

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

Reserved on: 19.10.2015
Pronounced on: 27.11.2015

+ CS(OS) 1687/2010

M/S CENTRE FOR DEVELOPMENT OF TELEMATICS..... Plaintiff
Through: Mr. J.C. Seth & Mr. Udit Seth, Advs.

versus

KLG SYSTEL LTD. Defendant
Through: None

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This is a suit for recovery seeking the following reliefs:-

- (a) Pass a money decree of Rs.81,17,267/- (Rupees eighty one lacs seventeen thousand two hundred sixty seven only) in favour of the plaintiff and against the defendant.
- (b) Grant *pendente lite* and future interest @ 12% p.a. on the suit amount till its realization.
- (c) Award the cost of the suit to the plaintiff society and against the defendant.
- (d) Pass any other or further relief(s) which this Hon'ble Court deems fit and proper in favour of the Plaintiff society and against the defendant.

2. It is the plaintiff's case that the defendant was supposed to supply/install and commission project management software as per its

letter dated 28th September, 2005 (Ex.PW1/9). The details of the project are referred to in the said document and Annexure-A contains the terms and conditions which were accepted in Delhi. Clause 16 of the aforesaid document reserved the jurisdiction of Delhi Courts in case of any disputes. The total value of the contract was Rs.96,72,080/-. The amount of Rs.81,17,267/-, being 90% of the contract value, was paid to the defendant by way of two cheques dated 10.02.2006 and 10.07.2007 of Rs.45,09,482/- and Rs.36,07,785/- respectively. The documents are marked as Ex.PW1/12. The receipt of the aforesaid amount has been admitted on page 7 of the written statement.

3. The plaintiff's case is that the defendant has defaulted in supplying the software, as required in terms of the contract, therefore, the latter is liable to refund the amount paid to it along with the interest accrued thereon. The defendant's counter-claim was rejected. The plaintiff has led its evidence. Two witnesses have been examined.

4. The plaintiff contends that in response to the plaintiff's Tender No.C-DOT/Tender/2004-05/03, Sl. No.7 and its letter dated 9th February, 2005, the defendant vide its letter dated 18th February, 2005 (Ex.PW-1/3) had offered to the plaintiff the supply of modules which offered functionality of the programme by using a combination of other modules quoted in the communication. "Prime-vera modules" were offered in terms of the tenders and functional requirements. By a letter dated 9th February, 2005, the plaintiff inquired whether cost of customisation was included in its commercial bid (Ex.PW-1/4). The defendant responded in the affirmative vide its letter dated 4th March, 2005 (Ex.PW-1/5). This communication was acknowledged by the plaintiff vide its letter of 4th March, 2005 (Ex.PW-1/6). Subsequent correspondence (Ex.PW-1/7 and CS(OS) 1687/2010

PW-1/8, being letters dated 17th March, 2005 and 21st April, 2005) from the defendant showed that the cost of customisation was included in its quotation; they had, inter alia, stated that “.....we are pleased to offer substantial reduction in the timesheet component by way of customised time sheet application on top of the Primavera PM Professional Module. This customisation is in complete compliance with the tender and the additional unique requirements for timesheets.....” The order for supply of integrated software services was placed upon the defendant in terms of the letter dated 29th September, 2005, in view of the clear commitment towards customisation of the programme. Against the said purchase order, a Bank Guarantee was issued by the defendant for an amount of Rs.9,67,208/- (Ex.PW-1/11). The payments were made by the plaintiff to the defendant by two cheques for amounts of Rs.45,09,482/- and Rs. 36,07,585/- (Ex. PW-/12A and 12B). The system installed by the defendant could not demonstrate complete integration and stability which was required for normal use of the solution, i.e., Project Management Software in the plaintiff company. The plaintiff’s request to the defendant to remove the shortcomings was met by a reply of 14th November, 2007 (Ex.PW-1/16) that “....Though it will not be possible for us to do a free replacement of existing orderable (sic.) with fresh ones without any commercial implication, we are ready to work out the best possible deal for Primavera timesheets together with Primavera for C. DOT’s use in line with our association with you.”

5. Through their legal notice dated 28th January, 2008, the plaintiff called upon the defendant to fulfil its obligation in terms of the Purchase Order or provide a prime-vera timesheet in place of rejected ETM timesheet module without any additional financial obligation to C.DOT

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and to attend to all pending issues towards fulfilment of its obligations under the Purchase Order, failing which the plaintiff would cancel the purchase order and initiate the recovery for the amounts paid as well as for losses/damages suffered by the plaintiff. The suit was filed within three years of the refusal of the defendant's refusal dated 14th November, 2007 and the legal notice dated 28th January, 2008.

6. The defendant has not cross-examined the evidence led by the plaintiff. The plaintiff has led its evidence through Mr. Indu Prakash Bhardwaj, its Manager (Materials), who has deposed along the lines of the averments in the suit. In particular, he has deposed as under:

“15. I say that integration of Timesheet Module with management modules of Primavera was the responsibility of the Defendant to meet Plaintiff tender requirements. In fact Plaintiff's tender requirements clearly seek an integrated solution to Project Management. That the Defendant miserably failed to fulfill its obligation under the Purchase Order - despite its receiving 90% payment from the Plaintiff in terms of the Purchase Order. The problems faced were communicated to the Defendant. The Defendant repeatedly assured to look into the matter and resolve all the issues but the Defendant failed to fulfill its obligation till date. Copies of two E-mail dt.26.7.2007 of the Defendant are enclosed as Exh. PW-1/13 colly.

