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

% **Delivered on 03.01.2022**

\+ **CS(COMM) 1217/2018**

BELA GOYAL PROPRIETOR OF ISPAT SANGRAH (INDIA) ..... Plaintiff

Through: Mr.Rajiv Bajaj and Mr.Karan Prakash, Advocates.

versus

VIIPL - MIPL JV (JAIPUR) & ORS. ..... Defendants

Through: Ms.Geeta Luthra, Sr. Advocate with Mr.Aadarsh Kothrari and Mr.Jatin, Advocates for D1.
Mr.Rajive R. Raj, Advocate for Intervener/IDBI Bank Limited

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

I.A. Nos. 1790-91/2020 & 12937/2021

1. Application being I.A. No.*12937/2021* is filed by defendant No.1 under Section *151* CPC seeking urgent directions in this matter is taken up with other two applications.

2. The learned senior counsel for the defendants no.1 to 3 argues this Court has no territorial jurisdiction to entertain this Suit and the Suit is, even otherwise, barred by limitation. It is submitted by the learned senior counsel for the defendants the entire cause of action arose at Jaipur; the goods were supplied at Jaipur; payments were to be made at Jaipur and the invoices raised by the plaintiff also notes *the jurisdiction to be of Jaipur*.

3. Further, it is alleged the entire supplies of iron was made between the year *2014-2015* and the last of such invoices was of dated 30.03.2015 and the present Suit has been filed on 31.10.2018 i.e., much after the limitation had expired and hence, the suit is liable to be dismissed.

4. It is also submitted, this Court vide an order dated 02.11.2018 had attached an amount of Rs.2.7*0* crores viz. the amount receivable by defendant No.*1* from defendant No.*4* pursuant to an award of Rs.*12.00* crores passed in favour of defendant No.*1*. The said amount of Rs.2.70 crores is lying in the FDR with the learned Registrar General of this Court. It is alleged on the basis of this order dated 02.11.2018, 12 other vendors have filed Suit for recoveries and had taken such like attachment under Order *38* Rule *5* CPC. It is alleged by defendant No.*1* the amount deposited by defendant No.*1* with the Registrar General of this Court belong to IDBI Bank, a secured creditor.

5. It is alleged an agreement dated 17.06.2014 was entered into between defendant No*1* and defendant No.*4* for construction of 11 towers of different categories of dwelling units located at Air Force Naval Housing Board, Village Boitawala, Jaipur, Rajasthan. The defendant No.*1* vide work order dated 28.08.2014 sub-contracted the construction of the aforesaid project to defendant No.*2*. The defendant No.*2* approached IDBI Bank for issuance of bank guarantee in favour of defendant No.*4*. The aforesaid bank guarantee was illegally encashed by defendant No.*4* against which the defendant No.*1* had invoked arbitration and an arbitration award was passed in favour of defendant No.*1*.

6. The IDBI Bank has also filed application under Order *1* Rule *10* CPC (I.A. No.*2181/2019*) seeking impleadment as a party in this suit and an application under Order *39* Rule *4* CPC (I.A. No.*3649/2019*) seeking vacation of the order dated 02.11.2018. Both these applications are still pending. The applicant submits the IDBI Bank vide its letter dated 15.12.2020 had offered to settle the loan account of defendant No.*1* as maintained with IDBI Bank. The IDBI Bank had approached the Ld. DRT-II, Delhi where its OA No.*1080/2017* titled "*IDBI Bank Limited v. M/s.Maxout Infrastructures Pvt. Ltd. & Ors.*" and vide I.A. No.*382/2021* sought remittance/transfer of amount lying deposited with Patiala House Courts in *8* such like matters. Vide order dated 26.02.2021, the Ld. DRT-II, Delhi was pleased to allow the said I.A. and had requested/directed the Ld. Commercial Judge, Patiala House Courts to release the amounts lying deposited with the Courts for utilization of the same in SKBY Scheme of IDBI Bank. This Court refused to interfere in the Writ Petitions filed by those *8* vendors and later they also filed an appeal before the Ld. DRT-II, Delhi, which is pending.

7. Vide order dated 03.05.2021, the Ld. Commercial Judge-03, Patiala House Court had directed release of the amounts deposited in all *4* matters. Similar request is made in the present case.

