



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

% *Reserved on: 5th February, 2024*

Pronounced on: 17th May, 2024

+ **CS(OS) 2457/2012**

M/S LEO ISPAT LIMITED

..... Plaintiff

Through: Mr. Kshirja Agarwal, Mr. Noor Sher
Gill and Mr. Subhahish Kumar,
Advocates.

versus

HIND STEEL SALES & ORS

..... Defendants

Through: Mr. Mohit Chaudhary, Mr. Kunal
Sachdeva and Ms. Srishti Bajpai,
Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A. 402/2013 (under Order XXXVII Sub Clause 3 read with Section 151 CPC, 1908 for leave to defend, on behalf of the defendants)

1. The application under *Order XXXVII Sub Clause 3 read with Section 151 of the Code of Civil Procedure, 1908* (hereinafter referred to 'CPC'), has been filed on behalf of the defendants, for leave to defend the Suit filed by the plaintiff for Recovery of Rs. 2,14,26,083/- including interest @ 18% p.a. with *pendent lite* and future interest claimed @13% p.a.

2. The *defendants have sought leave to defend* on the ground that there is *no cause of action* disclosed in the Plaint; that it is *barred by Limitation*; and that the Suit has not been *filed by a Competent Person*, on which score itself it is liable to be rejected.



3. The defendant *M/s Hind Steel Sales (HSS)*, which is a partnership Firm, was involved in the business of iron/steel trading, with the plaintiff Company, through its Managing Director, Mr. Devi Dayal Garg. The last business transaction was made in the month of July, 2009. During the course of business, payment of around Rs. 2.5 Crores was made to the plaintiff Company.

4. Admittedly, in the month of October, 2009, on cross-checking and reconciliation of accounts by both the parties, an amount of Rs.1,49,76,639/- was found outstanding against specific Invoices, raised against the defendant No. 1. Post reconciliation, the defendant Firm handed over 6 *undated cheques* for the total outstanding amount of Rs.1,49,76,639/- to Sh. Devi Dayal Garg, as security, with an understanding that either the goods of that value shall be supplied to the plaintiff Company or the amount against those cheques shall be paid on or before June, 2010, as agreed between the plaintiff and the defendant No. 3.

5. However, since January, 2010, Mr. Devi Dayal Garg himself as well as through his relatives, started creating pressure and extended threats, for the payment against the aforesaid cheques. Sometime in the first week of March, 2010, one Mr. Subhash Garg and Mr. Bhushan Garg, his younger brother, who are the cousin brothers of Mr. Devi Dayal Garg contacted and requested the defendants for a meeting to resolve the matter.

6. Pursuant thereto, a meeting was held in the first week of March, 2010, wherein Mr. Devi Dayal Garg, Mr. Subhash Garg, Mr. Bhushan Garg and Mr. Pramod Gupta along with Mr. Rajesh Aggarwal and Mr. Ashok Ruhil, arrived at a settlement as under:-



- a. *that the amount of Rs.1,49,76,639/- was payable by the defendants firm to the plaintiff Company;*
- b. *that no interest would be chargeable on the said amount;*
- c. *that the said amount shall be payable for the goods of the said amount would be supplied by June, 2010.*
- d. *that the goods purchased from M/s. Jindal Steel and Power Ltd., Ranchi Jharkhand, by the defendants, which were later transferred to M/s. AJAX Project Pvt. Ltd.(an associate concerned of the defendant) would be supplied to the plaintiff against the outstanding amount, on the basis of pick and choose and the rate agreed to be paid by the defendants, was settled @34.75 per kg., exclusive of taxes and freight etc.*
- e. *that as soon as the transaction was completed, the 6 undated cheques would be returned to the defendants.*

7. Pursuant to the settlement, Mr. Devi Dayal Garg deputed Mr. Chauhan for lifting of the material from Ranchi from *M/s. Jindal Steel and Power Ltd. (JSPL)*, to be delivered in trucks to the plaintiff Company at its godown at Ghewra More, Mundka, Delhi. During this period, Mr. Chauhan was in communication with defendant No.3, in regard to the lifting of the material, as was agreed. The goods were delivered to the plaintiff Company and the delivery was confirmed by Mr. Devi Dayal Garg through SMS as well as telephonically and the Kanta slip was also issued. The payment of freight was made by Mr. Devi Dayal Garg to Jai Bajrang Carrier, Ghaziabad, U.P., directly. The Invoices were also raised against the said goods.



