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

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*Judgment reserved on: 22.01.2026**Judgment pronounced on: 05.05.2026**Judgment uploaded on: 05.05.2026*

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RFA(OS)(COMM) 1/2025 and CM APPL. 921/2025

GURVINDER SINGH TOOR

.....Appellant

Through: Mr. Sagar Pathak, Adv.

versus

ROHIT MALHOTRA

.....Respondent

Through: Mr. Arjun Dewan, Mr. Akash
Arora and Mr. Jasraj Singh
Chhabra, Advs.**CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE AMIT MAHAJAN****J U D G M E N T****ANIL KSHETARPAL, J.:**

1. Through the present Appeal, the Appellant [Original Defendant] assails the correctness of the Judgment and Decree dated 28.06.2024 [hereinafter referred to as 'Impugned Judgment'] passed by the learned Single Judge, decreeing the Respondent's [Original Plaintiff] suit for specific performance of the Memorandum of Understanding (MoU) dated 14.02.2020, while exercising powers under Order XIII-A of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] amended by the Commercial Courts Act, 2015.

2. In order to comprehend the issues involved in the present case, relevant facts in brief are required to be noticed.



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3. For the sake of convenience, the parties hereinafter are referred to as they were arrayed in the Suit. The Plaintiff [Respondent herein] while filing the suit prayed for the following reliefs:

“A. Issue a Decree in favour of the Plaintiff and against the defendant declaring the Letter/Communication dated 18.03.2020 sent by the Defendant to the Plaintiff purportedly and illegally terminating /withdrawing from the MoU dated 14.02.2020 as illegal, null and void having no effect in law; and

B. Issue a Decree in favour of the Plaintiff and against the Defendant directing the Defendant to perform his obligations in accordance with the MoU dated 14.02.2020 by making a payment of Rs. 1,90,00,000/- to the Plaintiff for purchase of the Equity Shares owned by the Plaintiff in the Company, Zoi International Company Limited, i.e., 45% of the total Equity Shareholding of the Company and to execute a Share Purchase Agreement in favour of the Plaintiff for the purchase of the Equity Shares owned by the Plaintiff in the Company; and

C. Issue a Decree directing the Defendant to make payment of Rs 14,25,000/- [fourteen lacs twenty five thousand] as interest @ 18% p.a on the total consideration of Rs 1,90,00,000 [one crore ninety lacs] from 30.03.2020 till the date of institution of the Pre-Litigation Mediation by the Plaintiff i.e 19.09.2020; and

D. Issue a Decree in favour of the Plaintiff and against the Defendant directing the Defendant to pay further interest @ 18% p.a. to the Plaintiff pendente lite till the date the Defendant performs his obligation under the MoU and makes payment to the Plaintiff; and/or

In the alternative;

E. issue a decree in favour of the Plaintiff and against the Defendant directing the Defendant to pay compensation an amount of Rs 1,08,41,860 [Rupees One Crore Eight Lakhs Forty One Eight Hundred and Sixty Only] along with interest @ 18% p.a till the date of realization;”

4. The Plaintiff primarily sought a declaration that the Defendant’s communication dated 18.03.2020, which sought to unilaterally terminate the MoU, was illegal and void. Further, a decree for specific performance was sought, directing the Defendant to pay the agreed consideration of Rs.1,90,00,000/- in exchange for the 45% equity stake in M/s ZOI International Pvt. Ltd. (ZIPL). Alternatively, the Plaintiff sought compensation to the tune of Rs. 1,08,41,860/-.



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5. M/s ZOI International Pvt. Ltd. [hereinafter referred to as 'ZIPL'] is a Thailand based company. The Plaintiff and the Defendant were the owners to the extent of 45% shares each, whereas 10% shares were owned by Mr. Manish Alak. The Plaintiff claims that he was led to invest in the company on persuasion of Mr. Manish Alak, who projected its commercial viability.

6. On 14.02.2020, the parties executed an MoU for the sale of the Respondent's 45% shareholding to the Appellant for a fixed consideration of Rs. 1,90,00,000/-. The execution of this MoU is an admitted fact. Two post-dated cheques, one for Rs.1,13,50,000/- (dated 30.03.2020) and another post-dated cheque dated 26.03.2020 were issued with respect to the remaining amount, i.e., Rs.76,50,000/- in favour of the Plaintiff.

