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

% ***Date of decision 31st January, 2023***

\+ CS(COMM) 690/2021

TKW MANAGEMENT SOLUTIONS PVT. LTD. ..... Plaintiff

Through: Mr.Abhinav Jaganathan and Mr.Avinash Amarnath, Advocates

versus

SHERIF CARGO & ANR. ..... Defendants

Through: Mr.Sajal Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

I.A. 12748/2022 (of the defendants u/O-XXXVII R-3(5) of the CPC) and I.A. 10658/2022 (of the defendants u/O-VII R-11 of the CPC)

1. The present suit has been filed under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) for recovery of Rs.2,53,02,720/- along with *pendente lite* and future interest.

2. Summons in the suit were issued on 22nd December, 2021. The defendants entered appearance and filed an application, being I.A.12748/2022, seeking leave to defend. The defendants also filed I.A.10658/2022 under Order VII Rule 11(a) and (d) of the CPC for rejection of the plaint. Pleadings in both the aforesaid applications have been completed.

3. Submissions on behalf of the counsels were heard on 24th November,

2022 and 12th December, 2022. On 12th December, 2022, the parties were referred for mediation, however, the mediation proceedings were not successful.

FACTUAL MATRIX

4. Briefly stated, the facts pleaded in the plaint are as under:

4.1 Plaintiff company is a third-party logistics company, which, *inter alia*, provides freight forwarding and transportation services.

4.2 Defendant no.1 is engaged in the business of logistics and warehousing in India and defendant no.2 is the proprietor of the defendant no.1.

4.3 In February/March, 2019, the defendants approached the plaintiff, on behalf of their clients, to provide freight forwarding services for shipment of various goods from Hong Kong.

4.4 As per the arrangement between the parties, once the goods were brought to the customs ports in India by the plaintiff, a delivery order would be issued to the defendants to enable to the defendants to collect the goods from such ports. Once the delivery order was issued, the plaintiff would raise an invoice on the defendants.

4.5 The plaintiff stopped receiving payments from the defendants against its invoices dating back to 12th March, 2019 raised on the defendants. This is despite the fact that the defendants have never complained about the quality of service, nor have the defendants raised any dispute regarding the invoices.

4.6 On 22nd August, 2019, the plaintiff received the last payment of Rs.10,00,000/- made by the defendants.

4.7 Various assurances were given by the defendants to the plaintiff via e-mail and WhatsApp messages that the payment would be released. However, despite repeated reminders by the plaintiff to the defendants, the defendants did not release the outstanding amounts.

4.8 As on date, 436 invoices amounting to Rs.2,53,02,720/- are outstanding, on which the defendants have also deducted tax.

5. Accordingly, the present suit was filed under Order XXXVII of the CPC seeking recovery of Rs.2,53,02,720/-.

SUBMISSIONS ON BEHALF OF THE DEFENDANTS

6. In the leave to defend application filed on behalf of the defendants as well the application filed under Order VII Rule 11 of the CPC, the main ground taken on behalf of the defendants is with regards to territorial jurisdiction of this Court to entertain the present suit.

7. It has been submitted on behalf of the defendants that the defendants are situated in Chennai, Tamil Nadu and hence, no cause of action, wholly or in part, has arisen at New Delhi. The counsel appearing on behalf of the defendants has placed reliance on the Explanation to Section 20 of the CPC to submit that a 'corporation', which also includes partnership firms like the defendant no.1, can only be sued where such corporation has its principal or subordinate office in India. Reliance in this regard has been placed on the judgments in ***Indian Performing Rights Society*** **v.** ***Sanjay Dalia and Another***, (2015) 10 SCC 161 and ***Dashrath Rupsingh Rathod*** **v.** ***State of Maharashtra and Another***, (2014) 9 SCC 129.

8. It is further submitted by the counsel for the defendants that in the present case, out of total 436 invoices, at least 400 invoices were in respect

of goods to be delivered in Chennai and therefore, substantial cause of action would arise in Chennai.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF

9. *Per contra*, the counsel for the plaintiff has drawn attention to the terms of the invoices raised by the plaintiff on the defendants, wherein it is provided that the payments were to be made in New Delhi. He further submits that 29 out of the 436 invoices were in respect of goods to be delivered at New Delhi. Further, the registered office of the plaintiff is in New Delhi. Therefore, it cannot be contended that this Court does not have the territorial jurisdiction to entertain the present suit.

10. On merits, the counsel for the plaintiff places reliance on the various e-mails and WhatsApp messages exchanged between the parties, wherein the defendants have not denied the dues owed to the plaintiff. Reliance is also placed on the TDS deducted on behalf of the defendants on the invoices raised by the plaintiff to submit that the defendants have acknowledged the amounts in the invoices and never disputed the same.

