IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.09.2024

CORAM:

THE HON`BLE MR.JUSTICE A.A.NAKKIRAN

C.S.No.146 of 2014

1.Harish Raghavan
2.Ramamoorthy Parameswaran
3.IP Investor LLC
Having its registered office at
520 Pike Street
Suite 985, Seattle, WA 98101
United States of America
Represented by Power of Attorney
Mrs.Lakshmi Raghavan
No.47 (Old No.25) TTK Road
Chennai-600 018. ... Plaintiffs

Vs.

1.Mercado Online Private Limited
having its registered office at
No.333, 6th Floor, Fountain Plaza
Pantheon Road, Egmore,
Chennai-600 008.
2.K.Vaitheeswaran ... Defendants

Prayer: Civil Suit filed under Order IV Rule 1 of O.S Rules, read with Order VII Rule 1 of CPC, praying for the following judgment and decree as against the defendants:

a) directing the 2nd defendant to compensate the plaintiffs in a sum of Rs.3,00,00,000/-

b) for mandatory injunction directing the 2nd defendant to deliver up to the 2nd plaintiff, the Source Code, Customer data base and all other property of the 1st defendant in 2nd defendant's possession and or control.

c) granting permanent injunction restraining the 2nd defendant from copying, disseminating, tampering with, or otherwise using in any manner, the source code, customer database, and/or any other intellectual property of 1st defendant.

d) directing the 2nd defendant to pay to the 1st plaintiff a sum of Rs.15,57,000/- together with interest at 15% per annum on the principal amount of Rs.14,30,000/- from this date till the date of payment.

e) directing the 2nd defendant to pay to the 2nd plaintiff a sum of Rs.66,87,378/- together with interest at 15% per annum on the principal sum of Rs.61,70,000/- from this date till the date of payment.

f) directing the 2nd defendant to pay all statutory dues including and not limited to provident fund dues, tax deducted at source dues and any other statutory dues which were to be payable by the 1st defendant.

g) declaring that the plaintiffs 1 and 2 are not liable for the losses and liabilities sustained by the 1st defendant on account of the 2nd defendant's negligence and reckless conduct of business.

h) directing the 2nd defendant to pay the plaintiffs the cost of the above suit.

For Plaintiffs : Mr.K.P.Prabhu Raj
For M/s.A.K.Mylsamy & Associates

For Defendants : 1st defendant - struck off
2nd defendant - Set exparte

JUDGMENT

This Civil Suit has been filed for damages, mandatory injunction, permanent injunction, declaration and for costs.

2.0 The brief facts of the case of the plaintiffs are as follows:

The 1st defendant company was incorporated on 02.04.2004 having Mr.V.Ravichandran and Mrs.Radha Vasudevan as the initial shareholders with an authorised and paid up capital of Rs.1,00,000/-. The 2nd defendant and one V.S.Sudhakar who were the promoters and directors of a private limited company named Fabmall (India) Private Limited entered into a slump sale agreement with the 1st defendant wherein they agreed to sell the e-commerce business of Fabmall to the 1st defendant. On 30.04.2004, the 2nd defendant had started his association with the 1st defendant. The plaintiffs 1 and 2 who are permanent residents of United States of America, carrying on business therein and pursuant to the Foreign Direct Investment Regulations of India, they made several investments in India. The 3rd plaintiff is a limited liability company organised under the laws of State of Delaware, United States of America and controlled inter alia by the plaintiffs 1 and 2. The 3rd plaintiff entered into a share subscription agreement dated 02.04.2004 with the defendants 1 and 2, Fabmall, Mr.V.S.Sudhakar and their associates and pursuant to which, 3rd plaintiff had invested a sum of Rs.75,45,430/- into the 1st defendant company acquiring the majority shareholding of 1st defendant amounting to 80% of the paid up capital. The share certificates for the 3rd plaintiff were issued at Chennai on 09.11.2004. The 1st plaintiff holds one share in the 1st defendant company. The 3rd plaintiff holds about 42.13% of the equity shareholding of the 1st defendant. Similarly, the 2nd plaintiff holds about 21.61% of the equity shareholding of 1st defendant, for which share certificates have been issued in Chennai. On 12.04.2004, the 2nd plaintiff and V.S.Sudhakar were co-opted as Directors of 1st defendant and the 2nd defendant was appointed as Chief Operating Officer of the 1st defendant. The 2nd defendant and V.S.Sudhakar were joint signatories to the operating bank account of 1st defendant and were in charge of the management of 1st defendant which included inter lia the strategy, planning and logistics involved wit the affairs of 1st defendant. Initially, the 1st defendant offered products and services at its website having the URL "www.Fabmall.com" pursuant to a license agreement with fabmall. Upon expiry of the said license agreement, 1st defendant used the domain names "indiaplaza.com" and "indiaplace.in" to carry out such business. Despite the equity investment made by the 3rd plaintiff and the marketing efforts of plaintiffs 1 and 2, the 1st defendant under the management of 2nd defendant and V.S.Sudhakar, continuously incurred losses. On 16.03.2009, the 1st plaintiff joined the Board of 1st defendant at the request of 2nd defendant and V.S.Sudhakar in order to help the 1st defendant raise further capital. However, the 1st plaintiff was not a whole time director, since he was a representative of 3rd plaintiff, the investor of 1st defendant. On 03.09.2009, V.S.Sudhakar resigned as Director of 1st defendant leaving the 2nd defendant solely responsible for the business and administration of 1st defendant.

