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

% ***Decided on: 07th February, 2023***

\+ **CS(COMM.) 444/2021**

SANDEEP SINGH
F-14, Green Meadows,
Saharpur Extn., Khasra No.544,
Opp. Mallu Farm, Chhatarpur,
New Delhi - 110 074

..... Plaintiff

Represented by: Mr. A. Maitri and Ms. Radhika, Advocate.

versus

HINDUSTAN SPIRITS LTD.
Through its
Chairman/Managing Director/CEO
D-10/1, Phase-I, Okhla,
New Delhi - 110 020

Also at:
402, 4th Floor,
Solitaire Plaza,
M.G. Road, Gurgaon,
Haryana - 122 002.

Also at:
10-A, New Mandi,
Muzaffarnagar-251 001
Uttar Pradesh.

Also at:
D-136, Gayatri Sadadan,
Opposite Meena Petrol Pump,
Laxmi Narayan Puri,
Suraj Pole, Jaipur,
Rajasthan - 302 003.

Also at:
Village - Paniyala,
Tehsil - Kotputli,
Distt. - Jaipur,
Rajasthan - 303 108.

..... Defendant
Represented by: Mr. Tanmaya Mehta, Advocate

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T

NEENA BANSAL KRISHNA, J.

I.A. 3017/2022 *(U/O XII Rule 6 r/w Section 151 of CPC, 1908)*

1. The present application under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 *(hereinafter referred to as* "CPC, 1908"*)* has been filed on behalf of the plaintiff seeking a Decree in the sum of Rs. 6,97,00,000/- along with interest @ 18% per annum pre-litigation, *pendente lite* and future interest @ 18% per annum.

2. It is submitted in the application that the plaintiff had given advances to the defendant Company as loan, by way of bank transfer/ RTGS/ NEFT. An amount of Rs. 18,38,27,000/- was given during the period from 03rd January, 2014 to 01st August, 2018 to the defendant Company. After giving an adjustment of the repaid amount, an amount of Rs. 7,06,65,844/- along with interest@ 18% per annum amounting to Rs. 10,66,09,541/- till 30th September, 2019 is payable.

3. It is asserted by the plaintiff that the defendant in its Written Statement has made clear, unambiguous, unconditional acknowledgement of the liability. It has disputed only an amount of Rs.1,61,00,000/-, even though

it had been paid by the defendant by way of bank transfers/RTGS/NEFT/bank cheques. The defendant-Company has made unequivocal admissions in paragraph 17 and 21 in respect of its liability to pay the sum of Rs. 6,97,00,000/-out of the claimed amount. Hence, a prayer has been made that a Decree in respect of the admitted amount of Rs. 6,97,00,000/- along with the interest @ 18% per annum may be made.

4. **The defendant in its response** has asserted that there is no admission of any kind made by the defendant which would entitle the plaintiff to a Decree on admissions; rather the defendant has filed a counter-claim claiming various amounts and has also sought adjustment/set-off.

5. It is denied that the amounts which are claimed by the plaintiff were advances as loan. It is asserted that infact the amounts were actually investments and the plaintiff is not entitled to the said amounts. It is submitted that the detailed defence is mentioned in the Written Statement which may be read as part and parcel of this application, which may be dismissed.

6. **Submissions heard.**

7. This application for judgement under Order XII Rule 6 of CPC, 1908 has been filed by the plaintiff seeking decree of Rs.6,97,00,000/- in the light of unambiguous and categorical admissions made by the defendant. Before embarking on the merits of the case, it would be pertinent to first highlight under what circumstances a decree can be made under Order XII Rule 6 of CPC.

8. Hon'ble Supreme Court in *Himani Alloys Ltd. Vs. Tata Steel Ltd.* (2011) 7 SCR 60 had observed that Order XII Rule 6 CPC is an enabling provision and the court has to exercise its judicial discretion after

examination of facts and circumstances, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore, unless the admission is clear, unambiguous and unconditional, the discretion should not be exercised to deny the valuable right of a defendant to contest. It is only when the admission is clear that it may be acted upon. Similar observations were made by the Supreme Court in the case of *M/s Jeevan Diesels & Electrical Ltd.* (2010) 6 SCC 601.

