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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 26th November, 2024*+ **C.R.P. 281/2019 & CM APPL. 52484/2019**

KEN V.C. HUNG & ANR

.....Petitioners

Through: Mr. Anil Kher, Sr. Advocate with Mr.
Kunal Kher, Advocate.

versus

VED PRAKASH SHARMA (DECEASED) THR LRS

.....Respondent

Through: Mr. Anupam Dwivedi, Advocate
through VC.

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+ **C.R.P. 282/2019 & CM APPL. 52509/2019**CEC INTERNATIONAL CORPORATION (INDIA) PVT LTD &
ANR

.....Petitioners

Through: Mr. Anil Kher, Sr. Advocate with Mr.
Kunal Kher, Advocate.

versus

VED PRAKASH SHARMA (DECEASED) THR LRS

.....Respondent

Through: Mr. Anupam Dwivedi, Advocate
through VC.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Revision Petitions under *Section 115 of the Code of Civil Procedure, 1908* (hereinafter referred to as "CPC, 1908") have been filed on behalf of Petitioner-Ken V.C. Hung (Defendant No. 4 in the main Suit), Petitioner-Nita Ing (Defendant No. 3 in the main Suit), Petitioner-CEC International Corporation (India) Pvt. Ltd. (Defendant No. 1 in the main Suit) (hereinafter referred to as "CICI") and Petitioner-Sunil Shinde



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(Defendant No. 2 in the main Suit) challenging the Orders dated 11.07.2019 and 24.09.2019 *vide* which the Application under *Order VII Rule 11 of CPC, 1908* filed by Defendant No. 1-CICI and Defendant No. 2-Sunil Shinde seeking rejection of the Suit, *and* Application under *Order I Rule 10 of CPC, 1908* filed by Defendant No. 3, Nita Ing and Defendant No. 4-Ken V.C. Hung seeking deletion of their names from the array of Parties, have been dismissed.

2. The Suit under *Order XXXVII of CPC, 1908* for *Recovery of Rs. 45,20,126/- with interest and mesne profits* had been filed on behalf of the Respondent/Plaintiff.

3. The Application under *Order VII Rule 11 of CPC, 1908* had been filed by Defendant No. 1-CICI and Defendant No. 2-Sunil Shinde seeking rejection of the Suit. The ground taken was that according to the Plaint, the Respondent/Plaintiff entered into a Sub-Contract with M/s Continental Engineering Corporation (*hereinafter referred to as "CEC"*), a Company incorporated in Taiwan, China. The same is also evident from the copy of the Legal Notice dated 11.08.2015 which had been sent by the Respondent/Plaintiff, wherein the said Notice was addressed to CEC, a Company incorporated in Taiwan.

4. It is claimed that in the Recovery Suit, the Indian Entity/Defendant No. 1-CICI, has been impleaded as Defendant No. 1 with whom there is no privity of Contract. Furthermore, the Defendant No. 3-Nita Ing (Chairman of CEC) and the Defendant No. 4-Ken V.C. Hung (President of CEC) have been impleaded, who have no concern with the Indian Entity i.e., CICI.

5. It is submitted that there is no cause of action disclosed against the Petitioners/Revisionists and the Suit is liable to be rejected.



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6. Another Application under *Order I Rule 10 of CPC, 1908* was filed by Defendant No. 3-Nita Ing and Defendant No. 4-Ken V.C Hung, seeking deletion of their names from the array of parties, since they have no concern with Defendant No. 1-CICI.

7. The learned District Judge *vide* impugned Order dated 11.07.2019 rejected both the aforesaid Applications by observing that as per the case of the Respondent/Plaintiff, there was some Contract with Defendant No. 1-CICI and various Work Orders had been executed by Defendant No. 1-CICI in favour of the Respondent/Plaintiff for various Works and thus, a sum of Rs. 45,20,126/- was due and outstanding.

8. The learned District Judge had further observed that as per the averments made in the Plaint, the Respondent/Plaintiff had entered into a Sub-Contract with CEC and since the Defendant No. 1-CICI is a concern Company of CEC, it cannot be said that there was no privity of Contract. Moreover, the Indemnity Bonds had been executed by CEC as well as Defendant No. 1-CICI. Since Defendant No. 2-Sunil Shinde is the Managing Director of CICI, therefore his name cannot be deleted.

9. It was also observed by the District Judge that the Defendant No. 3-Nita Ing and the Defendant No. 4-Ken V.C. Hung, are the Chairman and President of CEC, respectively. They are a necessary and proper party and therefore, their names cannot be deleted from the array of parties.

10. The Application under *Order I Rule 10 of CPC, 1908* was, therefore, rejected.

11. Aggrieved by the impugned Orders dated 11.07.2019 and 24.09.2019, the present Revision Petitions have been filed on behalf of the Revisionists.



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12. It is submitted on behalf of the Revisionists that CEC is a foreign Entity i.e., a Company which is incorporated in Taiwan. The CEC has a subsidiary Company in India i.e., CICI.