ANALYSIS AND FINDINGS

11. I have examined the record of the case and heard the counsels for the parties.

12. The plaintiff has placed on record copies of the unpaid invoices raised by the plaintiff on the defendants from 12th March, 2019 till 29th August, 2019. In this regard, the plaintiff has also filed a statement of account for the relevant period. The amounts due as per the aforesaid statement of account total Rs.2,53,02,720/-. The plaintiff has also placed on record the various Form 26AS showing that TDS has been deducted by the defendants in

respect of all except for four of the aforesaid invoices. Even though vague submissions have been made in the leave to defend application that the invoices have not been served on the defendants or that the said invoices are forged and fabricated or that the goods transported by the plaintiff were damaged and/or delayed, the defendants have failed to place on record any communication wherein they have raised any grievance with regard to services provided by the plaintiff or disputed the amounts claimed under the aforesaid invoices. In fact, deduction of TDS by the defendants is a clear acknowledgment of the amounts payable by them to the plaintiff under the aforesaid invoices.

13. In the e-mail dated 24th September, 2019 sent by the plaintiff to the defendants, the plaintiff has called upon the defendants to pay the total outstanding amount of Rs.2,53,02,720/-. No response thereto was sent by the defendants. From the various e-mails/WhatsApp communications received from the defendants, it is clear that defendants were only seeking time to pay the outstanding amounts and did not raise any dispute with regard to the amounts due.

14. In view of the discussion above, it is evident that the defendants do not have any defence insofar as the amounts claimed in the present suit are concerned.

15. Next, I shall deal with the issue of territorial jurisdiction of this Court to entertain the present suit. A reference may be made to the relevant clause in the invoices, which provides that the payments from the defendants to the plaintiff were to be made only in New Delhi. The same is set out below:

> *"Notes:*
> …
> ***3. Delivery Order will be issued only against payment of above charges in Cash or Bank Demand Draft in Favour of TKW MANAGEMENT SOLUTIONS PVT. LTD. <u>Payable at NEW DELHI only.</u>"***

16. A perusal of the note above would show that the amounts under the unpaid invoices were payable in New Delhi and therefore, cause of action in the present suit has arisen in New Delhi. In any event, in respect of the 29 invoices, the goods were delivered in Delhi and therefore, it cannot be denied that at least a part of the cause of action has arisen in Delhi. In terms of Section 20(c) of the CPC, this court would have territorial jurisdiction to entertain the present suit.

17. I do not agree with the submission of the counsel for the defendants that since the defendants are situated in Chennai, the plaintiff could not have instituted the present suit before this Court. The Explanation to Section 20 of the CPC is only in relation to Section 20(a) and (b), on the aspect of where a corporation can be said to be carrying on business and does not preclude jurisdiction of courts where cause of action arises, wholly or in part, as provided in Clause (c) of Section 20. Conversely, the plaintiff cannot be compelled to go to the place of residence or business of the corporation and can file a suit at a place where the cause of action, wholly or in part, arises. Therefore, the reliance placed by the counsel for the defendants on the Explanation to Section 20 of the CPC is misplaced.

18. In the present case, the plaintiff has correctly invoked the doctrine of 'the debtor must seek creditor'. The defendant has not denied the fact that the registered office of the plaintiff is in New Delhi and the various e-mails

and WhatsApp communications have also been sent on behalf of the plaintiff from New Delhi to the defendants, calling upon the defendants to pay the outstanding amount. Nor is there any dispute over the fact that payment under the invoices was to be made by the defendants in New Delhi.

19. In the judgment dated 14th May, 2012 passed in RFA(OS) 64/2007 titled ***Union Bank of India* v. *Milkfood Ltd.***, a Division Bench of this Court held that in the absence of any covenant in the agreement settling a place of payment, the debtor must seek the creditor to pay at the place where the creditor is located.

20. The aforesaid doctrine has also been invoked in the context of suits filed under Order XXXVII of the CPC in ***IUP Jindal Metals & Alloys Ltd.* v. *M/s. Conee Chains Pvt. Ltd.***, 2013 SCC OnLine Del 1454 and ***Shradha Wassan & Ors.* v. *Anil Goel & Ors.***, 2009 SCC OnLine Del 1285 and it has been observed that where the plaintiff has called upon the defendants to pay the outstanding amounts from a particular place, it would be the Courts having jurisdiction over such a place that would be the appropriate forum to adjudicate the dispute on the basis of the doctrine 'debtor must seek creditor'.

