



2026:DHC:7162-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 24th August, 2026******Uploaded on: 25th August, 2026***# **CNR No. DLHC010399212026**+ **FAO (COMM) 252/2026 and CM APPL. 57469/2026, CM APPL. 57470/2026 and CM APPL. 57471/2026****MULTITEX FILTRATION ENGINEERS LTD** Appellant
Through: Mr. Mohit Negi, Advocate.

versus

JOHNSON CONTROLS INDIA PVT LTD Respondent
Through: Mr. Aayushya Aankul and Mr. Sarthak Miglani, Advocates.**CORAM:**
JUSTICE PRATHIBA M. SINGH
JUSTICE VIKAS MAHAJAN**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellant under Order XLIII Rule 1(d) of the Code of Civil Procedure, 1908 (hereinafter, 'CPC'), *inter alia*, assailing the impugned order dated 3rd July, 2026 passed by the Id. District Judge (Commercial Court)-13, Central, Tis Hazari, Delhi in **Misc DJ No. 130/26**. *Vide* the impugned order, an application filed under Order IX Rule 13 of the CPC has been dismissed by the Trial Court.
3. The brief background of the present case is that a suit for recovery was filed before the Id. District Judge by the Respondent/ Plaintiff -Johnson Controls India Pvt. Ltd. against the Appellant/Defendant-Multitex Filtration



Engineers Ltd. seeking recovery of a sum of Rs. 58,35,390/- along with interest.

4. In the said suit, summons were issued by the Commercial Court on 3rd May, 2024 in the following terms:

“Issue summons for settlement of issues to the defendant through by all modes i.e. through Process Server, email, whatsapp, registered AD-speed post and approved Courier returnable on 04.06.2024, subject to filing of PF, RC/AD deposit of necessary charges within 07 working days directing the defendant to file written statement within 30 days from the date of service.”

5. It appears from the record, which has been filed before this Court that the Respondent/Plaintiff served the Appellant/Defendant through the Process Server on 10th May, 2024. The Process Server's report in Hindi is extracted below:

2024-05-10 11:18 AM
Ravi Kumar Chak
10/5/24 11:18 AM
10/5/24
IN THE COURT
Suit / Case No.
John San Com

मेरे नाम का नाम दिनांक: 10-05-2024 को प्रेषित किया गया स्मार्क-पत्रिका
हस्त प्रेषण विधि-1 बहादुर बहादुर नगर भागी मर्द दिल्ली-2 पर
आकाश M/S MULTITEX FILTRATION ENGINEERS LTD. फर्म को प्रेषित
गया जो कि पर प्रेषित RALPHATION पर वेबे ब्लॉक ने स्मार्क प्रकाश
लेकर एडकर सुप्रीम नालिक को स्मार्क व कापी एडकर व फोर कार्य
वात करके प्रेषित स्मार्क पर सुप्रीम नाल शक्ति-प्र पाठ्य लिखकर
स्टेप लगाकर स्मार्क की नालिक कर दिया जो कि पर मोरिगवही
म नाली लिखित-दिनांक 10/5/24
ने बाध्य ले कर कहता हूँ कि उपरोक्त रिपोर्ट सत्य है 10/5/24



6. The translated copy of the above report is set out below:

“Ravinder Pandey

Clerk

10/5/24 1:15 PM

Sir, Today on 10-05-2024, arrived at the designated spot, which is 217 Hans Bhawan, Wing-1, Bahadur Shah Zafar Marg, New Delhi-2, and located the firm M/S MULTITEX FILTRATION ENGINEERS LTD. The clerk present on the spot who was sitting at the RECEPTION, took the summons and copy and read it over to his master/owner and with his permission appended his name Ravinder Pandey and affixed the stamp and thereby the summons were served. No witness was found on the spot. Therefore, the report is submitted.

Sd/-

10.5.24

I state under oath that the above report is true.

Sd/-

10.5.24”

7. The Commercial Court on 25th July, 2024 records that the service has been effected through the Process Server at the Registered Office of the Appellant/Defendant on 10th May, 2024 and accordingly, since the Appellant/Defendant had not filed the Written Statement, the matter was proceeded *ex-parte*. The said order reads as under:

“WS on behalf of defendant company has not been filed till date, though it was served with summons through the Process Server at its given address on 10.05.2024.

The stipulated period of 30 days for filing WS stands expired long back. Hence, the right of defendant company to file WS stands forfeited.

Since none is responding to calls of the case on



behalf of defendant company, it is also being proceeded ex-parte in this case.

List the matter on 16.08.2024 for ex-parte PE.

Affidavit(s) by way of evidence of PWs alongwith list of witnesses be filed by the next date of hearing.”

8. The Respondent/Plaintiff then led its evidence of PW1- Mr. Ankush Sharma, who is the Service Sales Manager and Authorized Representative of the Respondent/Plaintiff. Mr. Ankush Sharma proved various documents including the purchase order, invoices, service orders etc. The statement of PW-1 was recorded on 30th January, 2025.

9. Pursuant to the said evidence which was led by the Respondent/Plaintiff, final arguments were heard and the suit was decreed on 08th August, 2025 in the following terms:

“24. Therefore, in view of above discussion, the plaintiff company is held entitled to recover the above outstanding amount of Rs. 58,35,390/- from defendant company along with simple interest @ 8% per annum from the date of filing of present suit till the said amount is realized.

