



2024:DHC:6037



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

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Reserved on: 8th May, 2024

Pronounced on: 7th August, 2024

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CS(COMM) 36/2017

1. **DEISM ENTERPRISES PRIVATE LIMITED,**

Having its registered office at
145/5, Shaikh Memon Street,
Opp: L.K. market,
Mumbai 400 002.

2. **WRINKLE ENTERPRISES PVT. LIMITED,**

A company incorporated under the
Provisions of the Companies Act, 1956
Having its registered office at
6-B, Samhita Hill Industrial Estate,
Off Andheri-Kurla Road,
Mumbai 400 072.

..... Plaintiffs

Through: Mr. Prosenjeet Banerjee, Ms.
Samapika Biswal, Mr. Aman Kumar
Yadav and Ms. Anshika Sharma,
Advocates.

versus

INDUSTRIAL FINANCE CORPORATION OF INDIA

IFCI Tower, 61, Nehru Place,
New Delhi

And also at

IFCI Bhavan, C.G. Road,
Post Box No. 4049,
Ahmedabad 380 009.

..... Defendant

Through: Mr. S.S Ahluwalia, Mr. Yuvraj
Jaiswal and Ms. Saniya, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T



NEENA BANSAL KRISHNA, J.

1. Suit for Recovery of Rs.1,75,70,500/- with interest has been filed on behalf of the plaintiffs against the defendants.
2. **Briefly stated**, in the year 1997, M/s Parekh Platinum Limited (*hereinafter referred to as 'PPL'*) sought financial assistance from the defendant, a Government instrumentality engaged in the business of lending money for a particular period to the Companies. It was granted Foreign Currency Loan on the terms and conditions contained in the Loan Agreement and as a security, M/s PPL created a charge by way of hypothecation of the movable properties and mortgage of its immovable properties consisting of non-agricultural land situated at Plot No. 66, GIDC, Gems and Jewellery Park, Post: Bhat, District Gandhinagar, 382428, in favour of the defendants. In or around 2007, PPL made efforts for settlement of their outstanding dues against the Loan Agreement and submitted a 'One Time Settlement' (*hereinafter referred to as 'OTS'*) proposal to the defendants.
3. The *plaintiff No. 1, Deism Enterprises Private Limited*, was keen to purchase the debts of M/s PPL from the defendant. Accordingly, plaintiff No. 1 wrote a Letter dated 07.05.2007, to the defendant wherein while referring to the already agreed OTS with PPL at Rs.5.46 Crores, offered to buy this outstanding liability by paying 10% immediately on receipt of a Settlement letter, from the defendant. It undertook to pay the balance 90% in six bi-monthly instalments, to be paid within a period of 12 months, from the date of receipt of the Settlement Letter with an assurance that there would be no delay in payment once the *letter of acceptance* was issued by



the defendant No. 1. It was also agreeable to pay interest at the prevailing rate for a period of delay.

4. Plaintiff No. 1 wrote a Letter dated 10.07.2007, for placing on record the communication of the aforesaid acceptance of offer by the defendant. The plaintiff No. 1 in terms of its offer to pay 10% of the Loan Settlement amount, enclosed two cheques bearing No. 345001 and 345002, due for payment on 11.07.2007 and 18.07.2007 respectively, in the sum of Rs.50,00,000/- and Rs.59,00,000/- respectively. The plaintiff No. 1 also requested the defendant, to issue a formal Letter of acceptance and to transfer/assign all the securities given by PPL, in its favour, as had been agreed by the defendant._

5. The aforesaid two cheques amounting to Rs.109 Lakhs, were duly encashed by the defendant, without any demur. The plaintiff No.1, therefore, became entitled to transfer of loan titles but the defendant did not issue any Acceptance Letter, despite the reminder Letter dated 21.08.2007.

6. In the meanwhile, *plaintiff No. 2, Wrinkle Enterprises Pvt. Limited*, approached the plaintiff No. 1 and agreed to replace plaintiff No. 1 and agreed to pay Rs.109 Lakhs paid by plaintiff No. 1, to the defendant upon receipt of letter of Acceptance from the defendant, in regard to assignment of loan in favour of the plaintiff No. 2. It also enclosed a cheque bearing No. 472653 dated 03.10.2007 for Rs.3.00 Lakhs as a proof of its eagerness to settle the matter on topmost priority and stated the said amount to be a part-payment towards the total sum of Rs.5.46 Crores, payable to the defendant, for the purchase of loan of PPL. This cheque of Rs.3 Lakhs given by the plaintiff No. 2, was also encashed by the defendant. However, it failed to issue any letter of acceptance in favour of the plaintiff No. 2 accepting its



substitution in place of plaintiff No. 1 or to acknowledge Rs.109 Lakhs that had been paid by the plaintiff No. 1.