8. Apart from supplying the material as directed by Mr. Devi Dayal Garg, the defendants also paid the plaintiff Company a sum of Rs.46,00,000/-, in three instalments; First of Rs.15,00,000/- on 22.04.2010, through RTGS, another sum of Rs.15,00,000/- on 23.04.2010 through RTGS and the third instalment of Rs.16,00,000/-also through RTGS on 30.04.2010.

9. The defendants have further asserted that after supplying the goods and making the aforementioned payment, the admitted liability stood satisfied and rather, a sum of Rs.58,000/- approximately became due by the plaintiff, to be paid to the defendants, for which it intends to file the Counter-Claim, after the Leave to Defend is granted.

10. The defendants have asserted that after the transaction was completed, the defendants approached Mr. Subhash Garg, cousin of Mr. Devi Dayal Garg, many a times, for the purpose of return of 6 cheques but to not avail. Instead, the plaintiff filed the Criminal Complaint under Section 138 of the Negotiable Instrument Act, against the defendants. The defendants have further explained that while deposing in the Complaint under Section 138 of the Negotiable Instrument Act, defendant No. 3 has exhibited his mobile phone with broken screen cover as DW-1/2, to prove the SMS messages. The copy of the SMS messages are annexed along with the leave to defend application.

11. The defendants have thus, asserted that not only are the defendants entitled to defend the present Suit but in fact, the Suit of the plaintiff is liable to be dismissed.

12. To buttress the argument advanced, the Id. Counsel for the defendants has placed reliance upon IDBI Trusteeship vs. Hubtown Ltd., (2017) 1 SCC 568; Shri Rana vs. Kemblotech Lab. (CS OS 83/2006 order dt. 22.07.2008);



Dalip Singh vs. State of U.P. & Ors. (2010) 2 SCC 114; Tripack Ltd. vs. Ram Kishore (OMP 361/2001 order dt. 23.05.2007); IFCI vs. Vasudev (CS OS 1394/2013 order dt. 21.03.2014); and IFCI vs. Vasudev (FAO OS 214/2014 order dt. 02.05.2014).

13. The ***plaintiff in its reply to the leave to defend application***, has asserted that a sham defence has been raised by the defendants which on the face of it, is illusory and bogus and is liable to be rejected.

14. It is asserted that the defendants have admitted the outstanding amount as well as the issuance of the 6 cheques to the plaintiff. The parties have been transacting for last many years and there is no plausible defence disclosed in the leave to defend application.

15. It is asserted that admittedly, a principal sum of Rs. 1,49,76,640/-, along with the interest @18% p.a., totalling to Rs.2,60,26,083/-, is payable by the defendants. From this amount, a sum of Rs. 46,00,000/- has been paid in April, 2010 and after adjustment, the total amount which still remains outstanding, is Rs.2,14,26,083/-, on which the plaintiff is further entitled to *pendent lite* and future interest @18% p.a.

16. The plaintiff has asserted that the cheques given were dated and it is denied that they were given as security or were given with an understanding that either the goods of such value would be supplied or the amount would be paid. Since, the cheques on presentation, have been dishonoured, the defendants have tried to mislead the court by taking a false plea in regard to handing over of 6 undated cheques as security towards the delivery of goods or about there being a settlement of supply of goods towards the payment of the outstanding amount. There was no such understanding in respect of



supply of steel @34.75 per kg. in a meeting allegedly held in the first week of March, 2010. It is claimed that no such meeting ever took place.

17. It is submitted that in view of the admitted outstanding liability, there is no defence disclosed by the defendants and their leave to defend, is liable to be rejected.

18. The *defendants in their rejoinder*, have further explained that a separate transaction between M/s HSS i.e. defendant No.1 and plaintiff, was going on wherein the plaintiff was to purchase the material from the defendant as the defendant was a successful bidder in the project at Ranchi, Jharkhand. JSPL was engaged in dismantling of a running rolling mill at Ranchi and HSS i.e. the defendant No. 1 was given a contract to sell the equipment and machinery along with the structural lot consisting of sheds, platforms/frames etc. from the said rolling mill. The true copy of the Agreement between JSPL and HSS is dated 20.03.2009, copy of which has been placed on record. The transfer documents in favour of AJAX Projects Pvt. Ltd., is also annexed with the rejoinder.