2.01. On 07.01.2011, the 2nd defendant was appointed as a director of 1st defendant and the 2nd defendant managed the business of 1st defendant as the CEO was also the only executive full time director of 1st defendant. The 2nd defendant informed the plaintiffs 1 and 2 that the 1st defendant had incurred a loss of Rs.9,25,54,436/- for the year ending 31.03.2012. Between October 2012 and March 2013, the plaintiffs 1 and 2 sent monies to the 2nd defendant for the running of 1st defendant. In March 2013, the 2nd defendant informed the plaintiffs 1 and 2 that Trent Limited, a company belonging to the Tata Group offered to acquire all the key assets constituting the business of 1st defendant for Rs.5 crores. On 25.04.2013, a preliminary expression of interest was executed in respect of the same. Between April to August 2013, the 1st plaintiff remitted the following sums to the personal account of the 2nd defendant for the conduct of the affairs of the 1st defendant.

a) 12.04.2013 - Mrs.Kamala Raghavan as joint holder with Mr.T.Raghavan (mother of 1st plaintiff) to the 2nd defendant - Rs.1,50,000/-

b) 26.06.2013 - Mrs.Kamala Raghavan as joint holder with Mrs.S.Rukmini (mother of 1st plaintiff) to 2nd defendant - Rs.2,00,000/-

c) 03.07.2013 - Mrs.Kamala Raghavan as joint holder with Mrs.S.Rukmini (mother of 1st plaintiff) to D2- Rs.1,50,000/-

d) 08.08.2013 - Mrs.Kamala Raghavan as joint holder with Mrs.S.Rukmini (mother of 1st plaintiff) to D2 - Rs.3,00,000/-

e) 13.08.2013 - 1st plaintiff to 2nd defendant - Rs.6,30,000/-

Similarly, the 2nd plaintiff has also sent a sum of Rs.5,00,000/- on 22.04.2013 and a sum of Rs.10,00,000/- on 16.07.2013 directly to the account of the 2nd defendant. On 31.07.2013, the Trent informed the 2nd defendant that the said transaction would not go ahead. Between August to November, 2013, further monies were wired by the plaintiffs 1 and 2 to the defendants 1 and 2. With the assistance and supervision of the appointed professional, the 1st defendant began clearing out some of the creditors' demands. In particular, the 2nd plaintiff sent sums of monies to certain creditors directly and also to the bank account of the 1st defendant. The details of such monies sent by the 2nd plaintiff to creditors are set out herein below:

a) 29.08.2013 : Rs.11,50,000/-

b) 04.09.2013 : Rs. 2,75,000/-

c) 27.09.2013 : Rs. 1,50,000/-

Total : Rs.15,75,000/-

Further details of monies that were sent by the 2nd plaintiff directly to the bank account of the 1st defendant are as follows:

a)	05.03.2013	:	Rs. 5,00,000/-
b)	06.03.2013	:	Rs. 4,60,000/-
c)	05.09.2013	:	Rs. 6,50,000/-
d)	10.09.2013	:	Rs. 3,25,000/-
e)	10.09.2013	:	Rs. 3,00,000/-
f)	07.10.2013	:	Rs. 1,00,000/-
g)	09.10.2013	:	Rs. 3,00,000/-
h)	12.11.2013	:	Rs. 1,60,000/-
	Total	:	Rs.30,95,000/-

2.02. On 03.10.2013, the 2nd defendant informed the plaintiffs 1 and 2 that provident fund amounts were not being paid in respect of employees of the 1st defendant. On 27.11.2013, the plaintiffs 1 and 2 were informed of the fact that tax deduction and source amounts were also not being remitted by the 2nd defendant. On 08.12.2013, the 2nd defendant sought to resign from the board of 1st defendant. Till this date, since the 1st defendant company is incurring losses and the plaintiffs are unaware as to whether or not the 2nd defendant has cleared the statutory dues which were liable to be paid by the 1st defendant company. Till date, since the 2nd defendant has not repaid various sums of monies that have been received by him as mentioned herein above to the plaintiffs 1 and 2. Hence the suit.