9. The Division Bench of Delhi High Court in *Vijay Myne vs. Satya Bhushan Kaura*, 142 (2007) DLT 483 (DB) explained the scope of Order XII Rule 6 of CPC as follows: -

> *"12. ...Purpose would be served by summarizing the legal position which is that the purpose and objective in enacting the provision like Order 12 Rule 6, CPC is to enable the Court to pronounce the judgment on admission when the admissions are sufficient to entitle the plaintiff to get the decree, inasmuch as such a provision is enacted to render speedy judgments and save the parties from going through the rigmarole of a protracted trial. The admissions can be in the pleadings or otherwise, namely in documents, correspondence etc. These can be oral or in writing. The admissions can even be constructive admissions and need not be specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case. No doubt, for this purpose, the Court has to scrutinize the pleadings in their detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous. In*

> *the process, the Court is also required to ignore vague, evasive and unspecific denials as well as inconsistent pleas taken in the written statement and replies. Even a contrary stand taken while arguing the matter would be required to be ignored."*

10. The Division Bench of Delhi High Court in *Delhi Jal Board v. Surendra P. Malik*, 104 (2003) DLT 151 laid down the following tests: -

> *"9. The test, therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment."*

11. In *Rajeev Tandon &Anr. Vs. Rashmi Tandon* CS (OS) 501/2016 decided by Delhi High Court on 28.02.2019 it was held that while considering an application under Order XII Rule 6 CPC the court can ignore vague and unsubstantiated pleas.

12. In *Abbot India Ltd. Vs. Rajinder Mohindra* (2014) 208 DLT 201 it was held that once it is found that there was no defence, merely because a bogey thereof is raised at the stage of framing of issues or upon the respondents/ plaintiffs filing an application under Order XII Rule 6 of the CPC, would not call for framing of an issue.

13. In *A.N. Kaul Vs Neerja Kaul &Anr.* 2018 SCC OnLine Del 9597 it was observed that even if there is no express admission in the written statement but an intelligible reading of the written statement shows propositions or pleas taken to be not material and no issue to be arising therefrom, the Court is still entitled to pass a decree forthwith.

14. In *Anil Khanna Vs. Geeta Khanna* 2013 SCC OnLine Del 3365, Hon'ble High Court of Delhi had observed that the preliminary objections are based on legal advice, the same are not reply on merits wherein the party is required to plead facts specifically. In the preliminary objections parties can even take contrary pleas and same would not amount to an admission. Further, the facts stated in the preliminary objections are without prejudice and do not constitute reply on merits and the averments cannot be read in isolation. Further, in the verification it is clearly stated that the averments in the preliminary objections are believed to be true on the basis of legal information.

15. Having discussed the law, it requires no reiteration that for the judgement to be based on admissions, the admissions have to be unequivocal and unambiguous leading to no other conclusion but to a decision in favour of the plaintiff.

16. In this background, the facts of the present case need to be examined.

17. The plaintiff has asserted that he is a family friend of Anejas who are the Directors in the defendant Company which is doing various businesses. The plaintiff has claimed that he gave loan/financial assistance on regular basis and a sum of Rs. 18,38,27,000.00/- was given during the period from 03rd June, 2014 to 01st August, 2018 through bank transfers/NEFT/RTGS/bank cheques. The loan amount is clearly reflected in

the ledger accounts of the plaintiff maintained in the name of the defendant Company. Part payments have been made by the defendant totaling to Rs.11,31,61,156.00/-. After adjusting amounts paid from time to time, a sum of Rs.7,06,65,844/- remains to be paid. The only amount that has been disputed is Rs. 1.61 crores. After deduction of this amount, Rs.7,06,65,844/- still remains due along with interest @ 18% per annum which amounts to Rs.10,66,09,541/-.

