

CP No.93 of 2012

IN THE HIGH COURT AT CALCUTTA  
Original Jurisdiction  
ORIGINAL SIDE

IN THE MATTER OF :  
JALAN INFOTECH PVT. LTD.

-AND-

HEWLETT PACKARD INDIA SALES PVT.  
LTD.

Appearance:

*Mr. Rudraman Bhattacharyya, Adv.*  
*Mr. Prithwiraj Sinha, Adv.*  
*...for the petitioner.*

*Mr. Pratap Chatterjee, Sr. Adv.*  
*Ms. Sonal Saha, Adv.*  
*Mr. Kushagra Shah, Adv.*  
*...for the company.*

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

Date : December 3, 2012.

The Court : The claim of the petitioning creditor is on account of dues from its distribution agent. The petitioner relies on the communication by electronic mail between the parties in April, 2009 as unequivocal admission on the part of the company to make payment of the dues as claimed by the petitioner.

The petitioner first refers to a mail sent at 12:12 pm on April 23, 2009 by the company to the petitioner. The company has not questioned the authenticity of the mail. The company had proposed to pay the petitioner its dues in a phased manner between June and September,

2009 in tranches of 20%, 25%, 25% and 30%, respectively. After making the said commitment, the company asserted as follows:

“Meanwhile I would request you to please make sure that all claims given to you are processed and reduced from a/r.”

The petitioner replied on April 24, 2009 forwarding what was called a final counter proposal. The petitioner proposed that the company pay to the petitioner sums of Rs.49,00,000/- on April 25 and May 15, 2009 and sums of Rs.71,11,716.55 on the 15<sup>th</sup> day of the four succeeding months. The total amount which the petitioner required the company to pay was Rs.3,82,46,866.21.

Within a couple of hours of the petitioner’s aforesaid mail being received by the company, it replied as follows:

“I had given you the payment plan which I feel was possible from our side.

I would once again request you to please accept our payment plan and confirm so the initial payment could be made before the commit (*sic*) day.

The intent is to pay the basis that I had committed dates below.

Request your understanding and cooperation and an confirmation.”

The petitioner says that since the mail of the company set out above followed the petitioner’s mail earlier in the day of April 24, 2009, the

company's admission of the counter-proposal made by the company would be evident.

The petitioner also relies on the previous mail issued by the company to the petitioner, inter alia, on April 18, 2009. The company had suggested that the company would make payment to the petitioner by the last days of June, July, August, September and October, but had qualified the proposal by suggesting that the payment would be made after "deducting or adjusting our claims ..."

It does not, however, appear from the documents appended to the petition that the company indicated the quantum of the company's claim against the petitioner at the relevant point of time. It also does not appear that the petitioner sought to ascertain from the company as to the amount that the company claimed by way of adjustment or deduction or otherwise.

The statutory notice was issued on October 1, 2010, some 18 months after the last lot of e-mail was exchanged between the parties. The petitioner claimed a principal sum outstanding of Rs.4,10,03,260.98 and demanded interest at the rate of 24% per annum on such amount. The company responded by a letter of October 20, 2010. The company narrated the relationship between the parties from the year 2000 and spoke of the days prior to the petitioner taking over the business of Compaq. The company complained of several business decisions taken by

the petitioner which were detrimental to the company and claimed that the company had suffered loss of business and damages. The company claimed a total amount of Rs.795.94 lakh from petitioner on account of the petitioner's withdrawal of business from the company, godown rent, bank interest, credit notes, claim on entry tax, bad debts and loss of reputation leading to shrinkage of business. The company declined altogether that any payment was due or owing from the company to the petitioner after taking into account the company's claim against the petitioner.

The petitioner says that the e-mail exchanged between the parties in April, 2009 did not indicate claims in the nature of damages on account of alleged loss of business or loss of reputation. The petitioner suggests that the company had only sought adjustment of some of the amounts which the company had claimed and it would be evident from the tenor of the correspondence at the relevant time that the company acknowledged to be a debtor of the petitioner in the sense that the company offered to make payment to the petitioner after adjusting the company's claim against it. The petitioner submits that a baseless and inflated claim was sought to be made by the company after receipt of the statutory notice and it would be evident that the company had claimed under bogus and fictitious heads in an attempt to conceal the company's inability to pay the rightful dues of the petitioner.

There is no doubt that the correspondence between the parties in April, 2009 gives the impression that the company admitted and acknowledged that the company owed money to the petitioner. Yet, on the basis of the mail exchanged at the relevant time, the exact quantum of the company's indebtedness to the petitioner cannot be assessed. The company did not agree to the final counter proposal made by the petitioner on April 24, 2009 nor is any sentence in the company's mail at 12:34 pm on April 24, 2009 capable of being understood to have, in any manner, acceded to the petitioner's counter proposal or admitted the amount claimed by the petitioner.

While it is evident that vague claims under several heads have been made by the company upon receipt of the statutory notice, it cannot be lost sight of that for a petition to be admitted in this jurisdiction, the petitioner has ordinarily to, not only show that a sum in excess of Rs.500 is due and owing to it from the company, but also demonstrate the quantum of the debt due. At the very least, on the basis of documents contained in the petition which have been relied upon in course of the hearing, it cannot be said that the petitioner has been able to establish the amount which is due and owing from the company.

If the amount claimed by the petitioner of about Rs.4.1 crore is accepted to be the amount due from the company to the petitioner on account of the unpaid bills, it does not appear that the credit that the

company sought has been given to the company by the petitioner. There is a serious question to be gone into, not only on account of the amount due from the company to the petitioner but also on account of the adjustment that the company is entitled to claim from the money due to the petitioner.

It does not appear that the defence is altogether moonshine or without basis. Though the company has not been called upon in course of the hearing, the communication exchanged between the parties in April, 2009 and the company's reply to the statutory notice indicate sufficient defence for this petition not to be admitted.

C.P.No.93 of 2012 is permanently stayed. Nothing in this order will prevent the petitioner from pursuing the petitioner's claim before the appropriate forum in accordance with law. There will be no order as to costs.

Urgent certified photocopies of this order, if applied for, be given to the parties subject to compliance with all requisite formalities.

**(Sanjib Banerjee, J.)**

A/s.