19. It is reiterated that in order to purchase low cost structure, sheds, machinery parts etc., the plaintiff, who wanted to expand his business by entering into manufacturing area, entered into an understanding with the defendants, for pick and choose and purchase of the material at the fixed price of Rs.34.75 per Kg, from Ranchi site to be delivered at its godown. The freight charges were to be paid by the plaintiff. In order to avail a facility of pick and choose, an amount of Rs.1 Crore was paid by the plaintiff to HSS as advance towards purchase of material from it. The said amount came in two tranches of Rs.50,00,000/- each, through cheques given in the name of the defendants.



20. It is further submitted that in terms of the understanding between the parties, the material from Ranchi site was delivered as per the requirements of the plaintiff as reflected from the Invoices of April-May 2010. In October, 2009, After re-conciliation of accounts between the parties, it was realised that an amount of Rs.1 Crore, in form of advance payment towards the purchase of steel from Ranchi, was received and an amount of Rs.49,00,000/- was a credit in the hands of HSS.

21. Therefore, in order to secure themselves, the plaintiff sought undated security cheques to be given so that there remains no risk for non-payment. Consequently, 6 undated cheques came to be handed by the defendants to the plaintiff.

22. The plaintiff is claimed to have suppressed the factum of having paid a sum of Rs.1 Crore to the defendants, for purchase of material from Ranchi. The balance of Rs.46,00,000/- admittedly has been returned by the defendants in April, 2010. It is, therefore, submitted that triable issues have been raised in the leave to defend application, which is liable to be allowed.

23. In the *Sur-rejoinder*, the plaintiff has sought to explain the transactions, as put forth by the defendants with its associate Concern M/s. AJAX Projects Pvt. Ltd., by asserting that M/s. AJAX Projects Pvt. Ltd. had a temporary requirement of 2-3 months of a godown for unloading and storing some material from JSPL. The plaintiff had let out its Godown at Ghewra More, Mundka, Delhi, to M/s. AJAX Projects Pvt. Ltd. for storing of the material.

24. It is claimed by the plaintiff that the goods so stored in his godown, were not supplied to him by the defendants as has been claimed by it. It is,



therefore, claimed that there is an admitted outstanding amount for which the Suit filed by the plaintiff, and that it is entitled to a decree.

25. Submissions heard and judgments as well as record perused.

26. Admittedly, a sum of *Rs.1,49,76,640/-* was found due from the defendants, when the re-conciliation of the accounts was jointly done by the parties, in October, 2009. It is also not denied that six cheques had been handed over by the defendants to the plaintiff. According to the plaintiff, two cheques dated 31.12.2009; two cheques dated 05.01.2010 and two cheques dated 10.01.2010, totalling to the claimed amount of *Rs.1,49,76,640/-* had been issued by the defendants. Admittedly, an amount of *Rs. 46 Lakhs* has already been paid towards part payment of the outstanding dues and thus, the only disputed liability becomes *Rs.1,49,76,640 – Rs. 46,00,000 = Rs. 1,03,76,640/-*.

27. To understand the nature of cross-transactions between the parties, it would be apposite to refer to the defence set forth by the defendant. Apparently, the parties also had another business transaction. The averments of the Defendant are to the effect that it was a successful bidder in the project at Ranchi, Jharkhand and JSPL was engaged in dismantling of a running rolling mill at Ranchi and M/s HSS, the defendant, was given a contract dated 20.03.2009 to sell the equipment and machinery along with the structural lot consisting of sheds, platforms/frames etc. from the said Rolling Mill. The true copy of the Agreement between JSPL and HSS been placed on record.

28. The plaintiff has explained that it had paid an advance of *Rs. 1,00,00,000/-* in two tranches of *Rs. 50,000/-*, on 27.04.2009, each for the purchase of this steel from the defendants, which it was to procure from the



project at Ranchi, Jharkhand. However, since goods could not be delivered and the said amount of Rs. 1,00,00,000/- was repaid in May, 2009 in nine tranches from 01.05.2009 to 28.05.2009 which was also reflected in the Ledger accounts. This particular transaction thus, ended at this point.