18. The plaintiff has further asserted that the defendant Company a duly registered Company under the Company's Act is mandatorily required to maintain its accounts, balance sheets and under no circumstances can the accounts be falsified by the defendant Company. On inspection of the Defendant Company's balance sheet in the office of ROC (Registrar of Companies), it has been revealed that massive bungling in the accounts of the defendant Company has been committed and false balance sheets have been filed before ROC simply to commit the fraud upon the plaintiff. The balance sheets show an amount of Rs.12.92 Crore payable to plaintiff on 31st March, 2017. An amount of Rs.7.49 Crore is shown to have been paid during the Financial Year 1st April, 2017 till 31st March, 2019, but the balance sheet ending on 31st March, 2018 shows that only Rs.13.23 lakhs is payable to the plaintiff. The plaintiff has claimed that the defendant Company has committed fraud upon the plaintiff. A Notice dated 17th October, 2019 was sent to the defendant Company, but in response to the said Notice defendant Company has sent an evasive reply, which itself shows that defendant has no intention to pay the claimed amount.

19. The plaintiff was constrained to initiate proceedings of insolvency under Section 9 of Insolvency & Bankruptcy Code, 2010 before NCLT

Chandigarh bench, but the said proceedings did not result in the payment of the loan amounts of the plaintiff.

20. The **first aspect** which deserves a comment is that the plaintiff has claimed that he had given loans to the defendant Company, as Anejas who are the Directors of the Defendant Company and are close friends. As against this claim, it may be significant to refer to the Written Statement, wherein it is asserted that the plaintiff for the reasons best known to him alone, has hidden the most vital fact that he was himself a Director as well as approximately 47% shareholder in the defendant-Company since 2014 till 2018. Given the equal stake of the plaintiff and the Aneja family in the defendant-Company, there was a clear Agreement between the defendant-Company, Aneja family and the plaintiff which was encompassed partly in a written agreement and partly verbally with the oral agreement not in any manner being contradictory to the terms of the written agreement, rather being a supplementary to the agreement. The understanding was in the following terms: -

> *"(i) All losses and expenses would be shared equally between the plaintiff on the one hand and the Aneja family on the other, and the Company's coffers and accounts will be replenished with funds in proportion to the shareholding of the plaintiff and the Aneja family. It may be noted that the shareholding of the plaintiff and the Aneja family was equal and translated into 44.4% shareholding each in the defendant Company (as a small percentage of 6% was owned by some of the previous shareholder i.e., the Kamboj family);*
> *(ii) Apart from loses and expenses, the shareholder would contribute monies to the Company in proportion to their shareholding to*

enable the Company to repay bank credit and loans."

21. It was understood and agreed that the Company would have a claim against the shareholders in proportion to their shareholding and if as a result of failure of one shareholder, the other shareholder had to replenish the accounts of the Company for either replenishing losses or expenses or paying bank loans, credit etc. then, they would be jointly and severally have a claim against the default shareholder to the extent of a shortfall in replenishing losses or funds to enable payment of bank loans and the credits.

22. It has been further claimed that because of this special characteristics of the defendant-Company of being a closely held Company that shareholding being held primarily by Aneja family and the plaintiff, it continues to be in the natures of the family Company and *quasi* partnership. Hence, the special arrangements and equity principles akin to partnership principles where mutual understanding and arrangements on which the Company was to be run which are significant, paramount and binding on the Company as well as the shareholders. The decision of the House of Lords in *Ebrahimi vs. Westbourne Galleries Ltd.* 1972 2 All ER 492, laid down the principles which were endorsed by the Hon'ble Supreme Court in *Hind Overseas Pvt. Ltd. vs. Raghunath Prasad Jhunjhunwalla* 1976 2 SCR 226. Lord Wilberforce observed that while a Limited Company is more than a mere judicial entity, with a personality in law of its own: that there is room in Company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations *inter se* which are not necessarily submerged in the Company structure. That structure is defined by the Companies Act, 1948 and by the Articles of Association by

which shareholders agree to be bound. In most Companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the Company is large or small. The *'just and equitable'* provision does not, as the defendant suggests, entitle one party to disregard the obligation he assumes by entering in a Company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations that is of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way. Such indicators are, namely:

