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

+ CS(OS) 53/2009

% ***Judgment dated 27.05.2014***

M/S INTERARCH BUILDING PRODUCTS PVT. LTD Plaintiff
Through : Mr.Sanjiv Bahl and Mr.Eklavya Bahl, Advs.

versus

M/S SUDARSHAN OVERSEAS LIMITED Defendant
Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Plaintiff has filed the present suit for recovery of Rs.27,87,675/-.
2. Summons in the suit were issued on 13.1.2009. Defendant entered appearance on 8.7.2009. Written statement was filed. As none was appearing on behalf of the defendant since 19.9.2012, the defendant was proceeded *ex parte* on 24.1.2014. Prior thereto although the affidavits by way of evidence were filed, the witness of the plaintiff was not cross-examined. No evidence has been filed by the defendant.
3. The plaintiff relies on the amended affidavit (PW-1/A) of Sh.Vinod Gupta, PW-1, wherein PW-1 has testified that he is the General Manager (Personal and Administration) and Principal Officer of the plaintiff. As per PW-1/A, the plaintiff company is engaged in the business of manufacturing and sale of Pre-Engineered Building. It is further testified that the defendant placed purchase order on the plaintiff bearing no.Nil & SOL/KVB/22 dated 21.12.2004, a copy of the same has been marked as **Mark "A"** and purchase order no.SOL/KVB/23 dated 12.3.2005 for designing, engineering, drawing and erection of pre-engineered steel

building at its new facility building at KVB Puram (A.P.) on the plaintiff company. Original Purchase order dated 10.3.2005 has been exhibited as **Exhibit PW-1/4** and Original purchase order 12.3.2005 has been exhibited as **Exhibit PW-1/5**.

4. It has further been deposed that after mutual negotiations, the total value of the said contracts for carrying out the works detailed above as well as other miscellaneous works concerned with it, was arrived at Rs. 1,37,19,753/- (Rupees One Crore Thirty Seven Lac Nineteen Thousand Seven Hundred and Fifty Three Only).
5. It has also been deposed that immediately after placing of work orders, the plaintiff company started manufacturing pre-engineered steel building as per the requirements of the defendant company and the defendant started making the part payments as per the terms and conditions of the purchase orders.
6. PW-1 has next deposed that the plaintiff completed the entire work in terms of the purchase orders to the satisfaction of the defendant, however, the defendant company made a part payments of Rs.1,27,77,700/- (Rupees One Crore Twenty Seven Lac Seventy Seven Thousand Seven Hundred Only) inclusive of advance payments between 7.12.2004 to 3.1.2006 against the total payable amount of Rs.1,37,19,753/- (Rupees One Crore Thirty Seven Lac Nineteen Thousand Seven Hundred and Fifty Three Only) thereby leaving a balance of Rs.9,42,053/- (Rupees Nine Lac Forty Two Thousand and Fifty Three only).
7. Mr.Vinod, PW-1 has further deposed that the defendant company promised to pay the above said balance amount of Rs.9,42,053/- (Rupees Nine Lacs Forty Two Thousand and Fifty Three only) shortly but never cared to pay the same despite repeated requests and demands by the plaintiff company.

8. It has also been deposed by PW-1 that the defendant company further undertook to provide Form 1 for Sales Tax Exemption within 15 days from the date of its letter dated 30.5.2005 sent by fax and in case of failure to pay sales tax amount on the supplies made in terms of purchase orders, the defendant agreed to pay the amount in lieu thereof. Copy of the letter so received by Fax has been **Exhibit PW-1/6.**
9. PW-1 has also deposed that the defendant company has failed to provide Form 1 for Sales Tax Exemption as promised and as such the defendant is liable to pay a sum of Rs.9,18,842/- (Rupees Nine Lac Eighteen Thousand Eight Hundred and Forty Two Only) towards the sales tax amount on the supplies made through various invoices by the plaintiff company. The defendant is further liable to pay interest @ 14% p.a. amounting to Rs.418072/- (Rupees Four Lac Eighteen Thousand and Seventy Two only) on the said outstanding sales tax amount.
10. It has next been deposed that the plaintiff has made several representations and demands to the defendant to pay a sum of Rs.9,42,053/- (Rupees Nine Lac Forty Two Thousand and Fifty Three only) towards the balance principal amount alongwith interest @ 18% p.a. for the delay in the payments as per the terms of the invoice, as the payments were to be made by the defendant within 10 days of their due dates. However, the defendant kept on assuring the plaintiff that the payments would be made shortly but the defendant never cared to make the payment.
11. It is next deposed by PW-1 that the defendant is liable to pay a sum of Rs. 9,42,053/- (Rupees Nine Lac Forty Two Thousand and Fifty Three only) to the plaintiff towards the balance payment. The defendant is further liable to pay a sum of Rs. 508708/- towards the interest @ 18% p.a. calculated w.e.f. 4.1.2006 to 31.12.2008. The rate of interest of 18% p.a.