29. Thus, the plaintiff has stated that the above transaction is not concerned with the present Suit of Recovery as the same is based on the 29 unpaid Invoices pertaining to the month of June-July 2009 and thus, a total outstanding amount of *Rs. 1,49,76,639/- is liable to be paid by the defendants.*

30. It emerges, *on reconciliation of the accounts in October, 2009*, it was admitted between the parties, that *an amount of Rs. 1,49,76,639/- was outstanding and was to be paid by the defendant to the plaintiff. Admittedly, defendant also paid six cheques for this admitted amounts dated December, 2009 and January, 2010.*

31. The defendants have set up a defence that subsequently, the parties had a reconciliatory meeting in March, 2010 wherein they arrived at a *settlement* in the following terms:

- (i) *that the amount of Rs.1,49,76,639/- was payable by the defendants firm to the plaintiff Company;*
- (ii) *that no interest would be chargeable on the said amount;*
- (iii) *that the said amount shall be payable for the goods of the said amount would be supplied by June, 2010.*
- (iv) *that the goods purchased from M/s. Jindal Steel and Power Ltd., Ranchi Jharkhand, by the defendants, which were later transferred to M/s. AJAX Project Pvt. Ltd.(an associate concerned of the defendant) would be supplied to the plaintiff*



against the outstanding amount, on the basis of pick and choose and the rate agreed to be paid by the defendants, was settled @34.75 per kg., exclusive of taxes and freight etc.

(v) *that as soon as the transaction was completed, the 6 undated cheques would be returned to the defendants.*

32. Pursuant to this settlement, the goods as agreed, were supplied on behalf of the defendant, in the month of April- May-2010, which were received in the godown of the Plaintiff, between April and May, 2010, as discernible from the Invoices for the said goods, which have been placed on record by the defendants.

33. The defendants have explained that they had a valid Agreement for the Ranchi Project with JSPL, which was subsequently assigned to M/s AJAX Projects Pvt. Ltd. for which documents were executed and the same have been placed on record by the defendants. The steel/ material was lifted by M/s AJAX Projects Pvt. Ltd. from Ranchi and brought to Delhi, which was stored in the godown of the plaintiff at Ghewra More, Delhi which are duly supported by the Invoices of April and May, 2010.

34. The defendants have sought to further explain that these goods/steel delivered in the godowns of the plaintiff, was towards subsisting liability which got offset by delivery of these goods. Further, an amount of Rs. 46 lakhs has already been paid by the Defendants, admittedly in three instalments in the month of April, 2010, through RTGS, to the plaintiffs. Thus, according to the defendants, the admitted liability was fully satifeid partly by delivering goods in and thus, the entire liability has already been discharged by way of the supply of goods in April-May 2010 and balance by



payment of the Rs. 46 Lakhs in April, 2010, leaving an outstanding amount of Rs. 58,000/- to be paid by the plaintiff.

35. Though, it is admitted by the plaintiff that the amount of Rs. 46 Lakhs has already been paid towards part payment of the admitted liability, however, the plaintiff has completely denied the settlement of March, 2010 and delivery of any goods by the defendants towards the repayment of the outstanding dues. However, in the *sur-rejoinder by the plaintiff*, while not denying the receiving of the goods in its godown at Ghewra Moad, it has sought to explain the same by claiming that the godown was been temporarily hired by/ let-out to M/s. AJAX Projects Pvt. Ltd., an Associate Company of the defendants, merely for the purpose of temporary storage of certain goods by supplied by JSPL. The goods were never delivered to the plaintiff by the defendants in lieu of the admitted liability.

36. The plaintiff has not only denied having received the goods but has also asserted that these Invoices are forged and fabricated. For this, the plaintiff has placed reliance on the statement of Shri Ramesh Goel, defendant No. 2, recorded *before EOW, Faridabad on 13.03.2012* which reads as under: -

“ *E.O.W., DISTT. FARIDABAD*
Statement of Mr. Ramesh Goel s/o Mr. Naurang Rai Goel, r/o
A-4/4, Paschim Vihar, New Delhi, aged 54 years.

.....
Stated that acknowledging my earlier statement as correct. I
again mention that out of Rs. 1.5 crores, I have paid Rs. 46
lakhs through bank to Mr. Devvi Dayal Garg. In spite of his
refusal to receive the money through SMS, I paid this amount.
For the rest of the amount of Rs. One crore, I purchased goods
from third party situated in Ranchi and sent the same to his
godown and the receipt of which has been acknowledged Mr.



