



2025:DHC:3694



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

*Date of decision: 2<sup>nd</sup> May, 2025*

+ CS(COMM) 17/2023, CCP(O) 51/2023, I.A. 16516/2022, I.A. 6618/2023, I.A. 43252/2024  
CEPCO INDUSTRIES PRIVATE LIMITED .....Plaintiff

Through: Mr. Jai Sahai Endlaw, Ms. Shambhavi Kala and Ms. Shivalika Rudrabatla, Advocates.

versus

TEWARI RESTAURANT PRIVATE LIMITED .....Defendant

Through: Mr. Ankur Jain, Advocate for D-2.  
Mr. Ujjawal Ghai, Advocate for D-3 along with Defendant No.3 in person.  
Ms. Shiva Lakshmi, CGSC and Mr. Govind Sharma and Mr. Madhav Bajaj for ROC (UOI).

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**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**J U D G M E N T**

**MANMEET PRITAM SINGH ARORA, J (ORAL):**

**CS(COMM) 17/2023**

1. The captioned suit was initially filed against the Defendant No.1, because of non-adherence of financial discipline by the said Defendant in payment of rent as per terms of the Lease Deed dated 22.03.2016. The Plaintiff inter alia sought recovery of arrears of rent for period of (i) April, 2021 to November, 2021; and (ii) December, 2021 till handing over of the vacant possession of the leased premises i.e., F-14 and F-15, F- Block, Inner



Circle, Connaught Place, New Delhi –110001.

1.1. It is a matter of record that Defendant No. 1 vacated the suit property on 13.04.2024 and is thus liable for payment of rent until 31.03.2024.

1.2. This Court vide judgment dated 22.08.2024 held that corporate veil of Defendant No.1 has been used by its Directors to defraud the Plaintiff and the Court. The Court vide the said judgment lifted the corporate veil of the Defendant No.1 and impleaded its directors i.e., Mr. Vikram Handa, Mr. Dev Kumar Arora and Mr. Noorul Arfeen as Defendant Nos. 2, 3, and 4 respectively.

1.3. The Court held that since Defendant No. 1 continued to occupy the suit premises during the pendency of the suit<sup>1</sup>, under the aegis of the undertaking given to the Court that the rent shall be paid to the Plaintiff, the Court held that Defendant Nos. 2, 3 and 4 are personally liable for the payment of the said rent.

1.4. The arrears of rent for the period April, 2021 to March, 2024 as per the monthly rate of rental<sup>2</sup> admitted by Defendants was assessed at Rs. 2.47 Crores.

1.5. This Court restrained the Defendant Nos. 2, 3, and 4 from operating their respective personal bank accounts in excess of Rs. 25,000/- per month until the arrears due to the extent of Rs. 2.47 Crores was paid.

1.6. The judgment dated 22.08.2024 has attained finality. This order is being passed in continuation of the judgment dated 22.08.2024.

### **Submissions of the Defendant No.3**

2. Defendant No. 3 stopped appearing after 22.08.2024 leading to

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<sup>1</sup> December, 2021 to March, 2024

<sup>2</sup> Rs. 8.75 lakhs per month



issuance of bailable warrant(s). Defendant No. 3 has appeared today in pursuance to the bailable warrant(s) issued by this Court vide order dated 01.10.2024 and 06.02.2025.

2.1. Mr. Ujjawal Ghai, learned counsel enters appearance for Defendant No.3. He states that he will file his *Vakalatnama* on behalf of Defendant No 3 during the course of the day. He states that non-appearance of Defendant No. 3 on previous dates was inadvertent.

2.2. He states on instructions that the direction for filing of affidavit of assets as per the judgment dated 22.08.2024 will be complied by the Defendant No.3 within three (3) weeks.

#### **Submissions of the Defendant No.2**

3. Mr. Ankur Jain, enters appearance on behalf of Defendant No. 2.

3.1. He states that he has been discharged by Defendant No. 1; and will now be representing Defendant No. 2. He states that Defendant No. 2 as well will comply with the directions to file an affidavit of assets as per the judgment dated 22.08.2024, within three (3) weeks.

3.2. He states that there is an objection on maintainability of the suit, which was initially filed as an ordinary suit and was latter converted by the Court as a commercial suit, but certain paragraphs in the plaint have not been amended, i.e., paragraph '17', which states that the suit is ordinary and non-commercial in nature. He states that certain other mandatory requirements of Commercial Courts Act, 2015 ('Act of 2015') have also not been complied with by the Plaintiff.