8. The learned senior counsel for the petitioner referred to undated cheques listed at page No.*36* of the documents filed by the plaintiff to say such cheques were blank cheques and though the plaintiff claims those were handed over to it in May, 2016 but such argument is made only to increase the period of limitation but in fact all the three cheques of Rs.*25*

lakhs each are undated, hence could not be treated as an *acknowledgement* on behalf of defendants to raise limitation of the present suit; as for an acknowledgement it has to be *in writing* and be *unconditional*, *unequivocal* but whereas the three cheques lying with the plaintiff, having been misused in May, 2016, would never increase the limitation for filing this Suit.

9. Reference is made to the *Union of India v. M/s.Tubes and Malleables Ltd. Madras*, 92 L.W. 192 wherein the Court held as follows:

> *"**Limitation Act** (1963), Ss.18 and 19- Acknowledgement of liability what constitutes-Requirement that the acknowledgement should be in writing-Payment stating to be in full and final settlement of a claim- Acceptance of the payment with the reservation "under protest"- Payment in such case does not create a fresh "debt" under S/19 and cannot constitute acknowledgement of liability under S.18-Meaning of the word 'debt' in S.19."*

10. In *Makalu Impex Pvt. Ltd. vs. Vivek Nagpal* 2006 (89) DRJ 300 this Court held as under:

> *"13. Learned counsel also referred to the Judgment of the learned single Judge of the Punjab and Haryana High Court in Northern India Finance Corporation (P) Ltd. v. R.L. Soni; AIR 1973 P & H 35 to advance the proposition that the payment by cheque will not save limitation under Section 19 of the Limitation Act if the cheque is dishonoured on presentation to the bankers on whom the cheque has been drawn. If the cheque is not honoured, it cannot be said that the amount represented by the cheque has been paid by the drawer to the payee."*

11. Qua jurisdiction it is argued even though the principal office of the defendant Nos.*1* to *3* is in Delhi, yet no cause of action had arisen at Delhi as it arose only at Jaipur and in view of the stipulated condition on the invoices viz. *subject to Jaipur jurisdiction*, coupled with the fact

defendant have their offices at Jaipur, this Court does not have territorial jurisdiction to try this matter.

12. Reference is made to *Bhat Carpets v. AMI India Logistics Pvt. Ltd. & Anr*. 2007 (75) DRJ 656, wherein this court held as follows:

> *"3. Even a cursory consideration of the Section inexorably leads to the conclusion that the provisions are no different to Section 20 of the CPC, and the exposition of the law in* ***M/s. Patel Roadways Limited, Bombay v. M/s. Prasad Trading Company, AIR 1992 SC 1514****. No part of the cause of action has arisen in Delhi and the Defendant does not have a principal place of business or its habitual residence in Delhi. If any doubts as to the arising of the cause of action in Delhi still remain, reference to the Plaintiffs letter dated 15.2.1997 would amply dispel them. This letter endorses and reiterates the statements contained in the Bill of Lading i.e. that the port of loading was Bombay; and that no part of the transaction between the parties took place in Delhi."*

13. And of *Patel Roadways Ltd. v. Prasad Trading Co.*, (1991) 4 SCC 270, wherein the Court held as under:

> *"**13.** …… It would be a great hardship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus for the corporation's place of business, not an additional one."*

14. In *Hanil Era Textiles Ltd. vs. Puromatic Filters (P) Ltd.* 2004 (4) SCC 671 the Court held as follows:

> *"8. The same question was examined in considerable detail in A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies AIR 1989 SC 1239 (headnote D) and it was held as under :*
> *"When the Court has to decide the question of jurisdiction pursuant to an ouster clause it is necessary to construe the*

> *ousting expression or clause properly. Often the stipulation is that the contract shall be deemed to have been made at a particular place. This would provide the connecting factor for jurisdiction to the Courts of that place in the matter of any dispute on or arising out of that contract. It would not, however, ipso facto take away jurisdiction of other Courts. Where an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other Courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other Courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like 'alone', 'only', 'exclusive' and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim 'expressio unius est exclusio alterius' expression of one is the exclusion of another may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all other from its operation may in such cases be inferred. It has therefore to be properly construed."*

15. Thus the crux of the arguments is the contract was entered into at Jaipur; invoices were raised at Jaipur; the goods were supplied at Jaipur; even the plaintiff has its registered office at Jaipur and further the invoices contain the clause *subject to Jaipur jurisdiction*; this Court has no jurisdiction to try this case merely because the registered office is at Delhi and it alone would not give rise to a cause of action at Delhi.