16. I that on account of Defendants failure in installation and commission despite visit of its technical team on 21.9.2007 the Plaintiff vide letter/E-mail dt. 21.09.2007 rejected ETM Timesheet module (as integration of management module and timesheet module had not worked) and asked Defendant for an alternate solution to this module at no additional cost within 2 weeks and stated that in case of failure legal action

will be taken. A copy of the E-mails dt.21.9.2007, 2.11.2007 and 14.11.2007 sent to Defendant is marked as Ex-PW1/14 colly.

17. I say that vide letter/E-mail dt. 2.11.2007(Ex-PW1/14), Plaintiff informed the Defendant that Mr. Gaurav Hazra head of PRIMAVERA had got the PRIMAVERA timesheet module installed both at C-DOT's Delhi and Bangalore and confirmed that Plaintiff agrees to prima vera time sheet module as an alternate to ETM timesheet supplied by Defendant, without any financial implication to Plaintiff.

18. I say that the Defendant vide letter/E-mail dt. 14.11.2007 (Ex-PW1/14), refused to do a free replacement of existing orderable with fresh ones without any commercial implication. Also defendant told the plaintiff that they are in the middle of discussing this with Primavera as well and need some more time to work the best possible solution. Defendant also sought reconfirmation that Primavera timesheets completely meets the requirement of Plaintiff and is acceptable to the technical team in the original form.

19. I say that the Plaintiff vide letter/E-mail dt. 19.11.2007(Ex-PW1/14) replied the e-mail of Defendant dt. 14.11.2007 and reiterated that Plaintiff (C-DOT) cannot be asked to pay any charges for replacement of ETM Timesheet with Primavera Time Sheet since the Defendant had not agreed to the replacement without additional cost to Plaintiff on the other hand, the Defendant sent E-mail dt.2.1.2008 to Petitioner reiterating its demand. Copy of letter dt.2.1.2008 enclosed as Exh. PW-1/15.

20. I say that the Plaintiff vide legal notice dt.28.1.2008 called upon Defendant to fulfill its obligations under the Purchase Order dt.29.9.2005 or in alternative provide Primavera Time Sheet in place of rejected ETM Time Sheet Module, without further delay, at no additional financial cost and to attend to all pending issues and full-fill all its obligations under the Purchase Order. It is also pertinent to add that Defendant also failed to fulfil its obligation under Purchase Order viz. to

provide free concurrent licenses of Citrix etc. A copy of the legal notice is marked as Ex-PW-1/16.

21. I say that despite receipt of the legal notice, Defendant failed to take necessary measures to the terms and conditions of the Purchase Order and assurances by the Defendant. The Solution supplied by Defendant is useless scrap to the Petitioner and Defendant is liable to refund the amount of Rs.81,17,267/- paid by Plaintiff to the Defendant under the Purchase Order as the Defendant has failed to install and integrate the Solution, which did not work till date and has been mere wastage of lacs of Rs.81,17,267/-all along.

22. I say that the Defendant with a view to forestall the recovery of amount of Rs.81,17,267/- on account of its blatant defaults has now dishonestly raised, counter- claim of Rs.37,74,267/- for the first time on 24.12.2010, which is not due and stood time-barred at the time of filing Counter Claim. The claim of Plaintiff is within time limitation as obvious from record. This Court has the jurisdiction as the Purchase Order was issued from Delhi and also because of Clause 16 of Annexure-A to the Purchase Order (Exh. PW-1/9 specifically stating that the courts in Delhi will have jurisdiction in case of any dispute. Plaintiff did not like to pick up a fight with the Defendant by encashing their Bank Guarantee because of their assurances and the Bank Guarantee, which lapsed on 31.03.2007. This, however, does not affect the right of the Petitioner to recover the amount of loss suffered by Plaintiff on account of repeated defaults of the Defendant. ”

7. There is no cross-examination of the said Deponent. The defendant's counter-claim for an amount of Rs.37,74,267/-, which was raised for the first time on 24th December, 2010, was dismissed on 30th July, 2014. The defendant seems to have abandoned these proceedings from 5th August, 2013 as there has been no appearance on its behalf from that date onwards for the subsequent 12 listings of CS(OS) 1687/2010

the case. The plaintiff has also led evidence through Ms. Mini Bhambri, the Technical Expert, working with the plaintiff. She too has deposed on the same lines as PW-1. She too has not been cross-examined.

8. The plaintiff's case that they have been deprived from a requisite Solution to integrate the timesheet module with management module of primavera with due customisation (cost of which was included in the purchase order) has deprived them of the Solution they were looking for; the software supplied by the defendant was useless. Hence, the defendant be directed to refund the amount of Rs.81,17,267/- paid by them with interest.

9. The plaintiff's case is unrebutted. There is no reason to disbelieve it. The Court is of the view that a case has been made out for grant of the reliefs sought in the suit. Accordingly, it is directed that the defendant shall refund the amount of Rs.81,17,267/- to the plaintiff along with interest @ 12% p.a. from the date the said monies were paid till its realisation. The litigation costs of Rs.50,000/- is also imposed upon the defendant.

10. The suit is decreed in favour of the plaintiff and against the defendant in the above terms.

11. Let the decree sheet be drawn up accordingly.

12. The suit stands disposed off.

NAJMI WAZIRI, J

NOVEMBER 27, 2015

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