#### **Submissions on behalf of the ROC**

4. Ms. Shiva Lakshmi, appearing on behalf of Registrar of Companies states that the latest Action Taken Report ('ATR') on behalf of the ROC has



been filed on 18.10.2024.

4.1. She states that penalty has been imposed on Defendant Nos. 1 to 4. She states that, however the said Defendants have failed to pay the penalty and the ROC will now initiate further process including prosecution for recovery of the penalty, as per Section 454 of the Companies Act, 2013 in accordance with law.

**Submissions of the Plaintiff**

5. Learned counsel for the Plaintiff states that on a conjoint reading of the orders dated 30.05.2023, 19.10.2023, 08.01.2024, 28.02.2024, 07.05.2024, 06.08.2024, and 22.08.2024, it is apparent that Defendant Nos. 1 to 4 unequivocally admit their liability towards rent payable to the Plaintiff for the period April, 2021 to March, 2024.

5.1. He states that as per the own admissions of the Defendants, a total sum of Rs. 2,47,55,100/- is due and payable for the period April, 2021 to March, 2024. He states that this due has been calculated as per the monthly rental admitted by Defendants i.e. Rs. 8.75 lakhs per month.

5.2. He clarifies that the Plaintiff does not admit that the arrears are only Rs. 2,47,55,100/-, because as per the Plaintiff the principal amount due and payable is around Rs. 4.89 Crores for the same period.

5.3. He states that as per the judgment dated 22.08.2024, for the rental due and payable from April, 2021-November, 2021, Defendant No.1 is exclusively liable. He states that the rental due for this period is Rs. 28,29,000/-.

5.4. He states that further as per the said judgment the Defendant Nos. 2 to 4 along with Defendant No.1 are liable for the rental due and payable from December, 2021-March, 2024. He states that the rental due for this period is



Rs. 2,19,26,100/-.

5.5. He states that at this stage a decree to the extent of admitted liability of Rs. 2,47,55,100/- may be passed against the Defendants. He states that for the remaining amount Plaintiff will proceed to trial.

#### **Analysis and Findings**

6. This Court has heard the submissions of the learned counsels for the parties and perused the records.

#### **Objections *qua* non-compliance of the provisions of Act of 2015**

7. The present suit was originally filed as an ordinary Civil Suit i.e., CS(OS) 682/2021. The Defendant No.1 herein filed an application I.A. No. 17306/2022 seeking rejection of the plaint under Order VII Rule 11 (d) of CPC. The Defendant No.1 raised the similar objections as has been raised by the Defendant No.2 today. The said objections were as follows: (i) Paragraph '17' of the plaint representing that the suit is a non-commercial suit; (ii) non-compliance of Section 12-A of the Act of 2015; and (iii) non-filing of Statement of Truth.

7.1. Vide judgment dated 09.01.2023, whilst dismissing the application and objections raised thereunder, this Court converted the ordinary Civil Suit into the captioned Commercial Suit, observing that: (i) in view of the judgment of Supreme Court in **Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.**<sup>3</sup> compliance of Section 12A of the Act of 2015 was prospective in nature and as the suit was filed in December, 2021 before the said judgment was passed, therefore, the rigors of Section 12A were inapplicable; (ii) non-filing of the Statement of Truth was immaterial as the said defect was rectifiable. This Court further directed the Plaintiff to file the

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<sup>3</sup> (2022) 10 SCC 1.



Statement of Truth in accordance with law. The relevant paragraph of the judgment dated 09.01.2023 reads as under:

“13. As far as non-compliance with the mandatory provision of Section 12A of the Act is concerned, the judgment of the Supreme Court in Patil Automation Pvt. Ltd. and Ors. (supra) has been expressly made prospective in nature. **The same, therefore, shall have no application to the facts of the present case as the suit was filed prior to the date of the said judgment.** The parties were also referred to mediation vide order dated 22.04.2022 passed by the learned Joint Registrar (Judicial), however, the parties could not arrive at a settlement of their disputes.

14. **As far as non-filing of the ‘Statement of Truth’, as the Suit was not filed as a Commercial Suit to which the provisions of the Act apply, the occasion of filing the ‘Statement of Truth’ did not arise.** Now that the Suit is admitted to be a Commercial Suit of the specified value to which the provisions of the Act would apply, **the plaintiff shall rectify this defect, however, for this defect alone the plaint cannot be rejected.**”

(Emphasis supplied)

7.2. The order dated 09.01.2023 dismissing I.A. No. 17306/2022 has attained finality. Thus, the oral objections raised by Defendant No. 2 are not maintainable.