> *(i) an association formed or continued on the basis of a personal relationship, involving mutual confidence – this element will often be found where a pre-existing partnership has been converted into a limited company;*
>
> *(ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business; and*
>
> *(iii) restriction on the transfer of the members' interest in the company – so that if confidence is lost, or one member is removed from management he cannot take out his take and go elsewhere.*

23. In the present case, the defendant has not denied that a total sum of Rs.18,38,27,000/- had been credited to the account of the defendant

Company from the period 03rd January, 2014 to 01st August, 2018 by the plaintiff but has asserted following defences:

(i) The amount was admittedly shown as loan in the accounts of the defendant, but in fact was by nature of an investment by Shri Sandeep Singh the Director of plaintiff Company by way of investments to infuse funds in the defendant Company since Shri Sandeep Singh was a Director in the defendant Company having approx. 47% shareholding;

(ii) The oral understanding between the parties was that the Company would return the money to the extent possible;

(iii) The due amounts is liable to be adjusted towards meeting the liability towards bank loans etc to the extent of the shareholding of Shri Sandeep Singh; and

(iv) The amounts found due from the defendant Company are liable to be adjusted against the counter-claim/ set off of the defendant Company.

24. There are specific defences taken by the defendant in regard to the nature of transactions which cannot be termed as an unequivocal or admission of liabilities by the Company.

25. The **second aspect** which emerges from the plaint itself is that: -

(i) On inspection of defendant-Company's balance sheets filed in the Office of ROC (Registrar of Companies), it was found that

massive bungling in the account books of the defendant-Company has been done;

(ii) the Balance Sheet as on 31st March, 2017 reflected that a sum of Rs. 12,92,00,000/- was payable to the plaintiff;

(iii) the balance sheet further reflected that a sum of Rs. 7,49,00,000/- was repaid during financial year 01st April, 2017 till 31st March, 2018 and only a sum of Rs. 13,23,000/- was payable as on 31st March, 2018.

26. It is claimed that these bank statements are false, frivolous and fabricated balance sheets which have been placed before the Registrar of Companies.

27. The plaintiff himself has stated in the plaint that as per the balance sheets of the defendant only a sum of Rs.13,23,000/- is shown as payable to the plaintiff on 31st March, 2018. If the documents of the defendant and the claim of the plaintiff reviewed, it cannot be said that there is any unequivocal admission of the liability of the defendant to pay the plaintiff as claimed.

28. The other aspect is that the plaintiff, in order to substantiate its claim has relied upon its his own bank ledger accounts of the defendant-Company.

29. Learned counsel on behalf of the plaintiff has placed reliance on the decision of the Hon'ble Supreme Court in *Asset Reconstruction Company vs. Bishal Jaiswal &Anr.* Civil Appeal No. 323/2021 decided on 15th April, 2021. In the said judgement, reference was made to the *Consolidated Agencies Ltd. Vs. Bertram Ltd.* (1964) 3 All. E.R. 282, wherein the Privy Council had recognized that the balance sheets could in certain circumstances, amount to acknowledgements of liability. It cannot, however,

be said as a general proposition of law that statements in balance sheets of a Company would always operate as acknowledgement of liability.

30. In *Beni vs. BisanDayal* AIR (1925) Nag. 445, it was observed that entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself when he chooses to write in his own books behind the back of the parties.

31. In *Hira Lal vs. Ram Rakha* AIR (1953) Pepsu 113, a reference was made to Section 34 of the Indian Evidence Act and the Court observed that the entries in books of account regularly kept in the ordinary course of business are relevant whenever they refer to a matter in which the Court has to enquire, but it is subject to salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. Therefore, merely that the books of accounts have been maintained regularly in the course of business, would not be sufficient to draw any conclusion of concluded liability against the defendant. It was further observed that such entries are only corroborative evidence and it is to be shown further by some independent evidence that the entries represent honest and real transactions and that money was paid in accordance with those entries.