is the market rate of interest in case of delayed payments in commercial transactions and which is as per the usage and custom of the Delhi market and the same was also agreed between the parties. The rate of interest was also mentioned on the bills which were duly accepted by the defendant. Further defendant is liable to pay the said rate of interest as the defendant has illegally retained the amount. The defendant is further liable to pay a sum of Rs.9,18,842/- (Rupees Nine Lac Eighteen Thousand Eight Hundred and Forty Two only) towards the sales tax amount on the supplies made through various invoices by the plaintiff company. The defendant is further liable to pay interest @ 14% p.a. amounting to Rs.418072/- (Rupees Four Lac Eighteen Thousand and Seventy Two only) on the said outstanding sales tax amount. In all, the defendant is liable to pay a sum of Rs.2787675/- (Rupees Twenty Seven Lac Eighty Seven Thousand Six Hundred and Seventy Five Only) to the plaintiff which the defendant has not paid till date despite various requests and demands and service of Legal Notice dated 11.2.2008 followed by another Legal Notice dated 24.4.2008. Office Copy of legal notices dated 11.2.2008 and 24.4.2008 alongwith Original postal receipts and A.D. Cards have been exhibited as **Exhibit PW-1/7 (Colly.)** Office copy of invoice dated 30.12.2006 has been exhibited as **Exhibit PW-1/8.** Office Copy of debit note dated 19.10.2006 has been exhibited as **Exhibit PW-1/9.** Office copy of letter dated 29.4.2005 sent by plaintiff to the defendant has been marked as **Exhibit PW-1/10.** Original letter dated 21.5.2005 written by defendant has been marked as **Exhibit PW-1/11.** Copy of letter dated 28.5.2005 has been marked as Mark B. Copy of letter dated 18.7.2005 so sent by plaintiff to the defendant has been marked as Mark C. Copy of letter dated 19.7.2005 sent by plaintiff to the defendant is mark D. Certified copy of statement of accounts is exhibited as **Exhibit**

PW-1/13. Certified Copy of assessment order dated 15.11.2008 of Sales Tax Authority has been exhibited as **Exhibit PW-1/12.**

12. I have heard learned counsel for the plaintiff and also perused the evidence by way of affidavit filed by PW-1, which has gone unrebutted and unchallenged. The plaintiff has been able to establish that three purchase orders (Exhibits PW-1/4 and PW-1/5) were placed by the defendant on the plaintiff company for a total value of Rs.1,37,19,753/-. Payment of Rs.1,27,77,700/- was made by the defendant to the plaintiff during the period 7.12.2004 to 3.1.2006. The last payment was received by the plaintiff on 3.1.2006 in the sum of Rs.7.50 lakhs, leaving a balance of Rs.8,94,253/-.
13. Since the defendant has failed to provide Form 1 to the plaintiff for Sales Tax Exemption from 30.5.2005, as admitted by the defendant in its letter dated 30.5.2005 (Exhibit PW-1/6), as undertaken by the defendant, the defendant is liable to pay Rs.9,19,842/- to the plaintiff towards sales tax amount on the supplies made by the plaintiff to the defendant. Statement of account has also been exhibited as PW-1/13. Certified copy of the assessment order received from the Sales Tax Department dated 15.11.2008 has been exhibited as Exhibit PW-1/12.
14. In view of the evidence filed and documents placed on record, the present suit is decreed in favour of the plaintiff and against the defendant in the sum of Rs.27,87,675/- together with *pendente lite* and *future* interest at the rate of 8%, per annum. Let a decree sheet be drawn up accordingly.

G.S.SISTANI, J

MAY 27, 2014

msr