7. In addition, to establish the *bona fides* and his willingness, the plaintiff No. 2 sent two Cheques bearing No. 472651 and 472652 of Rs.50 Lakhs, in favour of the defendant along with the forwarding Letter dated 03.10.2007, but this Letter also failed to elicit any concrete action or confirmation about the acceptance of the offer of plaintiff No. 2. Consequently, plaintiff No. 2 who did not want to make further commitment of Rs.1 Crore without the Acceptance Letter, stopped the encashment of these two cheques.

8. While the Plaintiff No.2 was negotiating, defendant wrote a *Letter dated 03.01.2008 to M/s PPL*, demanding the payment of Rs.1 Crore and also asked them to ensure that the payment of settlement amount to be strictly made in terms of their Letter dated 05.09.2007. The copy of this Letter was not forwarded to the plaintiffs by the defendant.

9. Further discussions and negotiations took place between the plaintiffs and the defendant and eventually, the plaintiff No. 2 agreed to pay a lump sum of Rs.11.5 Crores in full and final settlement of the claims of M/s PPL and proposed the detailed Settlement terms in its Letter dated 29.07.2009.

10. However, after further discussions, the Plaintiff No.2 attempted to address the concerns expressed by the Defendant regarding certain aspects listed in the section titled "*Deliverables from IFCI Ltd.*" in its proposal dated 29.07.2009. The proposal was accordingly modified on 24.08.2009 by the plaintiff No. 2 in respect of the deliverables by the defendant, effective upon acceptance of the proposal. The defendant continued to represent to the plaintiff their intention to assign the debt.



11. In derogation to the negotiations, the defendant reneged on its Agreement and conveyed *vide* Letter dated 24.08.2009 that the proposal as given by the plaintiff No. 2, was not acceptable and the entire assignment amount needs to be paid before September, 2009. The defendant expected plaintiff No. 2 to pay 25% of the assignment amount at the time of conveying the approval of the assignment and the balance within seven days. This proposal was not feasible for plaintiff No. 2 and was in absolute contravention to the previous Agreements.

12. The request by the plaintiff No. 2 through its Letter dated 25.08.2009 to urge the defendant to reconsider their decision did not meet with any positive response.

13. In complete disregard to the offer of plaintiff No. 2's for assignment of debts/purchase of loan, the defendant invoked the provisions of SARFAESI Act and took possession of the secured assets at Post: Bhat, Gandhinagar.

14. Since the proposal of the plaintiff No. 2 for assignment of debt of M/S PPL, did not fructify, it demanded the return of Rs.112 Lakhs along with interest @18% p.a. w.e.f. the date of payment, vide letter dated 09.09.2009, but the defendant failed to respond.

15. The plaintiffs then filed the Writ Petition bearing *W.P. (C) No. 3299/2010 under Article 226 of the Constitution of India*, for refund of the entire amount along with interest on 07.05.2010, before this Court, which did not meet any success and was dismissed *vide* Order dated 14.05.2010. The plaintiffs then filed a Letters Patent Appeal bearing *No. LPA No. 629/2010 on 14.07.2010*, which was dismissed on 30.08.2010, with liberty to the plaintiffs to approach the Civil Court, for the appropriate remedy.



16. The plaintiffs thus, filed the present Suit claiming Rs.112 Lakhs along with interest @ 18% p.a., the total amount being Rs.1,75,70,500/- along with 18% p.a., w.e.f. 11.07.2007 with *pendente lite* and future interest.

17. The ***defendant in the Written Statement***, took the preliminary objections that the present Suit is *an abuse of the process of law*, intended to harass and malign the name of the defendant. The plaintiff had intentionally *concealed the material facts* in order to get the illegal benefits. Also, the Suit is *barred by limitation*. Moreover, Suit is not maintainable as there is *no privity of contract* between the plaintiffs and the defendant. Furthermore, *PPL was a necessary party to the present Suit*, who have not been impleaded only with an attempt to project an incorrect situation for recovery of the amount paid by PPL, for settlement of its dues towards the loan/credit facilities obtained from the defendant. It is also claimed that the *inter se* arrangement between PPL and the plaintiffs for discharge of the dues of PPL to defendant, is being projected otherwise, to suit the need of the plaintiffs.

