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

+ **CS(OS) 70/2010**

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Decided on: 27th August, 2013

M/S VIJAI INFRASTRUCTURE LIMITED

..... Plaintiff

Through: Mr. Abhinav Vashist, Sr. Advocate
with Mr. Nishant Menon and Mr.
Prince Pawaiya, Advocates.

versus

M/S PROGRESSIVE CONSTRUCTIONS LIMITED

..... Defendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. The Plaintiff has filed the present suit under Order XXXVII CPC for recovery of Rs. 19,78,71,711.80 along with the interest @ 18% per annum from the date of the institution of the suit till realization.
2. Summons to the Defendant were issued under Order XXXVII on 18th January, 2010. The Defendant entered appearance before this Court on 23rd March, 2010 when the counsel for the applicant filed an application seeking summons for judgment under Order XXXVII Rule 4 CPC. The summons for judgment were received by the Defendant on 8th July, 2010 and he filed his application under Order XXXVII Rule 3 (5) CPC being I.A. No.

9493/2010 on 17th July, 2010. However, this application of the Defendant was dismissed for non-prosecution on 12th August, 2013 as none was present on behalf of the Defendant on the said date nor was the Defendant represented on 12th February, 2013. Thus the Plaintiff prays for a judgment under Order XXXVII CPC.

3. The case of the Plaintiff is that the Plaintiff is a company duly incorporated under the Companies Act and the suit has been instituted by Shri M.L. Sharma, its authorized representative in whose favour the Board Resolution dated 5th January, 2009 authorizing him to file the suit on behalf of the Company has been placed on record. The Defendant is also a company duly incorporated under the Companies Act. The Defendant Company formed a joint venture with one M/s Sunway Construction Berhad under the name and style of M/s PCL-SUNCON (“JV”) wherein the Defendant held the majority financial stake. The Defendant submitted a bid in the name of the joint venture to the National Highway Authority of India (in short ‘NHAI’) for the work of four laning of part of NH-2. The main contract was awarded for a sum of Rs. 396,47,78,901/-. The Defendant approached one M/s K.R. Anand as a sub contractor for execution of the part of the project which in turn approached the Plaintiff. Thus the Defendant

appointed the Plaintiff as a sub-contractor vide its agreement dated 25th February, 2002 which has been placed on record. The value of the part project awarded to the Plaintiff was Rs. 90 crores. Pursuant to the agreement and as per the terms and conditions of the main agreement between NHAI and the joint venture the Plaintiff fulfilled the Defendant's obligation under the main contract. The Plaintiff also paid to the Defendant amounts against the performance security given by the Defendant to NHAI for the portion of the project sub-contracted to the Plaintiff. The Defendant also deducted retention money from the running bills of the Plaintiffs. Thus the total amount due and payable by the Defendant to the Plaintiff is as under:-

PARTICULARS	AMOUNT
Towards performance security initially deposited by M/s K R Anand, which was to be refunded to the Plaintiff by the Defendant in terms of the letter issued by M/s K R Anand dated 5 th January, 2010 (@ Pg. No. 2 of Plaintiff's documents)	Rs. 1,5741,509/- (Rupees One Crore Fifty Seven Lakh Forty One Thousand Five Hundred Nine Only)
Towards balance amount of performance security deposited by the Plaintiff. (reflected in Defendant's ledger @ Pg. No. 3 of	Rs. 64,99,286/- (Rupees Sixty Four Lakh Ninety Nine Thousand Two Hundred And Eighty Six Only)

Plaintiff's documents)	
Towards balances for the work done during the contract period. (reflected in Plaintiff's ledger @ Pg. No. 9 of Plaintiff's documents)	Rs. 59,77,922.14 (Rupees Fifty Nine Lakh Seventy Seven Thousand Nine Hundred Twenty Two and Fourteen Paise Only)
Towards retention money deducted from the bills of the Plaintiff. (reflected in Defendant's ledger @ Pg. No. 4 of Plaintiff's documents)	Rs. 5,49,37,944/- (Rupees Five Crore Forty Nine Lakh Thirty Seven Thousand Nine Hundred Forty Four Only)
Towards bank guarantee margin money for purchase of bitumen/HSD from Indian Oil Corporation Limited (reflected in Defendant's ledger @ Pg. No. 5-6A of Plaintiff's documents)	Rs. 60,00,000/- (Rupees Sixty Lakh Only)
Towards additional work done during maintenance period (As per original statement of work @ Pg. No. 8 of Plaintiff's documents)	Rs.1,49,74,540.66 (Rupees One Crore Forty Nine Lakh Seventy Four Thousand Five Hundred Forty and Paise Sixty Six only)
Towards excise duty reimbursement.	Rs.3,50,00,000/- (Rupees Three Crore Fifty Lakh only)
Amount withheld by the Defendant on the untenable ground that NHAI had not paid the said amount to the Defendant	Rs.5,87,40,510/- (Rupees Five Crore Eighty Seven Lakh Forty Thousand Five Hundred Ten only)

4. The Plaintiff has placed on record its ledgers and the Defendant's ledger to support the claims made. Despite service of legal notice dated 18th November, 2009 regarding payment of outstanding amount of Rs.19,78,71,711.80 the Defendant has neither replied to the notice nor disputed or denied the liability. The Defendant has admitted the liability in its ledgers accounts, copies whereof have been placed on record. This Court has territorial jurisdiction to entertain the suit as the written agreement dated 25th August, 2002 between the parties had been executed at Delhi and the substantial part of the cause of action has arisen in Delhi. Consequently, a decree is passed in favour of the Plaintiff against the Defendant for a sum of Rs. 19,78,71,711.80 under Order XXXVII CPC. The Plaintiff is also entitled to the interest @9% per annum from the date of filing of the suit till the realization. Decree sheet be drawn accordingly.

5. The suit stands disposed of.

(MUKTA GUPTA)
JUDGE

AUGUST 27, 2013
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