3.Though summons was served on the defendants 1 & 2, they had not chosen to file the written statement. On 11.02.2022, the learned counsel for the 1st defendant filed a memo stating that the 1st defendant company is struck off and the same was recorded by this Court. The 2nd defendant was set exparte on 15.02.2022.

4. On the side of the plaintiffs, the power of attorney of the plaintiffs namely Mrs.Lakshmi Raghavan was examined as P.W.1 and Ex.P.1 to Ex.P.27 were marked.

5. Heard the learned counsel for the plaintiffs and perused the records.

6. The plaintiffs have filed Proof Affidavit reiterating the plaint averments and the power of attorney of the plaintiffs namely, Mrs.Lakshmi Raghavan was also examined as PW1, besides marking twenty seven documents, namely, Ex.P1 to Ex.P27. Ex.P1 is the copy of the certificate of Incorporation Memorandum of Articles of Association of 1st defendant company. Ex.P2 is the copy of certificate of Foreign Inward Remittance for issue of shares of 3rd plaintiff. Ex.P3 is the copy of share certificate of 3rd plaintiff. Ex.P4 is the copy of Certificate of Foreign Inward Remittance from the 3rd plaintiff for issue of shares to the 2nd plaintiff dated 20.09.2008. Ex.P5 is the copy of Certificate of Foreign Inward Remittance for the 3rd plaintiff for issue of shares to the 2nd defendant dated 06.11.2008. Ex.P6 is the copy of share certificate of 2nd plaintiff dated 10.03.2009. Ex.P7 is the copy of Form-2 filed with the Registrar of Companies with Rectification letter and revised list of allottees dated 07.01.2011. Ex.P8 is the copy of Form-

2 filed with Registrar of Companies for allotment of shares dated 02.08.2011. Ex.P9 is the copy of list of shareholders of 1st defendant for filing with the Registrar of Companies dated 30.09.2011. Ex.P10 is the copy of 1st defendant's balance sheet for the financial year ended 31.03.2012. Ex.P11 is the copy of trial of correspondence from D2 to plaintiffs 1 & 2 concerning Trent's Expression of Interest. Ex.P12 is the copy of the Trent's Expression of Interest. Ex.P13 is the copy of e-mail correspondence and demand for funds from the 2nd defendant on 25.04.2013. Ex.P14 is the copy of e-mail correspondence from the 2nd defendant to the plaintiffs 1 and 2 concerning Trent's Expression of Interest. Ex.P15 is the copy of e-mail correspondence from the 2nd defendant to the plaintiffs admitting receipt and monies. Ex.P16 is the copy of e-mail correspondence from the 2nd defendant to the plaintiffs 1 and 2 concerning non-payment of statutory dues. Ex.P17 is the copy of letter of resignation of 2nd defendant dated 08.12.2013. Ex.P18 is the copy of e-mail correspondence between the 2nd plaintiff and the 2nd defendant among others, concerning sale of 1st defendant's assets to Trent. Ex.P19 is the copy of proof of transfer from ICICI Bank Limited, Chennai

Branch certifying RTGS transfer from the 1st plaintiff's bank account to the 2nd defendant bank bank. Ex.P20 is the copy of proof of transfer from Kotak Mahindra Bank Limited, Chennai Branch certifying payments from the 2nd plaintiff, bank account to the defendants 1 and 2 account as well as payments made to creditor. Ex.P21 is the copy of proof of transfer from Andhra Bank, Chennai Branch certifying RTGS transfer from the 1st plaintiff's relatives bank account to the 2nd defendant's bank account. Ex.P22 is the copy of proof of transfer from Kotak Mahindra Bank Limited, Chennai Branch certifying payments from the 2nd plaintiff bank account to the defendants 1 and 2 bank account. Ex.P23 is the copy of power of attorney executed by Mr.Harish Raghavan (1st plaintiff) in favour of Mrs.Lakshmi Raghavan. Ex.P24, Copy of power of attorney executed by Mr.R.Parameswaran (2nd plaintiff) in favour of Lakshmi Raghavan. Ex.P25 is the copy of power of attorney executed by M/s.IP Investor LLC (3rd plaintiff) in favour of Lakshmi Raghavan. Ex.P26 is the copy of letter from the Assistant Commissioner of Income Tax (TDS) for circle-18(1) Bangalore, concerning non-payment of TDS to the 1st plaintiff. Ex.P27 is the copy of letter from the Assistant Commissioner of Income Tax (TDS) for circle-18 (1) Bangalore, concerning non-payment of TDS to the 2nd plaintiff.

