

WITNESS CALLED AND DULY SWORN ON 27.05.2024.**CROSS EXAMINATION BY SRI.N.K., ADVOCATE FOR THE DEFENDANT NO.8:-**

1. It is False to suggest that, Defendant no.8 was not present at any of the discussions between the plaintiff and the Defendants as stated in para no.11 of my evidence affidavit.

Question: How did the Defendant no.8 impress upon you that the affairs of the Defendant no.1 company have been “carried out in a professional way under their guidance” ?

Answer: Defendant no.8 submitted the balance sheet dtd.31.03.2006 saying that, all the accounting standards, schedule-VI complied with company’s Act 1956 and same is certified in his Audit report. Based on that, we have believed.

Apart from submitting the balance sheet, the Defendant no.8 stated that, he is statutory Auditor of Defendant no.1 company and this company professionally managed and all the internal controls and books of accounts neatly maintained. It is False to suggest that, the Defendant no.8 as an Auditor cannot give any assurance as to whether the Defendant no.1 company was carrying on its business affairs in a professional way.

Question: Is it, the only the manner of accounting in a company is within the scope of his professional work of defendant no.8 as an Auditor ?

Answer: Apart from Auditing, he can give professional advise also.

Question: Whether the Defendant no.8 had given any professional advise to plaintiff company ?

Answer: Yes, during the discussion he advised about defendant no.1 company's internal controls process, sales, revenue recognition and provisions.

We don't had any documents to shows that, the Defendant no.8 advised as stated above.

2. **Question:** When does the need for a due diligence audit arise for any company ?

Answer: Depending upon the company and size of the business and agreed by both parties, to know the facts of the company, compliance of statutory obligations for the purpose of investment.

3. It is True to suggest that, without a due diligence there is no way of knowing for sure whether the affairs of a company are carried out in a proper manner.

Question: Since the plaintiff company had decided to do due diligence of the defendant company before making any financial commitment, why you did not do it ?

Answer: Defendant no.2, 5, 7, 8 met us and submitted signed balance sheet of defendant no.1 company and impressed about defendant no.1 company made us to believe that , they are professionally managing affairs of the company and asked us to participate in the business investment and we have stated to complete the due diligence audit before making investment, but defendant no.2,5,7,8 told us there is urgent need of repayment of loan to SBI, Peenya Branch. The Defendant no.2,5,7,8 assured that, due diligence of audit can be taken after 7 days from the date

of payment. So, We have made the payment of 200lakhs. It is False to suggest that, at no point of time Defendant no.8 met the any officers of the plaintiff company and not given any assurance regarding any aspect pertaining to investment. It is False to suggest that, Plaintiff are blaming the Defendant no.8 to cover up their own negligence in entering into the business agreement and distribution agreement dtd.29.09.2006 without fully knowing or enquiring the state of business activities and affairs of the defendant no.1 company. Witness volunteers above mentioned two agreements were cancelled by MOU – Ex.P.2 as per the clause no.22. It is True to suggest that, the plaintiff company entirely relying on MOU dtd.28.12.2007 in respect of transactions with defendant no.1 company.

4. In the month of October, November – 2007, we have carried out due diligence audit in defendant no.1 company for the period of April-2006 to October-2007. 1st investment of Rs.200lakhs made in first week of October – 2006 and 2nd investment of Rs.50lakhs made in January-2008 and remaining balance of Rs.173.2lakhs investment made in different dates as per Ex.D.6.

5. **Question:** What were the points of reference and benchmarks for carrying out the due diligence audit in the Defendant no.1 company ?

Answer: Based on financial information, balance sheet, contract, transaction details, inventory and application of account as per accounting standards.

6. The contract referred by me is Annual Maintenance Contract, purchase order from the customers if any other contracts. The transaction details are invoices, revenue recognition, bank books, cash books, journal entries and any other documents made to adjustment of account. The employees of the plaintiff company were carried out the due diligence audit in the defendant no.1 company i.e. Myself, Sandeep Kumar Goyal, Venkataramana P. I do not remember what is the position / rank of the above officials in the plaintiff company, since it was carried out in the year 2007. My qualification is M.Com., Sandeep Kumar Goyal and Venkataraman P., are Chartered Accountants.

7. I do not remember the date on which due diligence audit report in respect of the defendant no.1 company was ready. I do not remember whether the due diligence audit report was ready within 30 days after completion of the audit by November – 2007 as stated earlier.

Question: What was the Decision of Board resolution passed by the Board of Directors of the plaintiff company after considering the due diligence audit report in respect of the defendant no.1 company ?

Answer: After considering the due diligence report, the board has taken decision as since the defendant no.1 company could not perform business participation agreement and distribution agreement, both dtd.29.09.2006, hence new agreement MOU – Ex.P.2 has to be executed by canceling the earlier two agreements.

**FURTHER CROSS EXAMINATION: DEFERRED AT THE
REQUEST OF ADVOCATE FOR DEFENDANT NO.8.**

(Typed to my dictation in open court.)

R.O.I & A.C.,

sd/-

(SUMANGALA S. BASAVANNOUR)
LXXXII ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.