

Arun Chandra Devan v Real Softwarre N V
[2001] SGHC 300

Case Number : Suit 1010/2000, RA 85/2001
Decision Date : 09 October 2001
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Randolph Khoo with Bernette Meyer [Drew & Napier LLC] for the plaintiff; Felicia Chua [Wong & Leow LLC] for the defendants
Parties : Arun Chandra Devan — Real Softwarre N V

Judgment

GROUND OF DECISION

1. This was an appeal against the order of the assistant registrar Mr. Phang granting summary judgment to the plaintiff on 30 April 2001. The plaintiff's claim was for an order for specific performance of a share option agreement dated 31 March 1999.
2. The agreement was executed between the plaintiff and the defendants who were the only shareholders of a company, called Oasis Systems Consulting Pte Ltd. The plaintiff purports to exercise his right under this agreement in compelling the defendants to purchase 46.5% of his shares in the company.
3. The sole ground of dispute was the formula for the calculation of the purchase price. This was set out in schedule 3 of the agreement. The part of the formula which was in dispute reads as follows:

"1. The Option Consideration shall be equal to $R \times (1 \text{ (one) minus } T) \times F \times S$
where:-

(a) R = (i) in respect of a Tranche Option, the gross revenue/turnover of the Company (before Taxation and extraordinary items) as stated in the Audited Accounts for the financial year immediately preceding the date of service of the relevant Option Notice."

4. The defendants say that the term "the gross revenue/turnover of the Company (before Taxation and extraordinary items)" means "the profits of [the company] before taxation". The plaintiff disputes this and claims that it meant simply, "the gross revenue of [the company]". The defendants say that income tax can never be imposed on gross revenue, only on gross profits and therefore, the words in parenthesis in schedule 3 cl 1(a)(i) must refer to gross profits.
5. The plaintiff's response was straightforward. His counsel, Mr. Khoo, argued that the word revenue, as defined in Blacks Law Dictionary, means "gross income or receipts excluding tax". The word "turnover" is defined as excluding extraordinary items. Therefore, he submitted, that the words in parenthesis merely expresses what is inherent in the definition of the preceding words.
6. I am inclined to agree with Mr. Khoo. The parties must be taken to have intended the most natural meaning of the words they choose to set out their contractual obligations. If the words are capable of a reasonable meaning without reading extra connotations into them, then that is the meaning to be given to those words. It was also pointed out that the word "profit" was specifically

used in cl 3.4 in the same agreement but the parties had chosen "gross revenue" in the formula. The word "profit" was again used in cl 6.12 of the agreement where the parties agreed on the formula for additional payment to the plaintiff.

7. In my view, the parties had expressly departed from the choice of the word "profit" to "revenue" in the option consideration clause and they must be taken to have intended to use the word "revenue" as opposed to "profit".

8. Counsel for the defendants submitted that the parties should be permitted to examine the drafts to ascertain the true intention of the parties. Both sides were represented by solicitors at all material times and I see no sufficient reason to venture behind a validly and properly executed contract where the meaning of the terms in dispute is clear.

9. However, I allowed the defendants the opportunity of proceeding to trial on the condition that the full amount is paid into court as security. The order below was, therefore, varied to that extent.

Sgd:

Choo Han Teck
Judicial Commissioner

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