7. The Execution of the aforesaid MoU dated 14.02.2020 is not in dispute between the parties, which reads as under:

"Memorandum of Understanding (MOU)"

This Memorandum of Understanding (MOU) is entered on 14 February 2020 between Mr. Gurvinder Singh Toor, Son of Mr. Mohinder Toor, residing at E-2085, Palam Vihar, Gurgaon, Haryana, India 122017 and Mr. Rohit Malhotra, Son of Mr. Navneet Kumar Malhotra, residing at EB-158 Maya Enclave, New Delhi.

Mr. Rohit Malhotra had invested and holds 45% equity stake in ZOI International Co., Ltd, a company incorporated in the state of Thailand and having its Registered Office Address at 89/7 Moo 5, Free Zone, Tamboon Bangsamak, Ampur Bang Prakong Chachoengsao -24180 Thailand. The other shareholders of the Company are Gurvinder Singh Toor & Manish Alagh and their shareholding is 45% & 10% respectively.

Now, Mr. Rohit Malhotra wishes to sell his entire 45% shareholding in the said company to Mr. Gurvinder Toor and Mr. Gurvinder Toor has agreed to purchase the same in its entirety.

The above two parties hereby agree to the following terms under this MOU.



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1. Mr. Rohit Malhotra agrees to sell his entire 45% shareholding in ZOI International Co., Ltd for a consideration of INR 1,90,00,000/- (Indian Rupees Crore & Ninety Lakhs Only) to Mr. Gurvinder Toor.

2. Mr. Gurvinder Singh Toor agrees to pay the above consideration by way of following two cheques payable by 30th March 2020 and 26th March 2020.

Cheque No. 385471 dtd 30.03.2020 for Rs. 1,13,50,000/- (Rupees One Crore, Thirteen Lakhs, Fifty Thousand Only).

Cheque No. 385472 dtd 26.03.2020 for Rs. 76,50,000/- (Rupees Seventy Six Lakhs, Fifty Thousand Only).

3. Mr. Rohit Malhotra undertakes to transfer the above shareholding unconditionally to Mr. Gurvinder Singh Toor immediately on realisation of above referred cheques and agrees to perform such acts as may be necessary for legal transfer of title of such shares as per regulations prevalent in country of Thailand including signatures on the Share Purchase Agreement.

4. Post Signing of the Share Purchase Agreement and the Consideration of the Equity Stake sale being realised by Mr. Rohit Malhotra, he agrees to resign as a Director in the said company. Further, he agrees to hand over any documents, agreements, papers related to the company which he may be holding to Mr. Gurvinder Singh Toor.

5. It is also mutually agreed that since Mr. Gurvinder Singh Toor has been responsible for running of the ZOI International business since inception, Mr. Rohit Malhotra will be absolved of all liabilities, if any, arising from ZOI International business and commercial dealings to date.

6. Both the above parties will enter into a detailed Share Purchase Agreement to execute the transfer of the Shares as per the terms of this MOU and the Rules and Regulations as mandated.

7. The Equity Sale Consideration will be treated and remitted under the Reserve Bank of India Rules and will be guided by the Rules and Guidelines of the Government/Banks/Institutions from where the Overseas Investment was made by Mr. Rohit Malhotra and other shareholders in ZOI International.

Confidentiality

Both the above parties agree to meet the commitment dates and maintain confidentiality about the MOU and the terms mentioned herein.

Signed by:

Witness

Sd/-

Sd/-

Gurvinder Singh Toor

Kuldeep Kumar



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Sd/-

Rohit Malhotra”

8. A plain reading of the MoU reveals a concluded contract, it contains the *essentialia* of a contract, the identity of the parties, the specific subject matter (45% shareholding), and a fixed consideration (Rs. 1,90,00,000/-). The Respondent undertook to transfer the shares unconditionally upon the realization of the cheques and promised to execute all necessary documents, including a formal Share Purchase Agreement (SPA), as required by Thai regulations. Significantly, Clause 5 of the MoU provided that the Appellant, being responsible for the company’s operations since inception, would continue to run the business while the Respondent stood absolved of all liabilities. It is evident that a complete contract was executed between the parties while paying the entire consideration through two post-dated cheques, as already noticed, which were drawn by the Defendant on his bank and were handed over to the Plaintiff.