#### **Decree on Admitted Dues of Rs. 2,47,55,100**

8. It would be relevant to refer to some of the orders and judgment passed by this Court where the Defendants have unequivocally admitted their liability towards the Plaintiff; undertaken to pay the same but have failed to pay admitted dues. The relevant extract of said orders reads as under:

#### **“Order Dated 30.05.2023:**

.....

4. The learned counsel for **the defendant**, on the other hand, submits that **the rent has not been paid for lack of proper invoices being raised by the plaintiff.**

5. The learned counsel for the plaintiff, in turn, submits that the



invoices could not be raised as the defendant is not ready and willing to pay the rent at the agreed rate as provided in the Lease Deed dated 22.03.2016.

6. Having heard the learned counsels for the parties and without prejudice to the rights and contentions of the parties, **the plaintiff shall raise an invoice of the amount that it seeks to claim from the defendant. On such invoice being raised, the defendant shall pay the admitted rent to the plaintiff, including the arrears thereof, within a period of four weeks. Future rent shall also be paid by the seventh day of each calendar month on a proper invoice being raised by the plaintiff.**

.....”

**“Order Dated 19.10.2023:**

1. Learned counsel for the defendant/contemnor submits that payments in terms of the invoices raised by the plaintiff were not made as the plaintiff had not taken into account some payments which have already been made by the defendant.

2. Even though this submission is denied by learned counsel for the plaintiff, **this Court is unable to appreciate as to why the defendant/contemnor has not paid at least the admitted due amount** after adjusting the amounts which are stated to have already been made to the plaintiff.”

**“Order Dated 28.02.2024:**

.....

3. **The Court has seen the statement of account today, from which it appears that a substantial amount of payment is due and the Defendant continues to run the restaurant in a prime property in Connaught Place i.e., F-14 and F-15, F- Block, Inner Circle, Connaught Place, New Delhi 110001.**

4. Stand of the Defendant is that though the rent agreement mentions Rs.12,65,000/- for the period of 1st June, 2018 to 31st May, 2021, after an enhancement of rent it was Rs.14,54,750/- for the period of 1st June, 2021 to 31st May, 2024. **The Plaintiff has been raising invoices at the rate of Rs.8,75,000/- per month. Admittedly, the last payment made of Rs.6,78,500/- was in August, 2022. Accordingly, the Defendant shall clear the entire outstanding @ Rs.8,75,000/- per month with the Plaintiff within a period of four weeks.** The above shall be subject to the rights and contentions of the



Plaintiff as the higher amount is due. **If the amount is not paid, coercive measures would have to be directed by the Court.**

.....”

#### **“Judgment Dated 22.08.2024**

.....

8.4. Undeterred, the defendant Company continued to occupy the leased property during the pendency of this suit and carry on the business of running and operating the restaurant, **without payment of rent**. There was admitted default in payment of rent even as per the defendant Company as recorded in the order dated 30.05.2023.....

8.5. In view of the admitted default in payment of rent, the Court in I.A. No. 6618/2023 filed by the plaintiff for seeking summary judgment, directed the plaintiff to raise an invoice for the arrears of rent on the defendant Company and directed the defendant to clear the admitted arrears. Further, the Court directed the defendant Company to ensure that future rent (i.e., w.e.f. 01.04.2024) should be cleared by 07<sup>th</sup> day of calendar month.

.....

19. The defendant Company represented to the Court that it had bona fide dispute on the quantum of arrears of rent and represented that the non-payment of the arrears was on the basis of genuine disputes. **The defendant Company undertook to pay the admitted rent for the continued occupation at Rs. 8,75,000 P.M. However, in view of the admission made today before this Court that the defendant Company has no funds to pay towards this admitted liability towards rent contracted during the pendency of the proceedings, shows that Mr. Vikram Handa, Mr. Dev Kumar Arora and Mr. Noorul Arfeen despite being aware about the inability of the defendant Company continued to misrepresent before this Court its financial abilities.**

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21. **In these facts, this Court is of the opinion that Mr. Vikram Handa, Mr. Dev Kumar Arora, and Mr. Noorul Arfeen, the directors of the defendant Company, by continuing to carry on restaurant business from the leased property after termination of lease deed vide final legal notice dated 29.10.2021 have become personally liable for the rent which has become due and payable.**

.....



