CS DJ137/21
M/S LOYAL SCAFFOLDING PVT. LTD. Vs. M/S TOP LINE BUILDTECH PVT. LTD. AND ANR

29.01.2024

Present: Sh. Suresh Bharti, counsel for plaintiff.

None for defendants.

Vide this order, I shall decide the application filed under Order 1 Rule 10 CPC filed by defendant no.2, 4 and 5 for deletion of their name from array of defendants.

It is submitted that defendant no.1 is a company, defendant no.2 is the Director, defendant no.4 and 5 are the AR's of the defendant no.1 company.

It is argued by learned counsel for defendants/applicants that company is having a separate legal entity and therefore defendant no.1, 4 and 5 are personally not liable for the acts done on behalf of defendant no.1 company. It is also argued that company is a distinct entity from its Director and Share holders and none of them can treat the assets of the company as their own. As the Directors are not liable for ordinary contractual liabilities, therefore, defendant no.2, 4 and 5 should be deleted from the array of defendants.

Reply was filed to the application by the plaintiff.

Plaintiff stated in its reply that defendant no.2 to 5 were conducting all the day to day activities of defendant no.1 and have full knowledge of day to day affairs of defendant no1. Defendant no.2 had signed the contract, defendant no.3 had signed all the TDS certificates and goods were transferred by defendant

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no.5 and all the defendants are necessary parties. Defendant no.5 is also the Vise President of defendant no.1 and therefore liable for all the acts.

Arguments heard and record perused.

As per the facts of the plaint, when plaintiff's AR went to the defendant no.1 for reconciling the outstanding claims, defendant no.2 and 3 handed over an intimation letter stating that the material of the plaintiff company had been transferred by defendant no.1 to 5 to defendant no.6 and recovery be made from defendant no.6. Defendant no.1 to 5 refused to pay any money to the plaintiff.

It is a settled law that liability of a Director of a company can arise from (i) negligence, (ii) malafide acts, (iii) ultravares acts, or (iv) breach of fiduciary duty.

It is also averred in the plaint that defendants retained the scaffolding for their own profit illegally and misappropriated the hard earned money of the plaintiff.

It is a settled position since the case of ***Salamon Vs Salamon & Co*** Ltd that company is a distinct legal entity and its members are not liable personally to the creditors of the company. In the landmark case of ***Balwant Rai Saluja Vs AIR India Ltd***, the Hon'ble Supreme Court had held that company had separate legal personality and the corporate veil should be lifted only in a restricted manner. It has been specifically held in Balwant Rai Saluja case that if a Director has to be made personally liable by lifting the corporate veil, it has to be shown that he was actually in

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control of the company. No specific averment has been made against each of the Directors and AR's in the plaint qua any fraud or negligence or malafide. Hence, I see no reason to proceed against defendant no.2 namely Vikram Bhardwaj. Hence, defendant no.2 is deleted from the array of defendants.

As far as defendant no.4 and 5 are concerned, they are admittedly the AR's of the company. The plaintiff has not been able to show the liabilities of defendant no.4 and 5. Merely submitting that defendant no.1 to 5 refused to make the payment is not sufficient to hold them liable. Moreover, the plaintiff has not been able to specifically state the role of defendant no. 4 and 5 in the transactions between the parties.

Hence, the application under Order 1 Rule 10(2) CPC is allowed and defendant no.2, 4 and 5 are deleted from the array of defendants.

Application is disposed of accordingly.

Fresh memo of parties be filed.

Put up for further proceedings on 10.04.2024.

(Purva Sareen)
ADJ-01, South District
Saket Court, New Delhi
29.01.2024