32. In *Durga Builders (P) Ltd. vs. Motor and General Finance Ltd. &Ors.* MANU/DE/4794/2013, this Court observed that the alleged admissions of a liability in the balance sheet can be explained and these issues must be put to trial.

33. In *R. Janakiraman vs. State* AIR 2006 SCC 697, the Hon'ble Supreme Court observed that the bar to Section 92 of the Evidence Act, 1872 to explain any contents of a written document does not apply. Bar of leading

oral evidence to explain the contents of a document under Section 92 of the Evidence Act, 1872 does not bar oral evidence to show that a transaction under a particular document is sham or fictitious or nominal, or not intended to be acted upon.

34. The Hon'ble Supreme Court in *Central Bureau of Investigation vs. V.C. Shukla &Ors.* (1998) 3 SCC 410, held that even correct and authentic entries in books of account cannot, without independent evidence of their trustworthiness, fix a liability upon a person.

35. So are the facts in the present case, wherein the plaintiff is relying on his own bank account and ledger accounts created by him on which he cannot claim an unequivocal admission without proving the same by way of evidence. At the same time, the plaintiff himself has stated that the balance sheets filed by the defendant with Registrar of Companies reflect a different position of the outstanding liabilities vis-a-viz the plaintiff which are limited to Rs. 13,23,000/-. Once the balance sheets of the defendant are reflecting a different position, it cannot be asserted that there is any admission in favour of the plaintiff entitling himself to a Decree on admissions.

36. Learned counsel on behalf of the plaintiff has argued that the defendant has categorically admitted the outstanding amounts in its Written Statement. However, there is no such unequivocal admission by the defendant in its Written Statement. What has been stated is that whatever be the amounts reflected in the Statement of Account /ledger is a matter of record. It is for the plaintiff to prove the outstanding amount and there is no unequivocal admission made by the defendant about the outstanding liabilities.

37. In *Ram Niranjan Kajaria&Ors. vs. Sheo Prakash Kajaria & Ors.* (2015) 10 SCC 203, the Hon'ble Supreme Court held that the admissions even if made, must be allowed to be explained by the party making the admissions.

38. In the light of specific defences taken up by the defendant, it cannot be said that the defendant has made any unequivocal admissions entitling the plaintiff to a decree. Rather, the defendant is entitled to prove its defences as enumerated above.

B. Counterclaim and Set- Off filed by the Defendant:

39. The other aspect which emerges for consideration is whether the plaintiff can claim judgement on admission in the light of counter-claim/ set off filed by the defendant.

40. The defendant has asserted that the plaintiff transferred his 40% shareholding on 01st April, 2018 and also resigned as a Director from defendant Company w.e.f 31st March, 2018. It is claimed that since as per the arrangement and agreement, the plaintiff had the obligation to infuse funds into the defendant Company for smooth running of the affairs of the Company, the plaintiff had infused Rs.18,38,27,000/- but has contended that it was by way of advance loan which is a malafide statement without any basis. The amount was actually in the nature of an investment, though for accounting convenience was shown as loans and advances with the understanding that the same would be repaid to the extent possible if the finances of the Company permitted. However, there was no surety of the returns. The amounts to the extent possible were returned from time to time in good faith. However, the characterization of the monetary transactions as described by the plaintiff is denied.

41. It is further asserted that the amounts claimed by the plaintiff are not repayable since they were actually investments by shareholders even though they were described as loans. In fact, plaintiff owes money to the defendant. Being an equal shareholder, he was also under an obligation to share the losses, expenses of the defendant Company equally along with proportionate contribution towards infusing funds for settling bank liabilities. The defendant has claimed that as on the date of transfer of shares by the plaintiff i.e. 01st April, 2018 the total losses in the books of the defendant Company was Rs.9,27,961/- and Rs.2,69,01,286/- under the head of deferred revenue expenditure. The total loss as on 31st March, 2018 was Rs.2,78,28,247/- and on 31st March, 2019 i.e the end of the Financial Year in which the plaintiff transferred his shares were of total INR 5,07,67,380/- plus deferred revenue expenditure of Rs.4,90,27,413/-. The outstanding bank loan on 31st March, 2018 was Rs.12,35,92,904/- and as on 31st March, 2019 it was Rs.9,01,42,760/-.