21. In ***Shradha Wassan*** (supra), a Coordinate Bench of this Court has observed that while considering an application seeking leave to defend, where leave is sought solely on the ground of challenge to the territorial jurisdiction, unless a clear case of ouster of jurisdiction is made out, leave ought not to be granted on such a plea. Observations of the Court in paragraph 17 of the judgment are set out below:

> *"17. Reference in this regard be also made to L.N.Gupta v. Smt. Tara Mani MANU/DE/0159/1983 : AIR1984Delhi49 where also*

> *after a review of the entire case law including the judgments of the other courts it was held that the principle of "Debtor must seek creditor' is applicable to India. However, an exception was carved out with respect to the promissory notes. Another thing which is relevant is that the plea of territorial jurisdiction in this case is raised in an application for leave to defend.* ***The criteria for determining the said plea in an application for leave to defend would be different from the criteria when such a plea is raised otherwise. While the ground by challenging the territorial jurisdiction of the court, unless a clear case of ouster of jurisdiction is made out, leave ought not to be granted on such a plea. In the present case on the applicability of the general doctrine aforesaid, no case for granting leave to defend is made out.****"*

22. The judgment in ***Shradha Wassan*** (supra) has been followed by me in ***Transasia Private Capital Limited and Another* v. *Parmanand Agarwal and Others***, 2022 SCC OnLine Del 1185, wherein the application seeking leave to defend as well as the application seeking rejection of the plaint filed on behalf of the defendant no.1 therein, solely premised on the ground of lack of territorial jurisdiction, were dismissed.

23. In the present case, on both counts, one, that the payments were to be received in New Delhi and second, on the principle of 'the debtor must seek the creditor,' the territorial jurisdiction of this Court is made out.

24. The counsel for the defendants has relied on the case of ***Dashrath Rupsingh Rathod*** (supra) to submit that a corporation can only be sued where its principal or subordinate office is located. In the present case, the defendants do not have any office in Delhi. However, the said case was in the context of Section 142 of the Negotiable Instruments Act, 1881, which deals with the issue of territorial jurisdiction in the case of dishonour of cheques. Therefore, the observations made in the said judgment are not

applicable in the present case.

25. Similarly, in ***Indian Performing Arts Society*** (supra), the Supreme Court was seized of a matter concerning Section 62 of the Copyright Act, 1957 and Section 134 of the Trade Marks Act, 1999, both of which are distinct statutory provisions dealing with territorial jurisdiction of courts in the context of copyright and trademark disputes. Therefore, the aforesaid judgment does not advance the case of the defendants.

26. As regards the application made on behalf of the defendants under Order VII Rule 11(a) and (d) of the CPC, it is a settled position of law that while deciding an application under Order VII Rule 11 of the CPC, reference has to be made only to the plaint and the documents filed along with the plaint.

27. In view of the clear and categorical averments made in the plaint that the payments for 436 invoices drawn on the defendants were to be made in New Delhi and in respect of 29 invoices, the goods were delivered in Delhi, no case is made out for rejection of the plaint on the ground of territorial jurisdiction.

28. In ***IDBI Trusteeship Services Limited* v. *Hubtown Limited***, (2017) 1 SCC 568, the Supreme Court has elucidated the principles on which the leave to defend has to be granted in summary suits filed under Order XXXVII of the CPC. Paragraph 17 of the said judgment is reproduced below:

> *"17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P)*

Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36] , as follows:

17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the

suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court."

29. In my considered view, the present case is squarely covered by paragraph 17.5 of the judgment of the Supreme Court in ***IDBI Trusteeship Services Limited*** (supra). The defendants have failed to raise any triable defence and also failed to make out a case for the ouster of the jurisdiction of this Court. The TDS Forms placed on record amount to a clear acknowledgement on part of the defendants of the amounts owed to the plaintiff. Therefore, no case for grant of leave to defend is made out and the suit is liable to be decreed in favour of the plaintiff and against the defendants.

30. Accordingly, in view of the discussion above, I.A. 12748/2022, being the application seeking leave to defend under Order XXXVII Rule 3(5) of the CPC, and I.A. 10658/2022, being the application seeking rejection of the plaint under Order VII Rule 11 of the CPC, are dismissed.

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31. In light of the applications filed on behalf of the defendants seeking leave to defend and rejection of the plaint having been dismissed, the plaintiff has become entitled to a decree forthwith.

32. Consequently, taking into consideration the facts and circumstances of the present case, the suit is decreed for a sum of Rs.2,53,02,720/-. The plaintiff shall be entitled to *pendente lite* and future interest @ 9% per annum till the date the payment is made. The plaintiff is also awarded costs of the suit.

33. Decree sheet be drawn up.

34. Pending applications, if any, stand disposed of.

AMIT BANSAL, J.

JANUARY 31, 2023
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