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

+ **C.R.P. 75/2024**

SHYAMJI DISTRIBUTORS & ANR. Petitioners

Through: **Mr. Vedant Singh and & Mr.
Vishisht Singh, Adv.**

versus

M/S G.C.I.T.

..... Respondent

Through: **Mr. Pankaj Gupta and Mr.
Bharat Bhushan, Advs.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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21.02.2024

1. This hearing is being conducted through hybrid mode.

CM APPLs. 10627/2024 & 10710/2024 (Exemption)

2. Allowed, subject to all just exceptions.

3. The applications stand disposed of.

C.R.P. 75/2024 and CM APPL. 10626/2024 (stay)

4. The petitioner, who is the defendant in the suit filed by the respondent/plaintiff, is assailing the impugned order dated 22.12.2023 passed by the learned District Judge, (Commercial Court-03), Patiala House Courts, New Delhi, whereby conditional leave to appeal has been granted in the suit under Order XXXVII Rule 3 CPC filed by the respondent/plaintiff, subject to the petitioner/defendant depositing a sum of Rs. 18,77,487.48/- in the form of FDR within two weeks of the said order.

5. Learned counsel for the petitioner has vehemently urged that the learned District Judge, (Commercial Court-03), Patiala House



Courts, New Delhi, does not possess territorial jurisdictions since as per the invoices whereby goods were supplied by the respondent/plaintiff clearly stipulated that the jurisdiction in respect of any disputed parties shall lie at Kasauli. It is further urged that although the parties had been dealing with one another, the invoices and for that matter, the accounts were never reconciled and there no liquidated amount payable from them to the respondent/petitioner.

6. Having heard learned counsels for the parties and on perusal of the record, this Court finds that the present civil revision petition is bereft of any merits.

7. First things first, insofar as the jurisdiction of the court is concerned, although it does appear that the invoices indicated that the jurisdiction shall lie at Kasauli, however evidently no part of cause of action has arisen at such place and there is a made a categorical averment in the plaint vide paragraph (15) to the following effect:-

“15. That this Hon'ble Court has territorial Jurisdiction to try and entertain the present case as the payments from the defendants were and are to be received by the plaintiff in their account maintained with IDBI Bank, Barakhamba Road, Connaught Place, New Delhi, which falls within the territorial jurisdiction of this Hon'ble Court. All the Pre-Institution Mediation Proceedings took place before DLSA, Patiala House, New Delhi and all negotiation for said Agreement/ MOU dated 4th November, 2020 also took place and the said Agreement/ MOU dated 4th November, 2020 was also submitted before the DLSA, Patiala House, New Delhi. As part cause of action arose within the territorial jurisdiction of this Hon'ble Court therefore, this Hon'ble Court has territorial jurisdiction to try and entertain the present case.”

8. Therefore, without further ado, this Court finds no illegality and infirmity in the Trial Court holding that the Court was not lacking territorial jurisdiction.

9. Insofar as the plea that there was no liquidated amount towards the pending invoices payable to the respondent/plaintiff, it is borne out



from the record that the parties in pre-litigation mediation executed a Memorandum of Understanding (MoU) dated 04.11.2020 and vide Clause (05) thereof, there was an acknowledgment of the liability on the part of the petitioner which goes as under :-

‘5. That if the Second Party fails to pay to the First Party any instalment, then the First Party shall be at liberty to forfeit the amount if any paid by the Second Party to the First Party and the First Party shall be at liberty to pursue suit for/ claim whole amount of Rs. 19,08,912/- (Rupees Nineteen Lakhs Eight Thousand Nine Hundred Twelve Only) from Second Party.’

10. Learned counsel for the petitioner has urged that the said MoU was executed by the son of the proprietor/petitioner No.2, who was not aware of all the facts and even otherwise it merely provided forfeiture of instalments paid pursuant thereto. Ex facie the said plea cuts no ice and there is a clear attempt to wriggle out of the acknowledgment of the liability on the part of the petitioner.

11. In view of the foregoing discussion, this Court finds that there is no illegality, perversity or incorrect approach adopted by the learned Trial Court in passing the impugned order dated 22.02.2023.

12. At this stage, on the request of learned counsel for the petitioner, he is granted 15 days time to invest an sum of Rs. 18,77,487.48/- in the form of FDR file the FDR receipts on the record.

13. Hence, the present civil revision petition is dismissed. The pending application is also disposed of. Nothing contained herein shall tantamount to expression of opinion on the merits of the case.

14. Copy of this order be sent to the learned Trial Court for information and necessary compliance.

DHARMESH SHARMA, J.

FEBRUARY 21, 2024/sp