

Technology Development Board (Tdb) Vs. M/S Usha (India) Ltd and anr.

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Court : Delhi

Decided On : Nov-27-2012

Judge : Valmiki J. Mehta

Appellant : Technology Development Board (Tdb)

Respondent : M/S Usha (India) Ltd and anr.

Advocate for Pet/Ap. : Mr. Suraj Kumar, Mr. Rakesh Bhardwaj

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS)No. 754/2002 % November 27, 2012 TECHNOLOGY DEVELOPMENT BOARD (TDB) Plaintiff Through: Mr. Suraj Kumar with Mr. Rakesh Bhardwaj, Advs. versus M/S USHA (INDIA) LTD AND ANR. Through: Counsel for the applicant/defendant. (appearance not given). Defendants CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not? VALMIKI J.

MEHTA, J (ORAL) IA No.7524/2005(u/O.37 R.5 CPC r/w S.22 of SICA 1985 & IA No.17059/2012(u/S.8 of the Arbitration & Conciliation Act, 1996) in CS(OS) No.754/2002 1. The present suit for recovery of Rs.1,38,04,188/- was filed by the plaintiff-Technology Development Board against two defendants. The first defendant is the Company-M/s. Usha (India) Ltd. and the second defendant is Sh.Vinay Rai, the guarantor and director of the defendant no.1.

2. The subject suit was filed under Order 37 CPC as a summary suit way back in the year 2002 in which no proceedings could take place immediately after service of the defendants inasmuch as firstly an application being IA No.7524/2005 was moved on behalf of the defendant no.2 pointing out the factum of the defendant no.1-company being a sick company under the aegis of Board for Industrial and Financial Reconstruction (BIFR) and therefore it was said that leave to defend was not required and, subsequently an application being IA No.3724/2009 was specifically filed under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short SICA) for staying the suit.

3. IA No.3724/2009 under Section 22 of SICA has been dismissed by a detailed order on 7.9.2012. That order has become final because that order has not been further challenged as informed to me by counsel for the plaintiff. The suit therefore has to proceed ahead. I may also note that the Supreme Court in the recent judgment reported as Raheja Universal Limited vs. NRC Limited & Ors., AIR 2012 SC 144, has also held that suits are not automatically stayed under Section 22 of SICA once there are no properties of the companies which are sought to be sold or transferred in the suit.

4. Today, the suit was listed pursuant to the order dated 7.9.2012 which noted that the plaintiff had not filed documents in support of the plaint. Now, the original documents, with respect to the loan transactions and the guarantee executed by the defendant no.2, have been filed. The provision of Order 37 Rule 3 sub-Rule 6 is clear in that if no leave to defend application is filed within the prescribed period of service of the summons for judgment, the plaintiff will be entitled to judgment forthwith. Summons for judgment were issued vide IA No.1513/2004 and service was effected on the defendants by publication as recorded in the order dated 4.4.2006. Defendant no.1 failed to file any application for leave to defend and the defendant no.2 only filed the IA Nos.7524/2005 and 3724/2009. Therefore, there is no leave to defend application on behalf of any of the defendants and therefore the plaintiff is entitled to judgment forthwith.

5. The facts of the present case show that the defendant no.1- Company-M/s Usha (India) Ltd. was granted at its request a loan for setting up of the project for

manufacture of Epitaxial Silicon Wafers. The loan agreement in this regard is dated 21.1.1998 under which Rs.222 lakhs was to be granted to the defendant no.1. Out of Rs.222 lakhs, Rs.170 lakhs was for procuring new machines and Rs.52 lakhs was towards installation and commissioning. The defendant no.2 executed a shortfall undertaking on 27.1.1998 agreeing to pay the dues of the plaintiff.

6. The plaintiff disbursed financial loan assistance of Rs.170 lakhs vide cheque no.430502 dated 4.2.1998 in favour of the defendant no.1 which was encashed and subsequently another amount of Rs.52 lakhs was given vide cheque no.119151 dated 22.10.1998 which was also encashed. Therefore, the total amount of loan of Rs.222 lakhs stood disbursed to the defendant no.1.

7. As per the plaint, the defendant no.1 only paid two amounts of Rs.26,32,000/- and Rs.6,28,800/- on 25.1.2000 and 1.8.2000 respectively. The suit was filed after service of the legal notices dated 11.7.2001 and 24.7.2001 on the defendants.

8. Since as stated above, no leave to defend applications have been filed, contents of the plaint are deemed to be admitted. Plaintiff is entitled to judgment forthwith and the suit is decreed for `1,38,04,188/against the defendants alongwith pendent lite and future payment @ 9% per annum simple. The plaintiff will be also entitled to the costs of the suit. Decree sheet be prepared. IAs stand disposed of. IA No.17059/2012(u/S.8 of the Arbitration & Conciliation Act, 1996) & IA No.17060/2012(u/S.151 CPC for exemption) 9. So far as the application under Section 8 of the Arbitration and Conciliation Act, 1996 filed by the defendant no.2 is concerned being IA No.17059/2012, the said application is not maintainable at this stage inasmuch as the said application ought to have been immediately filed on the defendants being served in the suit. Once the defendants failed to file any applications for leave to defend, and the suit is to be decreed, at that stage, to frustrate the suit, an application under Section 8 of the Arbitration & Conciliation Act, 1996 cannot be filed. The application is therefore dismissed as not maintainable because the entitlement to seek arbitration proceedings is contractual right which can be waived and the said right stands waived in the facts and circumstances of the present case where no application has been filed in the

suit of the year 2002 till the year 2012, though the defendants have been served way back in the year 2004. The defendant no.2 has taken steps in the suit by filing IAs. Applications being IA No.17059/2012 and IA No.17060/2012 accordingly stand dismissed and disposed of.

10. In view of the above suit is decreed. Decree sheet be prepared. VALMIKI J.

MEHTA, J NOVEMBER 27 2012 ak

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