42. The defendant has further asserted that at the time when the plaintiff made his exit from the Company and transferred his shareholding to Aneja Family, it was understood and agreed that the obligation and liability to contribute proportionately and equally would continue qua amount of losses, deferred revenue expenditure and outstanding bank liabilities as on date of transfer of shares i.e. 01st April, 2018 and at the end of the Financial Year 31st March, 2019 whichever was higher, each head considered separately. From the balance sheet for the year ending on 31st March, 2018 and 31st March, 2019 it is evident that the defendant Company did not have enough funds to pay the bank or replenish the losses or meet deferred revenue expenditure. The Aneja Family contributed funds to the defendant Company

to enable it to pay off the bank loan, bank credit and therefore, both defendant Company jointly and severally have a proportionate claim against the plaintiff to the extent especially because the plaintiff himself was a personal guarantor of the bank loan/ credit. It is asserted that the bank loan/ credit could be repaid on account of the contribution made by the Aneja Family and not by the plaintiff.

43. The defendant has further claimed that even after 01st April, 2018, the plaintiff transferred Rs.50 lakhs to the defendant in July, 2018 and 01st August, 2018. These payments were upon the understanding of bearing proportionate share of losses, expenses, bank loans etc. However, after 01st August, 2018 plaintiff turned dishonest and did not contribute and as an afterthought, gave a Notice in July, 2019 claiming sums which he knew he was not entitled to. The defendant has asserted that out of the sum of Rs.18.38 Crores which the plaintiff claims to have advanced to the defendant, it is asserted that a sum of Rs.1,61,00,000/- was never received into the account of the defendant Company.

44. It is further asserted that the monies as claimed by the plaintiff though received in the name of defendant Company, but the account was always under the control of previous shareholders i.e the Garg Family and as such the money never came to the beneficial control of the Company under the new ownership/ shareholding which was purchased by Aneja Family and also by the plaintiff as shareholder. Such money was never made available to the defendant Company for its use and benefit and as per the understanding with the defendant, these amounts were paid by the plaintiff not as payment to the defendant Company but to the previous shareholders i.e. Garg Family irrespective of whose name the said account may have

stood i.e whether the Company or the shareholder. The monies were actually given in the accounts owned or controlled by the previous shareholders and for the benefit of such shareholders and not the Company.

45. Furthermore, the description in the Statement of Account relied upon by the plaintiff mentions "Adarsh Mahila Mercantile". According to the defendant, such an account whether in the name of the defendant Company or any other name, must have been under the control of erstwhile Garg Family and never came to the benefit of the defendant Company.

46. The defendant has asserted that the defendant Company had purchased a few luxury cars from its own funds to be used by the Company in its business. The plaintiff being a shareholder was given one such car DL3CU 0011 Model Mercedes Benz G63AMG for official use, which was purchased at a cost of approx. 1.92 crores on 04th September, 2015. A sum of Rs.1.75 crore principle plus interest was taken as a loan amount to finance the car. A sum of Rs.1.47 crores was paid towards the loan and interest by the defendant Company. Once, the plaintiff resigned as a Director and gave up his shareholding, he was under an obligation to return the car back to the Company. However, it has come to the light that plaintiff unauthorizedly sold of the luxury car on 03rd October, 2017 and thereafter misappropriated some portion of the money.

47. The defendant has filed a police complaint on this account. The plaintiff was authorized to sell the Company assets. He could not unilaterally decide how the amount was to be adjusted. His unilateral credits may reduce his alleged claim against the defendant, but would not make any difference to the claim of the defendant against the plaintiff except to the extent of loan cleared by him. The defendant has claimed that he is entitled to recover the

entire amount of loan of Rs.1.47 crores paid qua the vehicle plus a sum of Rs.77 lakhs as a balance *vis-a-vis* the value of the vehicle. He is also entitled to interest @ 18% per annum w.e.f. 03rd October, 2017.

