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

Judgment Reserved on : 03.07.2013

Judgment Pronounced on : 17.07.2013

+ CS(OS) 2578/2010

M/S ATUL INDUSTRIES Plaintiff
Through Mr. Ashok Mittal, Adv.

Versus

M/S GRID INDIA POWER LTD. & ORS. Defendants
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

IA. No. 20174/2011 (u/O 9 R 7 CPC)

This is an application under Order 9 Rule 7 CPC filed by the defendants for setting aside ex parte proceedings against the defendants.

The defendants were proceeded ex parte vide order dated 17.08.2011. On 21.09.2011, counsel for the defendant appeared and made a statement that he intends to move an application for setting aside ex parte order dated 17.08.2011. Thereafter, the defendants filed an IA No. 20174/2011 under Order 9 Rule 7 CPC which came up for hearing on 16.12.2011 and notice of the application was issued to the plaintiff. The order directed that the application will be taken on the next date of hearing for disposal. On 11.01.2012, this court directed before hearing arguments on the application

under Order 9 Rule 7 CPC, in view of the submission of the counsel for the defendants that the option of mediation be explored, the matter was referred to Mediation and Conciliation Centre, Delhi High Court. On 09.10.2012, the matter was directed to be listed in the category of 'Finals'. Thereafter on 05.03.2013, 17.04.2013 and 02.07.2013 none had appeared for the defendants. Today also none has appeared for the defendants.

In view of the above, the application is dismissed in default.

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Arguments have been heard in the suit.

The plaintiff has filed the present suit seeking a decree in the sum of Rs. 27,74,644/- and direction for supply of pending 'C' Forms from the defendants. It is the contention of the plaintiff that it is a proprietorship concern dealing in manufacturing and marketing of PVC Cable Compounds. Defendant No. 1 is stated to be a company incorporated under the Companies Act. Defendants No. 2 and 3 are the Managing Director and Director respectively.

It is the contention of the plaintiff the defendants approached the plaintiff in their office at Mangol Puri, Industrial Area, Delhi and showed their intention to purchase the goods from the plaintiff as the plaintiff company is having a good name in the market being one of the finest manufactures of the PVC Cable Compounds. The plaintiff is stated to have supplied number of consignments of goods and issued challans/vouchers in its prescribed form. It is stated that one of the condition for the supply of goods to the defendants was that the defendants should make payment for the goods supplied to the defendants within a period of 15 days of the bills/challans failing which interest at the rate of 18% per annum was

payable by the defendants.

It is the contention of the plaintiff that several consignments have been supplied to defendant 1 but defendant No. 1 was always slow in effecting payments. As per the books of accounts of the plaintiff regularly maintained in due course of business a sum of Rs. 23,21,878/- is due from the defendant being the cost of goods apart from interest. It is further submitted that apart from the outstanding pending bill, the defendant has also failed to provide 'C' form to the plaintiff. It is submitted that the defendant was under statutory obligation to provide 'C' Forms to the plaintiff.

In the evidence to support the contention, the plaintiff has filed evidence by way of affidavit of Mr. Atul Gupta the proprietor of the plaintiff concern. The plaintiff in its evidence proved the original outstanding bills which are marked as EX. PW 1/1 to PW 1/35. A detailed statement of accounts for the financial year 2007-08 and 2008-09 has been filed. They have been exhibited as PW 1/36 and Ex. PW 1/37. The amount outstanding as per said statement of accounts which is payable by defendant No. 1 Grid India Power Cable Pvt. Ltd. is stated to be Rs.23,21,878/-.

The plaintiff has also placed on record with his evidence copy of bail application filed by defendants which is filed before the court of Sessions Judge, Gurgaon under Section 438 Cr.P.C. wherein in para 5 of the application defendants No. 2 and 3 have admitted that outstanding balance payable by defendant No. 1 is. Rs. 23,25,349.92/-. In para 8 of the said application defendants No. 2 and 3 have stated that they have all intentions to pay the amounts specified in para 5 (Rs. 23,25,349.92/-) to the plaintiff but due to financial constraints, defendant No. 1-Company is not in a

position to make payment in lump sum but is ready and willing to make payment in instalments in phased manner. The said application was disposed of by order dated 11.07.2009 by the Additional Sessions Judge, Gurgaon with the directions that the police may be directed to issue 7 days notice before arresting the applicants. This bail application was filed on account of a complaint lodged by the plaintiff before the police.

Regarding the 'C' Forms witness of the plaintiff Mr. Atul Gupta has filed details of pending 'C' Forms which is Ex. PW1/38. The list of pending of 'C' Forms is attached with the list of documents filed by the plaintiff dated 04.12.2010 at page 61 and 62. The 'C' Forms worth Rs. 88,72,351/- have been stated to be outstanding.

The plaintiff has also examined PW2 Sh. Pradeep Jaglan who has come from the office of Commissionerate of Excise and Taxation, Gurgaon, Haryana. The said witness has brought the original register pertaining to the 'C' Form issued in favour of defendant No. 1 in respect of sales effected by the plaintiff. The copies of the 'C' Forms register have been filed and have been exhibited as PW 2/1. This witness was cross-examined by the counsel for the defendants, who at that stage was appearing and whose application at that stage under Order 9 Rule 7 CPC was still pending. There is nothing in the evidence to show that the list placed on record namely PW 2/1 has any discrepancy.

In view of the above, in my opinion, the plaintiff has successfully proved his case. In view of the evidence, the documents produced and especially the admissions of defendants No. 2 and 3 regarding the outstanding dues payable by defendant No. 1 who are the managing director and director of the defendant No. 1, it is clear that defendant No. 1 owed a

sum of Rs.23,21,878/- to the plaintiffs.

The plaintiff has arrayed defendants No. 2 and 3 being the managing director and director respectively of defendant No. 1. A perusal of the bills and statement of accounts shows that the transactions have taken place between the plaintiff and defendant No. 1. There are no allegations or submissions which would show any liability on the part of defendants No. 2 and 3 who are only officers of defendant No. 1. Hence there is no case made out against defendants No. 2 and 3.

The next question is regarding pendente lite interest. The plaintiff has relied upon Clause 1 of the invoice raised on defendant No. 1 which states that interest at the rate of 18% per annum to be charged on the bills remains unpaid after 15 days of presentation. The transaction being a commercial transaction and the interest having been stipulated in invoice, the parties had agreed to the same. The plaintiff has claimed interest at the rate 18% per annum for the period prior to the filing of the suit i.e. Rs.4,52,766/-. Hence, the claim of the plaintiff is justified.

However, in my opinion, the pendente lite interest at the rate of 12% per annum would meet the ends of justice.

In view of the above, the suit is decreed in favour of the plaintiff and against defendant No. 1 for a sum of Rs.27,74,644/- with costs. Plaintiff would also be entitled to pendente lite interest at the rate of 12% per annum from the date of filing of the present suit till recovery of the amount on the sum of Rs.23,21,878/-. A decree of mandatory injunction is also passed in favour of the plaintiff and against defendant No. 1 directing defendant no. 1 to hand over necessary 'C' Forms as detailed in the list of documents at page 61 and 62 of the paper book filed by the plaintiff dated 04.12.2010.

Costs will also be awarded to the plaintiff.

The suit is accordingly disposed of. Decree sheet be drawn up.

JAYANT NATH, J.

JULY 17, 2013

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