. Kothari & Associates**, reported in **(2016) 14 SCC 761**, in **Fatehji @ Company & Ors. Vs. L.M. Nagpal & Ors.**, reported in **(2015) 8 SCC 390**, in **Bharat Barrel & Drum Mfg. Company Private Ltd. & Ors. Vs. The Employees' Estate Insurance Corporation**, reported in **(1971) 2 SCC 860**, in **N.V. Srinivasa Murthy & Ors. Vs. Mariyamma (Dead) by Proposed Lrs. & Ors.**, reported in **(2005) 5 SCC 548** and in case of **T. Arivandandam Vs. T.V. Satyapal & Ors.**, reported in **(1977) 4 SCC 467.**

7. It is submitted that the respondent No.1 has no entitlement for pursue the suit filed, it being hopelessly barred by limitation. Hence, the learned Commercial Court should have allowed the

application under order 7 Rule 11 of C.P.C. and rejected the plaint. The impugned order is unsustainable. Relief be granted to the petitioner.

8. Counsel for the respondent No.1/S.E.C.L. opposes both the petitions and the submissions made in these respect. It is submitted that parties to the rate contract dated 11.12.1995 were Western Coal Fields Limited and the petitioner S.K.F. Bearing India Ltd., which was later on adopted by the respondent No.1 after its constitution. The rate contract was extended from time to time and that has continued up till 30.06.2010. During this period, the supplies were made by the petitioner. Petitioner in both the cases were bound by Clause -12 of the rate contract according to which, the contractor was bound to make supply of the goods on the rate which should not more than the rates of the supply of the same goods to other establishments. The Ministry of Coal, Government of India sent communication dated 04.03.2016 informing that the goods supplied by the petitioners in both the cases was overpriced. Investigation was conducted and on the basis of the report, a letter of demand was issued to the petitioner dated 29.05.2017 for refund of differential price. It is pleaded in the plaint that cause of action has arisen on 05.05.2016. It is also submitted that the petitioner Sujyoti India (P) Ltd. is jointly liable for the default, therefore, he shall not be able to get any relief under Section 230 of Contract Act, 1872. It is further submitted that it is a case in which there was fraudulent concealment by the petitioners in both the cases regarding actual price of the goods supplied, which came to the knowledge of the respondent No.1 later on.

Therefore, the pleading in the plaint that cause of action has arisen after knowledge regarding variation for price was received by the respondent no.1 has to be determined on the basis of the evidence, which can be led only in the trial. Therefore, the question of limitation raised in this case is a mixed question of facts and law. It is pleaded in the plaint that the petitioner S.K.F. India (P) Ltd./defendant No.1 had by letter dated 14.04.1998 authorized the petitioner Sujyoti India (P) Ltd./defendant No.2 and has authorized stockist and agent for effecting supply upon the plaintiff on various orders received. Subsequent to which, the goods were supplied by the Sujoyoti India (P) Ltd. to the respondent No.1. Therefore, the petitioner in both the cases are jointly and severally liable for the acts done by them. The impugned order does not suffer from any infirmity, therefore, both the petition be dismissed.

9. I have heard the learned counsel for the parties and perused the documents placed on record.

10. Order 7 Rule 11 of C.P.C. provides as follows :-

> "**11.Rejection of plaint.-** The plaint shall be rejected in the following cases:—
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> (a) where it does not disclose a cause of action;
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> (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the Court, fails to do so;
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> (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped,

and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provisions of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp paper, as the case may be; within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

11. The dispute raised by the petitioners is that the cause of action had accrued to the respondent No.1/plaintiff in the year 2010 and on that starting point of limitation, a suit could have been filed within a period of three years from that date in the year 2010. The pleading in the plaint is this that the respondent No.1/plaintiff came to knowledge regarding supply of goods at escalated price in the year 2016 from the communication received from the Central Vigilance Commission and on that basis it is pleaded that, cause of action has arisen in the year 2016, therefore, the suit is within limitation.

12. In case of **T. Arivandandam Vs. T.V. Satyapal (Supra),** it was held that if on a meaningful not formal reading of the plaint, it seems manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, then the Court can exercise its power under Order 7 Rule 11 of C.P.C.. In the present case, the respondent No.1 has pleaded regarding the loss occurred due to the difference in price for supply of the goods, which is the cause of action. In case of **Popat and Kotecha Property Vs. State Bank of India Staff Association**, reported in **(2005) 7 SCC 510**, in which it was held that in case of consideration as to whether the plaint filed is hit by Clause- (d) of Order 7 Rule 11 of C.P.C., which pertains to limitation, only where the statement made by the plaintiff in the plaint without any doubt or dispute shows that the suit is barred by any law in force only then the plaint can be rejected, if otherwise there are diverse claim made by the parties in that case, the Order 7 Rule 11 of C.P.C. shall not be applicable. In case of **Church North India Vs. Lavaji Bhai Ratanjibhai & Ors.**, reported in **AIR 2005 SC 2544**, it is very clearly held that plea of bar to jurisdiction of civil Court must be considered having regard to the contentions raised in the plaint only.

13. The contention of the respondent No.1/plaintiff that the cause of action has arisen in the year 2016, is being based under Section 17 of the Limitation Act, that difference in price was concealed by the defendants which came to knowledge of respondent in the year 2016, therefore, the dispute raised by the petitioners/defendants on this point appears to be a mixed question of facts and law, which can be determined only after the

parties have led their evidence. Apart from that the pleading in the plaint in this respect that the cause of action has arisen in the year 2016 and thus the civil suit was filed on 14.02.2018 within limitation. Therefore, any statement beyond the pleading of the plaint can not be taken into consideration under Order 7 Rule 11 of C.P.C. Hence, on this basis, I am of this view that the learned Commercial Court has not committed any error in holding that the issue of limitation is a mixed question of facts and law, which is required to be decided on merits.

14. The issue raised by the petitioner – Sujyoti India (P) Ltd. that in capacity of being an agent of the petitioner S.K.F. India (P) Ltd., he has made the supply of the goods to the respondent No.1 on behalf of the petitioner S.K.F. India (P) Ltd., therefore, he is exempted from being prosecuted under Section 230 of the Contract Act. This issue also can not be decided under Order 7 Rule 11 of C.P.C., as it is clear pleading of the respondent No.1/plaintiff that the petitioners in both the cases, who are defendants in the civil suit are jointly and severally liable. The power under Order 7 Rule 11 of C.P.C. can be invoked on the basis of the pleading made in plaint only. Further the issue of liability of a defendant party is not within the scope of Order 7 Rule 11 of C.P.C. Pleading of non liability has to be made in written statement and that shall be decided in the trial. Therefore, I am of this view that the impugned order does not suffer from any infirmity.

15. Resultantly, both the petitions are devoid of merits, which are dismissed accordingly.

**Sd/-**
**(Rajendra Chandra Singh Samant)**
Judge

**Balram**