16. Heard.

17. The first thing I intend to take note of is the defendant no.1 is an entity of defendant nos. 2 and 3. As submitted all the directors of defendant nos.2 and 3 have since been absconding and are not appearing in different litigations, despite orders/directions. Moreso, till date there is no board resolution filed alongwith these applications by defendant no.1,

hence, applications must fail on this ground. Secondly, there is no written statement, till date on record of defendant nos.1 to 3, even after expiry of 120 days. Moreso, the order dated 02.11.2018 qua the deposit of an amount of Rs.*2.70* crores with the learned Registrar General of this Court, converted into an interest bearing FDR, had already attained finality as no appeal has been filed till date against such order.

18. Moreso, one need to understand the plaintiff is a vendor who had supplied material to defendant nos. 2 and 3 who then have completed some portion of the contract and got an amount of Rs.*12.00* crores through an award. It is out of this amount the Court has directed the defendants to deposit an amount of Rs.*2.70* crores before the learned Registrar General of this Court.

19. Admittedly the directors of defendant nos.2 and 3 are not available and probably for this reason an order dated 02.11.2018 was passed considering if a decree is passed in the present case how would the amount be recovered; the defendants been non-functional and its directors allegedly absconding.

20. Qua territorial jurisdiction, I may refer to Section *20* CPC and its explanation as under:

> *"20. Other suits to be instituted where defendants reside or cause of action arises.*
> *Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction*
> *(a) to (b)*
> *(c) The cause of action, wholly or in part, arises.*
> *[Explanation] A corporation shall be deemed to carry on business at its sole or principal office in 3 [India] or, in*

respect of any cause of action arising at any place where it has also a subordinate office, at such place."

21. Admittedly defendant nos.2 to 4 have their registered office at Delhi. The defendant no.1 is a joint venture of defendant nos.2 and 3. The explanation to Section *20* CPC makes it clear where principal office is located, the company is presumed to carry its business from there. Moreso, if one peruse the three impugned cheques, those were of the account in Punjab National Bank, of defendant no.1, being maintained at Shalimar Bagh, Delhi. Thus the part of cause of action arose at Delhi coupled with the fact the company has its principle office at Delhi; this Court shall have the jurisdiction. Merely by mentioning on the invoices viz. the disputes shall be subject to the jurisdiction at Jaipur would not snatch away the jurisdiction of this Court as there was no *exclusion clause* in the invoices.

22. Further admittedly, the arbitration proceedings were filed by the defendant nos.1 to 3 against defendant no.4 at Delhi, hence, they now cannot claim this Court shall have no jurisdiction once a suit is filed against them for recovery.

23. Qua *limitation* I may refer to para *16* of the plaint wherein the plaintiff has alleged the defendant nos.1 to 3 gave a written acknowledgment to the plaintiff in May, 2016 in the form of three cheques bearing no.445624; 445623, 445622 and promised they are into litigation with defendant no.4 and as soon as they recover money from defendant no.4 they would pay the amount to the plaintiff. The said cheques were undated and were allegedly given as a *written acknowledgment*.

24. Admittedly there is no written statement of defendants no.1 to 3 on record, hence there is no denial to para *16* of the plaint. In the absence of the denial of such averments in written statement, the contentions raised in the plaint need to be accepted at this stage.

25. Even otherwise, in *Hotel Diplomat vs. Folio Holdings India (P) Ltd.* 2012 SCC Online Delhi 4463, this Court held as under:

