

CP No.212 of 2012

IN THE HIGH COURT AT CALCUTTA
Original Jurisdiction
ORIGINAL SIDE

CONNECTIVA SYSTEMS INDIA PVT. LTD.

-And-

KRISHNENDU SENGUPTA

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

Date : January 7, 2013.

Appearance:

Ms. Manju Bhuteria, Adv.
...for the petitioner

Mr. Prabir Dasgupta, Adv.
...for the company

The Court : The claim is by an erstwhile employee of the company on account of bonus and commission. The company has not replied to the statutory notice but its stand is that the petitioner was not an employee of the company since his letter of appointment was issued by the company's principal, an American entity, sharing substantially the same name as the company.

The petitioner was appointed as "Senior Vice-President and General Manager of Connectiva India" by a letter dated March 30, 2009 signed by Chief Executive Officer (CEO) of Connectiva Systems and the

letter bears the logo and name of Connectiva but carries the address of Connectiva Systems, Inc. New York. The letter provided that the petitioner would be eligible for annual bonus and a further commission on the revenue generated and managed by the petitioner in his sales and account management capacity. The letter also spoke of a stock option as part of an additional compensation incentive package. In describing the general role and responsibilities of the petitioner, the letter of March 30, 2009 specified that the petitioner would “oversee all business operations of the Connectiva India business unit.”

The petitioner has referred to pay slips issued by the company, Connectiva Systems India Pvt. Ltd., and, at least, one certificate evidencing tax deducted at source by the company from the salary. The petitioner demonstrates that the petitioner held a corporate credit card of Axis Bank where the corporate client was the company.

The petitioner also refers to a letter issued by the chief scientist of the company relieving the petitioner from his responsibilities with effect from June 30, 2011. The acceptance of the petitioner’s letter of resignation was acknowledged by the Senior Manager, Human Resources of the company on June 30, 2011. The petitioner’s claim contained in the statutory notice was forwarded to the registered office of the company and

the company appears to have received the same without caring to reply thereto.

As regards the petitioner's claim on account of bonus and commission, the petitioner refers to an electronic mail received from one Pratyush Bhowmick of Connectiva with a copy marked to the CEO of the company. The communication referred to an exception being made out for payment of bonus for financial year 2010 to the petitioner and no bonus having been approved by the board for financial year 2011. It acknowledged, however, that an amount of US\$5000 was payable to the petitioner on lumpsum basis for the projects in which the petitioner was involved. The petitioner next refers to a later mail of October 17, 2011 when the petitioner called upon the same Pratyush Bhowmick to release an amount of Rs.4 lakh on account of the petitioner's bonus for financial year 2011 along with the sales commission of US\$5000. The petitioner indicated in the mail that it was agreed that such amount would be paid to the petitioner since the petitioner gave up his claim towards employees' stock option. The petitioner also asserted that such dues were promised to be paid to the petitioner by September 30, 2011. A copy of such mail of October 17, 2011 was forwarded to the CEO on November 25, 2011. The reply came from the CEO, Avi Basu, who said that, "in any case 4l is due to you as your 'f & f' and we will settle this by end of december." The

petitioner explains that “41” stands for Rs.4 lakh and “f & f” for full and final settlement.

The bunch of correspondence relied upon by the petitioner has been collectively annexed as annexure “C” to the petition and referred to at paragraph 8 of the petition. The affidavit-in-opposition deals with paragraph 8 of the petition at paragraph 9 thereof and does not question the authenticity of the copy documents appended as annexure C to the petition.

The stand taken by the company is that the petitioner was an employee of the American principal of the company and, hence, the company is not liable to the petitioner in any manner. Without prejudice to such objection, it is the further argument on behalf of the company that bonus is payable only upon the company making profits and such position would also be evident from the petitioner’s letter of appointment; and, the company had not made any profit during financial year 2011. In support of such contention, the mail of Pratyush Bhowmick of June 22, 2011, which forms part of annexure “ C” to the petition, has been placed again.

The company’s defence is dishonest and its attempt at the final hearing to create a confusion does not only not impress, but it may be good grounds for the company to be wound up on the just and equitable count. Whatever may have been the circumstances in which the letterhead

of the American principal was used for the appointment letter being issued to the petitioner - sometimes the technicalities are forgotten; or, it may have been perceived that using an American company's letterhead rather than an Indian company's was more impressive - it is evident from the several pay slips relied upon by the petitioner and the tax certificate that it was the company which was obliged to pay the petitioner and that the company consistently paid the salary to the petitioner after duly deducting tax therefrom according to Indian laws.

As to the merits of the claim, there is no room for the company to wriggle out of its categorical admission contained in Pratyush Bhowmick's e-mail of June 22, 2011 that a lumpsum amount of US\$5000 was payable on account of commission. The company's attempt to create a confusion on the bonus based on Pratyush Bhowmick's mail of June 22, 2011 can easily be dealt with by referring to the subsequent mail of October 17, 2011 relied upon by the petitioner from which it is evident that the parties had agreed that the petitioner would be paid a full and final amount of bonus of Rs.4 lakh. CEO Avi Basu's mail of November 25, 2011 finds no reference in the company's affidavit and the admission contained therein has not been dealt with. It may also be of relevance that the petitioner's mail of October 17, 2011 to Pratyush Bhowmick was forwarded to Avi Basu on November 25, 2011 where the petitioner had emphasised

that the petitioner was distressed at the way the overdue claims of the petitioner had been handled by Connectiva Systems (India) Pvt. Ltd.

CP No.212 of 2012 is admitted for the principal sum of Rs.4 lakh along with the Indian equivalent as on date of US\$5000 together with interest at the rate of 12 per cent per annum thereon from October 1, 2011 till such time the payment is made. If the company pays off the entire amount, inclusive of interest and costs assessed at 3000 GM, within a week from date, the petition will remain permanently stayed.

In default, the petition will be advertised once in “The Statesman” and once in “Bartaman”. The advertisements should indicate that the matter will appear before Court on the first available working day after the expiry of four weeks from the date of publications being made. Publication in the Official Gazette will stand dispensed with.

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

(SANJIB BANERJEE, J.)

a/s./ kc.
AR(CR)