7. On a perusal of the oral and documentary evidence adduced on behalf of the plaintiffs and in the absence of any evidence on behalf of the defendants to disprove the evidence produced by the plaintiffs, this Court is of the view that the plaintiffs have proved the case with respect to the reliefs sought for in this suit.

8. In the result, this Civil Suit is decreed as prayed for with costs.

25.09.2024

Index : Yes/No
Speaking/Non-speaking order
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<u>Witnesses examined on the side of the plaintiffs:</u>

P.W.1. - Lakshmi Raghavan

Exhibits produced on the side of the plaintiffs:

Sl.No.	***Exhibits***	***Date***	***Description of documents***
1	P1		Copy of the certificate of Incorporation Memorandum of Articles of Association of 1st defendant company.
2	P2		Ex.P2 is the copy of certificate of Foreign Inward Remittance for issue of shares of 3rd plaintiff.
3	P3		Copy of share certificate of 3rd plaintiff.
4	P4	20.09.2008	Copy of certificate of Foreign Inward Remittance from 3rd plaintiff for Issue of shares to P2
5	P5	06.11.2008	Copy of certificate of Foreign Inward Remittance for 3rd plaintiff for issue of shares to the 2nd defendant.
6	P6	10.03.2009	Copy of share certificate
7	P7	07.01.2011	Copy of Form 2 filed with the Registrar of Companies with Rectification letter and revised list of allottees
8	P8	02.08.2011	Copy of Form 2 filed with Registrar of Companies for allotment of shares
9			Copy of list of shareholders of 1st

Sl.No.	Exhibits	Date	Description of documents
	P9	30.09.2011	defendant for filing with the Registrar of Companies
10	P10	31.03.2012	Copy of 1st defendant's balance sheet for the financial year ended 31.03.2012.
11	P11		Copy of the Trial of Correspondence from the 2nd defendant to the plaintiffs 1 & 2 concerning Trent's Expression of Interest.
12	P12		Copy of the Trent's Expression of Interest
13	P13	25.04.2013	Copy of e-mail correspondence and demand for funds from the 2nd defendant.
14	P14		Copy of e-mail correspondence from the 2nd defendant to the plaintiffs concerning Trent's Expression of Interest
15	P15		Copy of e-mail correspondence from the 2nd defendant to the plaintiffs admitting receipt and monies.
16	P16		Copy of e-mail correspondence from the 2nd defendant to the plaintiffs concerning non-payment of statutory dues.
17	P17	081213	Copy of 2nd defendant's letter of Resignation
18	P18		Copy of e-mail correspondence between the 2nd plaintiff and 2nd defendant among others, concerning sale of 1st defendant's assets to Trent.

Sl.No.	Exhibits	Date	Description of documents
19	P19		Copy of the proof of transfer from ICICI Bank Limited, Chennai Branch certifying RTGS transfer from the 1st plaintiff's bank account to the 2nd defendant's bank account.
20	P20		Copy of proof of transfer from Kotak Mahindra Bank Limited, Chennai Branch certifying payments from the 2nd plaintiff bank account to the defendants 1 and 2 bank account as well as payments made to creditor.
21	P21		Copy of proof of transfer from Andhra Bank, Chennai Branch certifying RTGS transfer from the 1st plaintiff's relatives bank account to the 2nd defendant's bank account.
22	P22		Copy of proof of transfer from Kotak Mahindra Bank Limited, Chennai Branch certifying payments from the 2nd plaintiff bank account to the defendants 1 and 2 bank account
23	P23		Copy of power of attorney executed by Mr.Harish Raghavan (1st plaintiff) in favour of Lakshmi Raghavan
24	P24		Copy of power of attorney executed by R.Parameswaran (2nd plaintiff) in favour of Lakshmi Raghavan
25	P25		Copy of power of attorney executed by M/s.IP Investor LLC (3rd plaintiff) in favour of Mrs.Lakshmi Raghavan

Sl.No.	*Exhibits*	*Date*	*Description of documents*
26	P26		Copy of letter from the Assistant Commissioner of Income Tax (TDS) for circle-18(1) Bangalore, concerning non-payment of TDS to the 1st plaintiff.
27	P27		Copy of letter from the Assistant Commissioner of Income Tax (TDS) for circle-18(1) Bangalore concerning non-payment of TDS to the 2nd plaintiff.

<u>Witnesses and documents on the side of the defendants:</u>

Nil.

25.09.2024

A.A.NAKKIRAN,J.
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C.S.No.146 of 2014

25.09.2024