9. On 18.03.2020, prior to the national lockdown, the Defendant *via* email stated that due to COVID-19 pandemic, he is unable to perform his obligations under the MoU. The Plaintiff responded to the aforesaid communication by claiming that the Defendant cannot unilaterally walk away from the agreement, and it is a concluded contract.

10. Thereafter, the Defendant *via* email dated 25.03.2020 completely resiled from his position and submitted that he had only



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agreed to help the Plaintiff to sell his equity shares in the company with premium.

11. The Plaintiff in accordance with MoU presented the aforesaid two cheques issued by the Defendant, which were returned dishonoured with remarks “Payment stopped by drawer” as the Defendant had instructed his bank to stop the payment. Proceedings under Section 138 of the Negotiable Instrument Act, 1881 [hereinafter referred to as ‘NI Act’] are pending between the parties.

12. On 06.07.2020, the Plaintiff resigned from the post as Director of the Company which was accepted on 20.07.2020. The Plaintiff also issued a notice of demand dated 15.06.2020 under Section 138 of the NI Act. A complaint under Section 200 of the Code of Criminal Procedure, 1973 read with Section 138 of the NI Act against the Defendant in respect of the dishonoured cheque is pending before the Tis Hazari Court, Central District, New Delhi. The parties were referred to mandatory pre-litigation mediation, wherein the Defendant failed to enter an appearance. Consequently, a Non-Starter Report was issued by the Delhi High Court Legal Services Committee, constraining the Plaintiff to institute the suit.

13. The Appellant failed to file a Written Statement within the mandatory 120-day period despite entering an appearance on 22.02.2021. Although a written statement was purportedly filed, certain office objections were raised, which were never rectified by the defendant, and no written statement was filed after the removal of office objections. Consequently, the right to file the Written Statement



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was closed on 10.10.2022. An application under Order VII Rule 11 of the CPC filed by the Appellant was also dismissed.

14. Thereafter, the Plaintiff filed application under Order XIII-A of the CPC as applicable to the Commercial Courts for summary judgment, which was allowed, and the suit filed by the Plaintiff was decreed while directing the Defendant to pay a sum of Rs.1,90,00,000/- within two months and on payment of the said amount, the Plaintiff shall transfer his 45% equity shareholding in favour of the Defendant. The claim of the Plaintiff for the grant of interest @ 18% p.a. was declined. The Plaintiff has not questioned its correctness.

15. Heard learned counsel representing the parties at length and perused the paper book along with the requisitioned record of the suit.

16. Learned counsel representing the Appellant has made the following three submissions:

- i. The Plaintiff has not valued the suit in accordance with Section 12 of the Commercial Court Act, 2015 [hereinafter referred to as 'CC Act'], hence, his suit is not maintainable;
- ii. MoU is only an agreement to enter into an agreement, which is not enforceable in view of the Judgment passed by the Supreme Court in *Speech and Software Technologies (India) Pvt. Ltd. v. Neos Interactive Ltd.*¹; and

¹2009 1 SCC 475



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iii. Order XIII-A of the CPC could not be invoked to decree the Plaintiff's suit without giving opportunity to the parties to lead evidence.

17. *Per contra*, learned counsel representing the Respondent has supported the judgment of the learned Single Judge, and submits that the MoU contained all essential terms to constitute a valid agreement, and that the Appellant's prolonged failure to file a Written Statement left no triable issues to be decided.

18. At this stage, it would be appropriate to reproduce Section 12 of the CC Act.

12. Determination of Specified Value.—(1) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner:—

(a) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such Specified Value;

(b) where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such Specified Value;

(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining Specified Value; [and]

(d) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value;

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(2) The aggregate value of the claim and counterclaim, if any as set out in the statement of claim and the counterclaim, if any, in



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an arbitration of a commercial dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court, as the case may be.