18. ***On merits, the defendant*** has admitted that PPL had approached for settlement of the dues of PPL but claimed that it arranged the payment of the settlement amount through plaintiff No. 1/Deism Enterprises. The defendants *vide* its Letter dated 05.09.2007, informed PPL that the defendant is agreeable in principle for settlement of dues in the sum of Rs. 36,00,00,000/-. It was specifically made clear to PPL that the settlement is subject to making complete payment of Rs. 36,00,00,000/- in total and it was also made clear that *No Due certificate* would only be issued to PPL, after the receipt of entire payment towards full and final settlement. M/S PPL however, failed to abide with the terms and conditions of the Settlement and the complete payments were not made. The defendant,



therefore, *vide* its Letter dated 01.05.2008, revoked the Settlement with PPL. The amount arranged by PPL through the plaintiffs, was their internal arrangement with which the defendant had no concern. The amounts received from the plaintiffs was adjusted towards a liability of PPL for which due credit was given to PPL.

19. It is denied that the plaintiff No. 1 sent any reminder dated 21.08.2007, to the defendant. Even otherwise, it is claimed that such reminder would not make any difference as the plaintiffs had no cause of action as there was no privity of contract with the answering defendant. It is further claimed that as per the terms of the Settlement, the defendant was duly entitled to appropriate all the amounts in case the terms of OTS were not complied or default was committed. Because of the failure to comply with the Settlement terms, the defendant revoked the Settlement and appropriated the amounts so paid.

20. *It is thus, claimed that there is no cause of action against the defendant and the Suit is liable to be dismissed.*

21. The ***plaintiffs in their Replication***, have reiterated their assertions made in the Plaint and denied the averments raised in the Written Statement. It is claimed that by no stretch of imagination, the defendant could have adjusted the money received from the Plaintiffs towards the due of PPL. In the absence of any legal or contractual liability, the plaintiff was under no obligation or compulsion to make part-payments on behalf of PPL, to the defendant. The payment of Rs.112 Lakhs, was towards the payment of price for assignment of debt and not towards partial discharge of the liability of M/s PPL.



22. The issues on the pleadings, were framed on 19.08.2013, which are as under: -

- (i) *Whether the suit is bad for non-joinder of necessary party? OPP*
- (ii) *Whether the Plaintiffs are entitled to refund of the monies paid to the defendant? OPP*
- (iii) *Whether there was any agreement between the parties whereby the Defendant accepted Plaintiff's offer for purchase of outstanding loan of Parekh Platinum Limited? OPP*
- (iv) *Whether the Plaintiffs are entitled to pre-suit, pendent lite and future interest on the principal sum claimed? If so at what rate? OPP*
- (v) *Relief.*

23. On 19.08.2013, while framing issues, it was observed that the time taken by the Plaintiffs in prosecuting the Writ Petition and the LPA is excluded for the purposes of limitation, and consequently, the plaintiff's application, I.A. No. 14038 of 2010, for condonation of delay was allowed.

24. The plaintiffs in support of their case, examined **PW-1 Ms. Shubhada Prakash Gawde**, Chairperson and Managing Director of plaintiff No. 2, who tendered the affidavit of evidence as Ex. PW-1/A. She relied on documents Ex. P1 to Ex. P10. She also proved the documents as Ex. PW-1/1 to Ex. PW-1/4, in support of her testimony.

25. The defendant examined **DW-1, Ms. Trina Tejaswini**, the AGM (Law) of the defendant, who tendered her evidence by way of affidavit as



Ex. DW-1/A. She relied upon the documents Ex. DW-1/1 to Ex. DW1/5, in support of her defence.

26. Arguments heard and the written submissions as well as the evidence perused. My issue wise findings are as under: -

Issue No. 1 *Whether the suit is bad for non-joinder of necessary party? OPP*

27. It is the case of the plaintiffs that the plaintiff No. 1 offered the defendant, to purchase the outstanding liabilities of PPL by making the payments of Rs.5.46 Crores, in accordance with the OTS that defendant had arrived at with PPL. It also offered to pay the 10% of the said amount immediately on receipt of the Acceptance letter and balance 90% to be paid by six monthly instalments, within a period of 12 months.

28. The preliminary Objection has been taken by the defendant that it had negotiated with PPL who had the outstanding liability and to whom the OTS had been offered. There was *no privity of contract with the plaintiffs* and the M/S PPL has not even been joined as a party in any of the transaction/ negotiations carried out between the plaintiffs and the defendant.

