

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 294 OF 2013

Datamatics Software Services Ltd. & anr.Plaintiffs

: V/S :

Indepay Networks Private Limited & anr.Defendants

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Mr. Amir Arsiwala i/by. Mr. Sameer P. Khedekar, Advocate for the plaintiff.

Mr. Rakesh Sawant, Advocate for the defendants.

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Coram :- Smt. R.P. SondurBaldota, J.

7th October, 2015.

P.C. :-

1). This suit is for recovery of (i) Rs.82,78,247/- alongwith interest thereon at the rate of 16% p.a. due under the Convertible Loan Agreement dated 20th January, 2012 and (ii) Rs.45,45,630/- alongwith interest thereon at the rate of 18% p.a. due under the agreement dated 30th January, 2012 titled as “Master Agreement for Projects” (the Service Agreement). By the order dated 25th September, 2014 the suit was transferred to the list of undefended suits because the defendants failed

to file their written statement within the time granted.

2). It is the plaintiff's case that, the two agreements form part of a composite transaction. The Convertible Loan Agreement was entered into between plaintiff no.1 and defendant no.1 for providing credit facility to the extent of Rs.1,00,00,000/- . The actual credit facility availed of, was to the extent of Rs.70,00,000/-. The agreement defines the term 'Lender' and the defendant includes the affiliates of plaintiff no.1 i.e. plaintiff no.2. The maturity date for the loan was of 1st January, 2013. The loan bore monthly interest at the rate of 16% p.a. Under the agreement, defendant no.1 obligated to mortgage all it's present and future movable and immovable assets as security for repayment of the loan. The security so created was to be the security for all the amounts due either for plaintiff no.1 or it's affiliates. When the defendants failed to repay the loan on 1st January, 2013 plaintiff no.1 send Advocate's notice dated 7th January, 2013.

3). The Master Agreement for Projects was entered into between plaintiff no.2 and defendant no.1. Thereunder, scope of work agreement was to be entered into between the parties which provided for time and Materials format under which defendant no.1 was to take on for it's exclusive use the personnel of plaintiff no.2 who would then be devoted to completing the work of defendant no.1. Under the agreement,

plaintiff no.2 agreed to devote six resources per month to defendant no.1. Accordingly, plaintiff no.2 had devoted six resources per month @ of Rs.7,20,000/- p.m. Defendant no.1 floated various purchase orders on which plaintiff no.2 rendered services to defendant no.1 and raised invoices for the services rendered. When the invoices remained unpaid, plaintiff no.2 terminates the Masters Agreements vide notice dated 28th November, 2012.

4). Defendant no.2 is the promoter/Director of defendant no.1. He provided personal guarantee for performance by defendant no.1 under the two agreements.

3). The plaintiff led the evidence of it's authorise representative for establishing the claim in the plaint. It produced the documents of the two agreements, the correspondence between the parties, the purchase orders and the invoices raised by the plaintiffs. The evidence of the plaintiff remained uncontroverted and hence must be accepted as true and correct. The suit is therefore decreed in terms of prayer clauses (a) to (f).

(SMT. R.P. SONDURBALDOTA, J)