(3) No appeal or civil revision application under section 115 of the Code of Civil Procedure, 1908 (5 of 1908), as the case may be, shall lie from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a commercial dispute under this Act.

19. It is evident that the Plaintiff is required to value the suit on the basis of the relief claimed and the subject matter of the suit. The Plaintiff amended his plaint, he valued the suit at Rs.2,04,25,000/-. He deposited Court Fee of Rs.2,05,120/- in total for the relief of specific performance, the Plaintiff paid Court Fee of Rs.1,87,800/-, whereas for the amount of accrued interest, the Plaintiff paid Rs.16,300/-. The Plaintiff also paid Rs.20 *qua* the relief of declaration. Thus, the Plaintiff has valued the suit as per the relief claimed as well as the subject matter of the Suit.

20. It be noted here that the Appellant while filing the Appeal has claimed that the Company ZIPL has become defunct. The Defendant does not claim that the market value of the 45% shareholding of the company is more than Rs.1,90,00,000/-, hence, the objection of the Appellant lacks substance.

21. This Court has already extracted MoU, execution whereof is not disputed by the parties. It is evident that the Plaintiff agreed to sell his entire 45% shareholding in M/s ZOI for a consideration of Rs.1,90,00,000/- (Indian Rupees) in favour of the Defendant. The Defendant in turn, handed over two post-dated cheques worth Rs.1,90,00,000/- to the Plaintiff, who on encashment of the cheques agreed to execute legal transfer deeds as required for transferring



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shares as per Thai regulations, including signatures on the share purchase agreement.

22. The Plaintiff as agreed, did resign as the Director of the ZIPL on 06.07.2020, which was accepted on 20.07.2020. Hence, the MoU was not for execution of any further agreement. The MoU was not a preliminary negotiation but a concluded contract. The issuance of the two post-dated cheques for the full value of consideration constitutes a valid promise to pay consideration in the future under the Indian Contract Act. The Respondent's fulfilment of his obligation (resignation as Director) further confirms the binding nature of the agreement.

23. There is no merit in the argument that a further Share Purchase Agreement was a condition precedent to the formation of the contract; it was merely a formalising step for the transfer of shares under Thai law.

24. The contract between the parties does not fall within the ambit of either in Section 23 or Section 24 of the Indian Contract Act, 1872. Section 25 of the Indian Contract Act provides that agreements without consideration are void, unless they are in writing or registered. However, even a promise to pay consideration in future like in the present case, is a valid payment of consideration, which excludes the applicability of Section 25. Hence, such agreement is enforceable.

25. The Appellant's reliance on *Speech and Software Technologies (India) Pvt. Ltd. (Supra)* is misplaced as the facts therein pertained to a non-binding arrangement expressly contingent



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upon future agreements. The present MoU, by contrast, was intended to be binding. The MoU dated 14.02.2020 expressly recorded the subject-matter of sale, the consideration, and the obligations of the parties. Nothing material was left open for future negotiation. The act of the Appellant in issuing cheques for the exact consideration and the Respondent's resignation as a Director of the company, which was acted upon and accepted by the other Directors of the company, including the Appellant herein, are indicative of the parties having acted upon the MoU and had moved beyond mere negotiation into performance.

26. Moreover, the MoU was entered into at Delhi; hence the suit was filed in the Courts located in Delhi. The contract/agreement between the parties is enforceable as per the provisions of laws as applicable in India against the Appellant (Defendant).

27. It is pertinent to examine the provisions of the Specific Relief Act, 1963 [hereinafter referred to as 'SRA']. Sections 10, 11, 14 and 16 of the SRA are extracted as under:

“10. Specific performance in respect of contracts.—The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of section 11, section 14 and section 16.]

11. Cases in which specific performance of contracts connected with trusts enforceable.—(1) Except as otherwise provided in this Act, specific performance of a [contract shall], be enforced when the act agreed to be done is in the performance wholly or partly of a trust.

(2) A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

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[14. Contracts not specifically enforceable.—The following contracts cannot be specifically enforced, namely:—



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(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;

(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;

(c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and

(d) a contract which is in its nature determinable.