29. However, in this context, it is important to refer to the cross-examination of DW-1, a relevant part of which reads as under: -

“Q. Is it correct that the defendant assigns the loan account of its borrower to third parties?”

A. It depends upon case to case. Vol. It is generally in the cases of settlement where the borrower brings a strategic investor to settle the loan account.



Q. Is it correct that defendant does not require consent of the borrower for assigning the loan account to a third party?

A. It is correct."

30. From the admissions made by the DW-1, Ms. Trina Tejaswini, it is evident that for assignment, the consent of the original borrower, is not mandatory. Therefore, the plea taken that these negotiations were carried out without taking PPL in the loop, is irrelevant and immaterial. The defendant was well within its rights to assign the loan to a third party as was being transacted in the present case. Therefore, PPL was not a necessary party for negotiations in regard to the transfer of its Loan to the plaintiffs. The plaintiffs were independently negotiating with the defendant and their Claim is limited to recovery of amounts given to the defendant during the negotiations for purchase/assignment of Loan liability of M/S PPL.

31. ***It is, therefore, held that PPL was not a necessary party and the suit is not bad for non-joinder of necessary party.***

32. ***Issue No. 1 is decided in favour of the plaintiffs.***

Issue No. 2: *Whether the Plaintiffs are entitled to refund of the monies paid to the defendant? OPP*

Issue No. 3: *Whether there was any agreement between the parties whereby the Defendant accepted Plaintiff's offer for purchase of outstanding loan of Parekh Platinum Limited? OPP*

33. Admittedly, PPL had outstanding loans with the defendant which it was not able to pay, though it was negotiating to enter into an OTS to pay off its liabilities. In this regard, reference may be made to the Letter dated 07.05.2007, Ex-P10, which has been written by plaintiff No. 1 to the



defendant indicating that the plaintiff No. 1 believes that the defendant has already negotiated an OTS with PPL and that plaintiff No. 1 has agreed with PPL to offer to provide funds for the settlement of their dues and sought assignment of the entire loan titles of PPL in favour of plaintiff No. 1.

34. Further, negotiations took place between the plaintiff No. 1 and the defendant *vide* Letter dated 10.07.2007, Ex.PW-1/1 wherein the plaintiff No. 1 referred to telephonic conversation on 10.07.2007 with the defendant, wherein it had informed the plaintiff about having accepted their offer for purchase of outstanding loan of M/s PPL at 10% of the principal outstanding amount i.e. Rs.5.46 Crores only. Plaintiff No. 1 *vide* its Letter dated 10.07.2007, Ex.PW-1/1, also sought an Acceptance Letter in lieu of the offer of plaintiff No. 1 to purchase the outstanding loan of PPL, on payment of Rs.5.46 Crores.

35. Further, to establish its *bona fides*, plaintiff No. 1 as asked by the defendant, tendered two cheques bearing No. 345001 and 345002 dated 11.07.2007 and 18.07.2007 in the sum of Rs. 50,00,000/- and Rs. 59,00,000/- respectively, as a token of their Agreement to buy the outstanding loans which were admittedly encashed by the defendant.

36. In the meanwhile, the plaintiff No. 1 assigned its proposal to the plaintiff No. 2, Wrinkle Enterprises Pvt. Ltd. and informed the defendant about the same, by writing a Letter dated 03.10.2007, Ex.PW-1/2. Earlier the loan negotiations were being done by the plaintiff No. 1, later the same was transferred to the plaintiff No. 2. Consequently, plaintiff No. 2 took the offer further and made payment of Rs. 3,00,000/- by Cheque No. 472653 dated 03.10.2007 along with the covering Letter dated 03.10.2007 Ex. P-8, which was also encashed by the defendant. Plaintiff No.2 *vide* another Letter



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of the same date i.e. 03.10.2007, Ex. P-9, issued two additional post-dated cheques each of Rs. 50,00,000/- bearing No. 472651 and 472652 dated 25.10.2007 and 05.11.2007, as the further instalments for purchase of the loan. However, these two cheques on presentation, were dishonoured about which the defendant informed the PPL, *vide* Letter dated 03.01.2008, Ex. P-7.