*Devi Dayal Garg through his SMS to us. In his way, I have paid the entire amount to him. In spite of this, Devi Dayal Garg has filed a suit against me in the court by misusing the security cheques given by me to him. The next date of hearing in the said suit is 21.3.2012. Now this application has been filed against me in Faridabad with the intention to harass me, although nothing has taken place or happened in Faridabad about this case. **I have fabricated the bills and the account after informing Mr. Devi Dayal.** The truth is that goods came directly from Ranchi and I gave the same to Mr. Devi Dayal Garg. Here, this is also clear that delay in the payment is on account of some business disputes between us. It is for this reason that the application and the charges are being levelled in black and white. In fact, the charges leveled against me are completely devoid of truth.*

Statement has been written and read and found it is O.K.

RAMESH GOEL

13.3.2012 “

37. The plaintiff has argued that the defendant No. 2 has admitted the Invoices to be forged and fabricated and thus, cannot claim any right to defend the outstanding liability. While on the cursory perusal of the statement, it may appear that the defendant had admitted the Invoices to be forged and fabricated, but when the entire statement is read in totality, it is quite evident that he has totally denied his liability to pay any outstanding amount to the plaintiff; rather he has categorically asserted that all the amounts stand paid. He further asserts that the goods which came directly from Ranchi were handed over by him to Shri Devi Dayal Garg, the Director of the plaintiff.

38. The line “*I have fabricated the bills and amount after informing Mr. Devi Dayal Garg*” is apparently a typographical error in recording of the statement because in his entire statement, he has completely denied and has



categorically asserted that he has duly delivered the goods to the plaintiff. At this stage, the statement of defendant No. 2/Ramesh Goel recorded before EOW cannot be considered as an admission on the part of the defendants without giving an opportunity to them to explain this alleged admission.

39. *Thus, the apparent defence that emerges from the rival assertions of the parties, is the settlement of March, 2010 pursuant to which defendant made procurement and delivery of goods and the storage of the same in the godown of the plaintiff in discharge of the admitted liabilities of the parties.*

40. In, the case of IDBI Trusteeship Services Ltd. (Supra), while discussing the quintessential terms for deciding an application seeking Leave to Defend, the Apex Court observed as under :-

*“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.”

41. Subsequently, in the case of *B.L. Kashyap and Sons Limited vs. JMS Steels and Power Corporation and Another* (2022) 3 SCC 294, the Apex Court had referred to the case of *Mechelec Engineers & Manufacturers vs. Basic Equipment Corpn.*, (1976) 4 SCC 687, *IDBI (supra)* and *Kiranmayi Dasi vs. J. Chatterji*, 1945 SCC OnLine Cal 114 and reaffirmed that the Court has to determine if the defendant has raised a good defence, on merits. Moreover, only if the defendant raises a triable issue, indicating a fair and *bonafide* or a reasonable defence, even though not a positively good defence, the defendant is entitled to unconditional Leave to Defend.

42. Hence, applying the above laid principles in the present case, it is concluded that the defendants have set up a substantial defence indicating that they have a fair and reasonable chance to defend the present suit, raising the following triable issues for consideration:-

- i. Whether, subsequent to the reconciliation of accounts and the acknowledgment of the outstanding liability of the defendants, the parties had a meeting in March, 2010, whereby they arrived at a settlement, wherein they agreed to supply of goods from Ranchi Project*



to the plaintiff in discharge of the outstanding liabilities of the defendants?

ii. Whether the defendants had procured goods from Ranchi Project through M/s AJAX Projects Pvt. Ltd. by entering into a Contract for onward delivery of such goods to the plaintiff?

iii. Whether the goods, in fact, got delivered in April, 2010 to the plaintiff ? and

iv. Whether the Invoices of April and May, 2010 produced by the defendants in proof of delivery of goods, are forged and fabricated documents?

43. Thus, in light of the triable issues raised by the defendants, the application seeking leave to defend the present suit, is hereby allowed.

CS(OS) 2457/2012

44. The present suit for recovery under Order XXXVII of CPC, 1908, raises a "*commercial dispute*" in accordance with the Section 2(1)(c)(i) of the Commercial Courts Act, 2015, and is thus, directed to be renumbered as ***Civil Suit Commercial i.e. CS (COMM)***.

45. The defendants to file their written statement within 30 days, as per law.

46. Be listed before the learned Joint Registrar for completion of pleadings on 28.05.2024.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 17, 2024/RS