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16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—

[*(a) who has obtained substituted performance of contract under section 20; or*]

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) 3[who fails to prove] that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff 4[must prove] performance of, or readiness and willingness to perform, the contract according to its true construction.”

It is evident that the Section 10 of the SRA provides for the specific performance of the Contract subject to provisions contained in sub-section 2 of Section 11, Section 14 and Section 16. Sub-section 2 of Section 11 is not applicable because this is not a case of contract made by a Trustee in exercise of his power or in breach of trust.



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28. The present case does not fall in Section 14 because its performance does not come within any other exceptions carved out under Section 14 as neither the Plaintiff has obtained substituted performance of contract, nor it involves the performance of continuous duty which the Court cannot supervise or the contract is so dependent on personal qualification of the parties or a contract which in its nature is determinable. Section 16 lays down the personal bars to the relief. It lays down three different eventualities when specific performance cannot be invoked, however, the Defendant has failed to bring the present case within the four corners of the aforesaid three exceptions to the specific performance.

29. It is important to note that the Defendant though did not file written statement, but filed an application under Order VII Rule 11 of the CPC and also filed written submissions in support of his application under Order VII Rule 11 of the CPC. In the aforesaid written submissions, the Defendant does not dispute the execution of the MoU; however, it is his stand that on account of the COVID-19 pandemic, the Defendant would not be able to enter into the share purchase agreement, and it has become impossible to perform in view of section 56 of the Contract Act 1872.

30. In this case, Section 56 of the IC Act is also not attracted because the performance of the agreement has not become impossible or unlawful. It is well-settled that commercial hardship or an onerous bargain does not constitute frustration. A contract does not become void merely because its performance has become less advantageous. Furthermore, as the MoU lacked a unilateral termination clause, the Appellant's reliance on *Rajasthan Breweries Limited v. The Stroh*



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Brewery Company,² regarding determinability, is misplaced. The Memorandum of Understanding ('MoU') pertained to the sale of a specific 45% equity stake in a private limited company. Unlike a distributorship or agency, which may be terminated by notice, a contract for the sale of shares in a closely held company, where consideration has been fixed and post-dated cheques issued, does not possess the inherent character of determinability.

31. In *M. S. Madhusoodhanan & Anr. Vs. Kerala Kaumudi Pvt. Ltd. & Ors.*³, the Court has held that specific performance of purchase of shares in a closely held company is maintainable.

32. Order XIII-A of the CPC has been added by Section 16 of Act 4 of 2016. It provides that the Court may give a summary judgment, if it considers that the Plaintiff has no real prospect of succeeding on the claim or the Defendant has no real prospect of successfully defending the case, as the case may be. In this case, the Defendant has no real prospect of successfully defending the Plaintiff's claim as he does not dispute the execution of the MoU and issuance of post-dated cheques towards payment of the entire consideration. The Defendant does not claim that such agreement was executed by playing fraud or coercion. The parties entered with open mind and with free consent executed the agreement, which is enforceable as per Section 10 of the SRA.

33. The objective of Order XIII-A of the CPC, as introduced by the Commercial Courts Act, 2015, is to ensure accelerated disposal of commercial disputes, including when a party has no real prospect of

² 2000 (55) DRJ(DB)

³ 2004 9 SCC 204



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defending the claim. Given the admitted execution of the Memorandum of Understanding ('MoU') and the issuance of cheques for payment of consideration, combined with the Appellant's failure to file a Written Statement in the suit for over a year, there were no triable issues requiring a protracted trial. Furthermore, the entire case of the Appellant is based upon the interpretation of the MoU executed between the parties on 14.02.2020. The defence sought to be raised in the Appeal is purely legal in nature and does not hinge upon disputed questions of fact or oral evidence.

34. In such circumstances, the learned Single Judge was justified in concluding that the Appellant had no real prospect of successfully defending the suit. The invocation of summary judgment under Order XIII-A of the CPC for decreeing the suit of the Respondent was therefore in consonance with both the letter and the object of the provision.

35. Keeping in view the aforesaid discussion, and finding no merit, the present Appeal is dismissed. The pending application also stands closed.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

MAY 05, 2026

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