25. Besides above, costs of the suit as well Pleader Fee are also awarded to plaintiff company as per Rules.

26. Decree sheet be prepared accordingly. File be consigned to Record Room after due compliance.”

10. Thereafter, an application came to be filed by the Appellant/Defendant under Order IX Rule 13 of the CPC stating that the office of the Appellant/Defendant where the service was effected at Bahadur Shah Zafar Marg is only a Registered Office and none of the officials of the Appellant/Defendant sit there. The Corporate Office of the Appellant/Defendant is stated to have shifted to Noida in the year 2023 and



accordingly, the service of summons did not come to the knowledge to the concerned officials of the Appellant/Defendant in the office. Thus, the case of the Appellant/Defendant is that the Appellant/Defendant deserves to be given an opportunity on merits to lead its defence. Further, it was argued by the Appellant/ Defendant in the application that the disputes are liable to be referred to arbitration in view of the Arbitration clause *i.e.*, Clauses 19 and 20 in the purchase order.

11. In reply to this application, the Respondent/Plaintiff took a stand that the application under Order IX Rule 13 was filed beyond the period of limitation. In addition, it was argued that there was proper service of the summons and the burden of proof under Order IX Rule 13 of the CPC was not discharged.

12. In addition, the Respondent/Plaintiff also stated that bank guarantees of a sum of Rs.18.86 lakhs were also illegally encashed by the Appellant/Defendant. The Court, however, rejected the application under Order IX Rule 13 of the CPC and the *ex-parte* decree was confirmed. Hence, the present appeal.

13. Today, Mr. Mohit Negi, Id. Counsel for the Appellant/Defendant submits that the Appellant/Defendant has a very good case on merits. He urges that the Respondent/Plaintiff was under an obligation to send summons through **all modes** but the Respondent/Plaintiff chose only to serve through the Process Server and the summons were not received either by e-mail, WhatsApp, registered AD-speed post and approved Courier, as was directed by the Court. Id. Counsel further submits that even in the pre-litigation mediation, the Appellant/Defendant had participated but the mediation had failed. The said participation in pre-litigation mediation, according to Id.



Counsel, establishes the *bona fides* of the Appellant/Defendant.

14. Moreover, on merits various submissions are made by the Id. Counsel for the Appellant/Defendant. One of the objections being raised by the Appellant/Defendant is that there is an arbitration clause in the purchase order.

15. On the other hand, Mr. Aayushya Aankul, Id. Counsel appearing on behalf of the Respondent/Plaintiff submits that the Appellant/Defendant has not come with clean hands. The encashment of the bank guarantees does not find a mention in the present appeal. A substantial sum of Rs.18.86 lakhs was encashed even after the Judgment/Decree was passed and this establishes the *mala fides* of the Appellant/Defendant. Id. Counsel further submits that the Appellant/Defendant was duly served as is clear from the Process Server's report. The Process Server's report states categorically that when he had gone to serve the summons, the Guard who was there in the Registered Office of the Appellant/Defendant spoke to the '*Malik*' and only then accepted the summons. Thus, the Appellant/Defendant was fully aware of the filing of the suit.

16. The Court has considered the matter. Clearly, insofar as the Process Server's report is concerned, it is quite categorical to the effect that the Process Server had gone to the Registered Office of the Appellant/Defendant where he had met the Guard at the reception and had served the summons. The summons were accepted and due endorsement was also given after speaking to the owner of the Appellant/Defendant Company. Thus, the Appellant/Defendant knew of the issuance of the summons in the suit. The service on the Registered Office cannot be said to be incorrect service. In the opinion of this Court, the Appellant/Defendant ought to have been diligent and filed the Written Statement, However, the Appellant/Defendant failed to



do so. Even after several months the Defendant did not bother to find out the status of the suit.

17. Thus, the Commercial Court cannot be faulted for having proceeded with the Appellant/Defendant *ex-parte* and passing the Judgment/Decree in the absence of any defence. After the Judgment/Decree has been passed, the Appellant/Defendant also admits to have encashed the Bank Guarantees for a sum Rs.18.86 lakhs. All this goes to show that the Appellant/Defendant has been recalcitrant in defending itself in the present suit. However, insofar as the merits are concerned, the Appellant/Defendant has not had a chance to even place the arbitration clause before the Commercial Court or argue on merits as to the liability.

18. However, this Court is of the opinion that the Appellant/Defendant ought to have a chance to defend itself on merits considering that it had participated in the pre-litigation mediation. The purpose of issuing service through all modes is also to eliminate such possibilities of miscommunication and human errors – though in this case the service was duly effected. The purchase order does have an arbitration clause, which ought to have been considered by the trial court, even in the absence of the Defendant.

19. The Appellant/Defendant has been careless and has also encashed the bank guarantees. However, in the overall conspectus, this Court is of the opinion that the Defendant can be given a conditional order to enable it to defend itself in the suit.

20. Accordingly, the Appellant/Defendant is accordingly directed to deposit a sum of Rs.25,00,000/- before the Commercial Court within a period of four weeks. The said amount upon being deposited shall be maintained in a Fixed Deposit in auto renewal mode. The same shall abide by the final



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decision in the suit.

21. Accordingly, the impugned order dated 3rd July, 2026 and the Judgment/Decree dated 8th August, 2025 are set aside. The Appellant/Defendant is now permitted to file its Written Statement within 30 days from today. The Commercial Court shall proceed in accordance with law.

22. List before the Commercial Court on 28th September, 2026 for appearance of the parties.

23. In view of the fact that the Respondent/Plaintiff has been compelled to pursue the suit as also suffered legal costs in the present appeal, costs of Rs.1,00,000/- are awarded to the Respondent/Plaintiff. The costs shall also be paid by the Appellant/Defendant within four weeks.

24. The appeal stands allowed in these terms. All pending applications, if any, also stand disposed of.

PRATHIBA M. SINGH
JUDGE

VIKAS MAHAJAN
JUDGE

AUGUST 24, 2026/jg/Ck

Signature Not Verified

Digitally Signed
By: DEEPAK SINGH
Signing Date: 25.08.2026
17:33:39

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