> *"13. Section 18(1) of Limitation Act, 1963, to the extent it is relevant for our purpose, provides that where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*
> *14. It is by now settled proposition of law that a* ***dishonoured cheque*** *constitutes acknowledgement within the meaning of Section 18 of Limitation Act. Reference in this regard can be made to the decision of this Court in Rajesh Kumari v. Prem Chand Jain AIR 1980 Delhi 80, where it was held that a cheque constitutes acknowledgement and whether it was dishonoured or encashed would be immaterial. It was further held by this Court that where a cheque was dishonoured a fresh period of limitation would start from the date of the cheque. Similar view was also taken in S.C. Gupta v. Allied Beverages Co. Pvt. Ltd. 163(2009) DLT 495 & also by Full Bench of High Court of Gujarat in Hindustan Apparel industries v. Fair Deal Corporation AIR 2000 Gujarat 261.*
> *15. The next question which arises in this context is as to what would be the date of acknowledgement in a case where the cheque is delivered is undated and the date is later on put by the payee, with the consent/on the instruction of the drawer of the cheque.*
> *In Ashok Yeshwant Badave v. Surendra Madhavrao Nighojakar. AIR 2001 Supreme Court 1315, the Apex Court, on considering the provisions of Section 5 and 6 of Negotiable Instruments Act, held that a cheque is a Bill of Exchange drawn on a bank by the holder of an account payable on demand. It was further held that Bill of*

Exchange even though drawn on a banker if it is not payable on demand is not a cheque. The Apex Court concluded that a post dated cheque is not payable till the date which is shown thereon arrives and will become cheque on the said date and prior to that date the same remains a Bill of Exchange. Therefore, the cheques Ex.PW-1/4 to PW-1/6 continued to be Bills of Exchange till a date was put on them by the plaintiff in accordance with the instructions of the defendants who had asked the plaintiff to present the cheques for encashment only after 10.8.2002.

In MOJJ Engineering Systems Ltd. v. A.B. Sugars Ltd. 154(2008) DLT 579, this Court was of the view that since an undated cheque cannot be encashed, the person who hands over an undated cheque for a certain amount to the respondent in terms of the contract between the parties also authorizes the payee to enter an appropriate date on it. In the case before this Court, the defendants had expressly authorized the plaintiff to fill up a date which could not be earlier than 10.08.2002 when these cheques were to be presented to the bank. Since the cheque Ex.PW-1/4 for Rs. 45 lakh was otherwise duly filled except that no date had been put on it when it was delivered to the plaintiff, the cheque could have been completed by the plaintiff by putting an appropriate date on it in accordance with its agreement with the defendants.

In the context of a post dated cheque, this Court held in D.C.M. Financial Services Ltd. v. Sunil Kala & Co. 2002 (97) DLT 700 that when the creditor is prevented by the debtor from presenting the cheque before a particular date, it is the date on which the cheque can be presented which shall be deemed to be the date of the cheque. In that case a cheque dated 14.11.1995 was delivered by the defendant to the plaintiff. He, however, requested the plaintiff not to present the cheque since they did not have arrangement for its encashment. The cheque was eventually encashed on 12.12.1995. It was held by this Court that 12.12.1995 and not 14.11.1995 would be considered as the date of payment by the defendants to the plaintiff. The Court rejected the contention of the defendant that since the cheque could have been presented to the bank for the first time on 14.11.1995, that would be the date of payment.

In the case before this Court, though the cheque of Rs. 45 lakh as also the other two cheques were undated when delivered to the plaintiff, it was the defendant who prevented the plaintiff from presenting the same to the bank by requesting that they would be presented only after

> *10.08.2002 by which they were expecting the payment to be received in their City Bank account. Therefore, 10.08.2002 would be the date of the cheque for the purpose of computing the period of limitation. Since a fresh period of limitation starts from the date of the acknowledgement and the cheque of Rs. 45 lakh was dated 10.08.2002, the suit having been filed on 08.07.2005 is well within limitation. The issues are, therefore, decided against the defendants and in favour of the plaintiff.*

26. Thus where the plaintiff has alleged in the plaint the said cheques were handed over as a written acknowledgment in May, 2016 then in the absence of the written statement and/or a specific denial to such averment, such contention need to be accepted as of now. This fact can only be challenged in cross-examination of the plaintiff. The suit cannot be dismissed on this premise alone at this stage.

27. Because of the contentions raised the issues of *jurisdiction* and *limitation* have become the issues of *fact* and *law*, hence need evidence. The suit cannot be dismissed on these grounds, admittedly, when there is no written statement on record to controvert the allegations set out in the plaint.

28. Both these applications are thus dismissed.

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29. Be listed for disposal of applications viz. IA Nos.*2181/2019* and *3649/2019* on 07.04.2022.

YOGESH KHANNA, J.

JANUARY 03, 2022
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