13. It is argued that the foreign Entity and the Indian subsidiary are two separate Entities and cannot be considered as one, for which reliance has been placed on the decisions in Indowind Energy Limited vs. Wescare (India) Limited and Another, (2010) 5 SCC 306, JSL Limited vs. Ariba India Pvt. Ltd. & Another, 2010 SCC OnLine Del 3964 and Raj Cylinder and Containers Pvt. Ltd. vs. Hindustan General Industries and Ors., decided vide RFA (OS) 5/1999 by this Court.

14. It is further argued on behalf of the Revisionists that the Respondent/Plaintiff himself has relied upon the Sub-Contract, the perusal of which would show that the Sub-Contract was with CEC, a Company incorporated in Taiwan and not with CICI, which an Indian Entity of CEC. This is fortified from the Legal Notice dated 11.08.2015 that was sent by the Respondent/Plaintiff. The said Notice was addressed to CEC and not to CICI. From the documents relied upon by the Respondent/Plaintiff itself, it is evident that there is no privity of Contract between the Respondent/Plaintiff and the Defendant No. 1-CICI, the Indian Entity and therefore, the Suit is liable to be rejected.

15. It is also argued on behalf of the Revisionists that Defendant No. 1-CICI, the Indian Entity (who is not privy to the contract) and the Defendant No. 3-Nita Ing, Defendant No. 4-Ken V.C. Hung (who are claimed to be Chairman and President of CEC, the foreign entity, respectively) - are neither necessary nor proper party to the present Suit, and their names must be deleted.



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16. *Learned counsel for the behalf of the Respondent/Plaintiff* has submitted that the learned Trial Court has rightly appreciated that the Indemnity Bonds have been not only signed by the Defendant No. 1-CICI, but also by CEC and, therefore, there is a privity of Contract and the learned Trial Court has rightly rejected the Applications under *Order VII Rule 11 of CPC, 1908* and under *Order I Rule 10 of CPC, 1908*.

17. Submissions heard.

18. The Respondent/Plaintiff, Proprietor of M/s Tulsi Enterprises, entered into a Sub-Contract with CEC, which has its Headquarters in Taiwan, which has a leading Construction and Engineering Contractor Company in the name of CICI, based in Delhi.

19. Further, in the Legal Notice dated 11.08.2015, it is clearly mentioned that the Respondent/Plaintiff entered into a Sub-Contract with CEC for Work Orders. Similar are the averments made in the Plaint. However, instead of making CEC a party, the Suit has been filed against CICI, the Indian entity. It is evident that the Contract was with CEC, Taiwan and not with CICI and, therefore, there is no privity of Contract.

20. In Indowind Energy Limited, (supra), it has been clearly explained that where there are two independent Companies incorporated, then each Company is a separate and distinct legal entity and mere fact that two Companies have common shareholders or common Board of Directors, it would not make two Companies a single entity. The mere fact that one Company is described as the nominee of the second Company or as a Company promoted by the second party or that the Agreement was purportedly entered by one Company on behalf of other Company, would not make the other Company a party in the absence of a ratification,



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approval, adoption or confirmation of the Agreement dated 24.02.2006, by Indowind.

21. Similar facts, as in hand, were considered in *JSL Limited*, (supra), wherein it was observed that that the documents relied upon by the Plaintiff must be considered to ascertain the true facts. In the said case, the Defendant No. 1 was a Company incorporated in India which had a separate entity from Defendant No. 2, a foreign Company. The Agreement in question was executed only between the Plaintiff and the Defendant No. 1, to which the Defendant No. 2 was not a party. No provision of Companies Act makes the *Holding Company* liable for the breach of Contract by its Indian subsidiary. Therefore, the cause of action could have been only against the Defendant No. 1.

22. *In the present case as well*, both the Sub-Contract and the Legal Notice clearly reflect that the Sub-Contract was between the Respondent/Plaintiff and CEC, a Company incorporated in Taiwan (foreign Entity) and not with the Defendant No. 1-CICI. Further, some Managing Director may be common or the mailing address of the two Companies may be same, but that does not create any cause of action against Defendant No.1, the Indian Entity. There being no privity of Contract between the Respondent/Plaintiff and the Defendant No.1-CICI, and there is no subsisting cause of action arising out of the Sub-Contract *inter se* the parties.

23. Also, Defendant No. 3-Nita Ing and the Defendant No. 4-Ken V.C. Hung, are the Chairman and President of CEC, respectively cannot be sued without suing the Company. The Application under *Order I Rule 10 CPC* is also liable to be allowed.

24. So being the case, the impugned Order dated 11.07.2019 is hereby set



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aside and the Application under *Order VII Rule 11 of CPC, 1908* is allowed and the Suit of the Respondent/Plaintiff is hereby rejected as not disclosing any cause of action against the Respondent No.1.

25. Accordingly, the Revisions Petitions along with pending Applications are hereby disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 26, 2024
S.Sharma