37. It is pertinent to observe that while the defendant was negotiating for selling the loan to plaintiffs No. 1 and 2, it simultaneously communicated to PPL about the dishonour of two cheques even though these two cheques had been tendered by plaintiff No. 2, as a part of consideration for purchase of the loan of PPL. Pertinently, the Defendant *vide* letter dated 01.05.2008 had revoked the settlement offered *vide* letter dated 05.09.2007 to M/S PPL and restored the terms and conditions of the original Loan Agreement.

38. However, undeterred and undefeated, the plaintiff No. 2 then wrote a Letter dated 29.07.2009, Ex.P-6, to the defendant again in regard to the assignment of facilities given by IFCI to PPL, in favour of the plaintiff No. 2, M/s Wrinkle Enterprises Pvt. Ltd., together with all the underlying security interests and all right, title and interest in the Agreement Deeds, documents in relation to and in connection with the facilities. It stated that it had agreed to purchase the loan for a lumpsum amount of Rs.11.5 Crores, which was detailed to be paid, in the manner stated in the said letter. The other terms of offer to purchase the loan, were also stated in the said letter.

39. The plaintiff No. 2 wrote a subsequent letter dated 19.08.2009, Ex. P-5, which recorded that the defendant had some concerns regarding certain aspects listed in the letter, which the plaintiff No. 2 agreed to modify. It was further indicated that since their Overseas Principal, is also an institution of



which the approval was required, the revised proposed lines in requirement of defendant, can be sent only by 10.09.2009. This was followed by a Letter dated 24.08.2009, Ex. P-4, wherein a fresh proposal was given. However, this proposal was rejected by the defendant *vide* its Letter dated 24.08.2009, Ex. P-3. It was stated in the Letter that such conditional proposal was not acceptable to the defendant. The entire assignment amount was required to be paid within September 2009 and also at the time of convening the approval for assignment, a payment of 25% of the assignment amount, needs to be deposited and the balance amount to be paid within next seven days.

40. The proposal as suggested by the plaintiff No. 2, thus got rejected by the defendant. The plaintiff No. 2 responded to this Letter *vide* its Letter dated 25.08.2009, Ex. P-2, and indicated that they had already deposited Rs.112 Lakhs, towards settlement with the defendant on a verbal commitment, though no documents or supporting action were received from the defendant. It was further indicated that the commitments as orally agreed, were put in writing and sent in the form of a proposal on 24.08.2009 and a request was made to reconsider the proposal. Once it did not receive any favourable response from the defendant, it sought the return of Rs.112 Lakhs, which have been paid by it, on the understanding of assignment of the loan of PPL to it.

41. It was also noted that despite being in discussions for purchase of the loan of PPL by the plaintiffs, the defendant has simultaneously invoked SARFAESI Act on 03.09.2009 and taken possession of the properties of the PPL. Therefore, the return of Rs.112 Lakhs along with 18% p.a. was sought by the plaintiffs.



42. From the aforesaid discussion, it is established that the plaintiffs were negotiating with the defendant, for purchase of the outstanding loan of PPL and in furtherance of their proposals, had even paid Rs.112 Lakhs. However, the said proposal did not get accepted by the defendant. Since the money was given to the defendant to show credibility and willingness of the plaintiff to enter into an Agreement with the defendant, which never got materialised, as established by the various correspondence between the parties. The defendants are liable to return this amount on account of the failed Agreement; it could not have unilaterally appropriated the amounts received from the Plaintiffs unilaterally for the settlement of loans of third party (PPL). It is, therefore, held that the defendant is liable to return Rs.112 Lakhs, to the plaintiff No. 2, to whom this amount had been assigned by the plaintiff No. 1 *vide* Letter dated 03.10.2007, Ex.PW-1/2.

43. ***Issue No. 2 & 3 are decided in favour of the Plaintiffs.***

Issue No. 4: *Whether the Plaintiffs are entitled to pre-suit, pendent lite and future interest on the principal sum claimed? If so at what rate? OPP*

44. Since, the cheques dated 11.07.2007 and 18.07.2007 for Rs. 50,00,000/- and for Rs. 59,00,000 and another cheque Rs. 3,00,000/- had been given in October 2007 it is hereby held that the plaintiffs are entitled to interest @7% p.a. from October 2007, till the date of payment.

45. ***The Issue No.4 is decided accordingly.***

RELIEF

46. The plaintiffs are entitled to recover the amount of Rs.112 Lakhs along with interest @7% p.a., from October 2007, till the date of payment.



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47. The Suit is hereby decreed in the aforesaid terms. Parties to bear their own costs. Decree Sheet be drawn, accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

AUGUST 07, 2024/RS