48. The defendant has further submitted that during the period between April, 2017 to February, 2018 a sum of approx. Rs.2,10,50,000/- has been transferred from the account of HA Enterprises (partnership firm of Aneja Family) to the personal account of Sandeep Singh which has not been returned till date. This amount is also liable to be set of/ adjusted qua the plaintiff. HA Enterprises is a partnership firm of Aneja Family with Rajni Aneja, Rishabh Aneja and Pranay Aneja being its partners. The defendant has claimed that this amount arises from and is inextricably linked with the same set of transactions on which the plaintiff has asserted his claim. On merits, all the averments made in the plaint are denied and the defence as disclosed in the preliminary objections has been reiterated.

49. **The defendant by way of counter-claim has claimed:**

(a) Recovery of Rs.11,16,93,848/- aside from deferred revenue expenditure and outstanding bank loans as on 31st March, 2018/ 31st March, 2019 whichever is higher and has also claimed interest @ 18% per annum on the recovery of money w.e.f 01st April, 2019 till 15th December, 2021 on the sum of Rs.5,44,50,751/- along with *pendente lite* and future interest @ 18% per annum.

(b) Rs.2,24,00,000/- qua the Mercedes Car along with interest @ 18% per annum w.e.f 03rd October, 2017 till 15th December, 2021 in the sum of Rs.1,13,45,600/- along with *pendente lite* and future interest @ 18% per annum.

(c) Defendant has claimed **set off/ adjustment** of Rs.2,10,50,000/- along with interest @ 18% per annum w.e.f 01st April, 2019 which comes to 1,02,61,875/- along with *pendente lite* and future interest.

50. ***"Set-off"*** *is defined in Black's Law Dictionary (7th Edn., 1999)* inter alia as a debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor; the counterbalancing sum owned by the creditor. The dictionary quotes *Thomas W. Waterman from A Treatise on the Law of Set-Off, Recoupment, and Counter Claim* as stating:

> *"**Set-Off signifies** the subtraction or taking away of one demand from another opposite or cross-demand, so as to distinguish the smaller demand and reduce the greater by the amount of the less; or, if the opposite demands are equal, to extinguish both. It was also, formerly, sometimes called stoppage, because the amount to be set off was stopped or deducted from the cross-demand".*

51. The contours of *set-off* may be as defined in Sub-rule (1) of Rule 6 of Order VIII CPC or it may be equitable. The two concepts have been explained by the Apex Court in *Union of India vs. Karam Chand Thapar & Bros. (Coal Sales) Ltd. and Others*, (2004) 3 SCC 504, wherein while referring to concept of set-off in Sub-rule (1) of Rule 6 of Order VIII CPC it was explained that the claim sought to be set off **must be for an ascertained sum of money and legally recoverable by the claimant**. What is more significant is that both the parties must fill the same character in respect of **the two claims** sought to be set off or adjusted. Apart from the rule enacted in Rule 6 above-said, there exists a right to ***set-off, called equitable***, independently of the provisions of the Code. Such mutual debts and credits or cross-demands, to be available for extinction by way of

equitable set-ff, *must have arisen out of the* ***same transaction*** *or ought to be so connected in their nature and* ***circumstances as to make*** *it inequitable for the court to allow* ***the claim before it*** *and leave the defendant high and dry for the present unless he files a cross-suit of his own.* When a plea in the nature of equitable set-off is raised it is not done as of right and the discretion lies with the court to entertain and allow such plea or not to do so.

52. In *M/s. Lakshmichand & Balchand vs. State of Andhra Pradesh* (1987) 1 SCC 19, the Apex Court has ruled that when a claim is founded on the doctrine of **equitable set-off, all cross-demands** that arise out of the same transaction or the demands if so connected in the nature and circumstances then they can be looked upon as a part of one transaction.