24. The Directors of the defendant Company on 30.05.2023, 19.10.2023 and 28.02.2024 categorically **led the Court to believe that they will remit arrears of rent and current rent to the plaintiff.** However, today after having uninterruptedly used the leased property for running the restaurant business under the protective orders of the Court, the said Directors have now raised their hands and are claiming financial inability to pay the admitted debt towards arrears of rent. **In these facts, this Court is of the considered opinion that the corporate veil of defendant Company has been used by its directors to defraud the plaintiff and the Court. Therefore, this Court is of the considered opinion that this is a fit case of lifting of corporate veil, which already stands pierced by the willful and fraudulent acts and omissions of the Directors of the defendant Company.**

....

29. The newly impleaded defendants No. 2, 3 and 4 are directed to file with affidavit the list of all their bank accounts, list of movable and immovable assets within two (2) weeks i.e., on or before 05.09.2024. defendant nos. 2, 3 and 4 are hereby restrained from transferring or creating third-party rights in any of the movable and immovable assets. defendant nos. 2, 3 and 4 are restrained from operating their respective bank accounts in excess of Rs. 25,000/- per month **until the arrears of the plaintiff to the extent of Rs. 2.47 Crores towards principal arrears of rent which is based at the rate of Rs.8.75 lacs admitted by the defendant Company is paid off.**

.....”

(Emphasis supplied)

A perusal of the above orders and judgment clearly reveals that the liability of Defendant Nos. 1 to 4 towards the Plaintiff with respect to payment of arrears of rent for the use and occupation of the suit premises for the period April, 2021 to March 2024, at the rate of Rs. 8.75 lakhs per month is admitted.

Vide judgment dated 22.08.2024, the Defendant No.1 alone was held liable to pay the arrears of the rental due from April, 2021 to November,



2021. Further the Defendant Nos. 2 to 4 along with Defendant No.1 were held jointly and severally liable to pay the outstanding rentals from December, 2021 till the vacant possession of the leased premises was handed back to the Plaintiff (which was handed back on 13.04.2024), which has been reckoned till 31.03.2024.

8.1. Mr. Endlaw, learned counsel for the Plaintiff has handed over calculation of the amount of Rs. 2.47 Crores due from the Defendants. It is stated that the last payment made by the Defendants was on 23.08.2022 and after that no payment has been made by the Defendants for the use and occupation of the premises till 13.04.2024. The relevant extract of the said calculation sheet and the statement of account of Defendant No.1 (as maintained by the Plaintiff) attached with the said calculation sheet reads as under:

“2. The amounts payable by the Defendants calculated at the admitted rent of Rs. 10,32,500 [being **8,75,000** (admitted rent) + 15,75,00 (GST@18%)] is as follows:

- i. Rs. 82,60,000 for the period of April 2021 to November 2021
  - ii. Rs. 2,89,63,100 for the period of December 2021 to March 2024
- Cumulatively, amounting to **Rs. 3,72,23,100 (A)**.

3. Against the aforesaid amounts, the following amounts have been received by the Plaintiff

- i. Rs. 54,31,000 for the period of April 2021 to November 2021
  - ii. Rs. 70,37,000 for the period of December 2021 to August 2022
- Cumulatively, amounting to **Rs. 1,24,68,000 (B)**.

4. As such, the net amount receivable by the Plaintiff is

- i. **Rs. 28,29,000** for the period of **April 2021 to November 2021** [2(i) - 3(i)]
  - ii. **Rs. 2,19,26,100** for the period of **December 2021 to March 2024** [2(ii) - 3(ii)].
- Cumulatively amounting to **Rs. 2,47,55,100.**”





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awarded at 9% per annum during the pendency of the suit w.e.f. the date on which the rent for each month became due and future interest at 12% per annum.

For instance, the interest on the rent for the month of January, 2021 will be calculated w.e.f. 07.01.2021, since the rental from the month of January 2021 became due and payable in advance on 07.01.2021 as per Clause 1 of the lease deed dated 22.03.2016.

9.3 The plaintiff will file a computation for the pendente lite interest amount before the registry within three (3) weeks.

10. The Registry is directed to draw up the decree(s) for the above-mentioned amount(s) and Plaintiff shall file Court fee for the said amount(s).

11. The ROC is directed to initiate the process of recovery of penalty and prosecution as per law within a period of eight (8) weeks. The fresh ATR be filed before the next date of hearing.

12. List for further proceedings on **22.09.2025**.

**MANMEET PRITAM SINGH ARORA  
(JUDGE)**

**MAY 2, 2025/mr/sk**  
**(corrected and released on 13.05.2025)**

[Click here to check corrigendum, if any](#)