53. However, a plea in the nature of equitable set-off is not available when the cross-demands do not arise out of the same transaction and are not connected in its nature and circumstances as has been explained by the Apex Court in *Raja Bhupendra Narain Singha Bahadur vs. Maharaj Bahadur Singh & Ors.* AIR 1952 SC 782 that a wrongdoer who has wrongfully withheld moneys belonging to another, cannot invoke any principles of equity in his favour and seek to deduct therefrom the amounts that have fallen due from him. There is nothing improper or unjust in telling the wrongdoer to undo his wrong, and not to take advantage of it.

54. This case has been followed by the Co-ordinate Bench of this Court in *Amit Kumar Chopra vs. Narain Cold Storage & Allied Industries Pvt. Ltd. & Ors.* 2014 (208) DLT 509, observed as under:

> *"16. From the aforesaid enunciation of law it is quite clear that equitable set-off is different from the legal set-off; that it is independent of the provisions of the Code of Civil Procedure; that the*

> *mutual debts and credits or cross-demands must have been arisen out of the same transaction or to be connected in the nature of circumstances; that such a plea is raised not as a matter of right; and that it is the discretion of the court to entertain and allow such a plea or not. The concept of equitable set-off is founded on the fundamental principles of equity, justice and good conscience. The discretion rests with the court to adjudicate upon it and the said discretion has to be exercised with an equitable manner."*

55. An equitable set-off is not to be allowed where protracted enquiry is needed for the determination of the sum due, as has been stated in *Dobson & Barlow vs. Bengal Spinning & Weaving Co.,* (1897) 21 Bom 126 *and Girdharilal Chaturbhuj vs. Surajmal Chauthmal Agarwal,* AIR 1940 Nag 177.

56. In *Bhagwati Prasad vs. Hukamchand Mills Ltd.* 1961 MPLJ. 272, the High Court of Madhya Pradesh held that in case of an equitable set-off, the principle contained in Order VIII Rule 6 of CPC, 1908 applies not strictly but only by analogy. This implies that the Court should consider the question of convenience and of the mechanics of the litigation. If the claim of the inequitable set-off relates to transactions that can be suitably investigated in the suit itself, then even if it is a claim for unliquidated sum it should be taken up.

57. In *Cofex Exports Ltd. vs. Canara Bank* 1997 AIR (Del) 355, this Court observed that where a plea of adjustment of payment is taken as a defence, if upheld, it has the effect of mitigating or wiping out the plaintiff's claim on the date of the suit itself. It is not a claim made by the defendant in the nature of a counter-claim or a plea of set-off. It does not extinguish the

plaintiff's claim; it exonerates the defendant from honouring plaintiff's claim, if upheld. Such plea if raised shall be gone into by the court and would have an effect of Decree in favour of the defendant taking away plaintiff's right to realize such amount as has been upheld in favour of the defendant.

58. Similar were the observations made by this Court in *M/s. CRB Capital Markets Ltd. vs. Smt. Bimla Devi Sahney* 2005 (121) DLT 471.

59. In the present facts, the defendant in addition to denying its liability to pay the amount as claimed by the plaintiff, has also filed a counter-claim for recovery of about Rs. 11,16,93,848/- as plaintiff's proportionate contribution of 50% towards losses, deferred revenue expenditure, outstanding bank loans as on 31st March, 2018. The defendant, in addition, has claimed a set-off/adjustment of Rs. 2,10,50,000/- along with interest @ 18% per annum given to the plaintiff by HA Enterprises and not yet returned by the plaintiff, by way of adjustment as in his defence. These amounts relate to the same business transactions on the basis of which the plaintiff has sought its recovery. Thus, in view of the case law discussed above, the counter-claim/ set of the defendant also needs to be adjudicated for final determination of the amounts due to either party.

Conclusion:

60. In the light of the above discussion, it cannot be said that there are unambiguous and unequivocal admissions made by the defendant in regard to the outstanding liability either in the pleadings or in any of the documents/balance sheets or ledger accounts.

61. The application of the plaintiff under Order XII Rule 6 of CPC for judgment on admission is, therefore, dismissed.

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62. List this matter before the Roster Bench for framing of issues on 21.02.2023.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 07, 2023
va/*s.sharma*