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

+ **CS(OS) 1225/2012**

GRANT THORNTON INDIA LLPP Plaintiff

Through: **Mr. Ajay Talesara, Mr. Ambar
Qamuraadin & Mr. Abhishek,
Advs.**

versus

SILVERDALE SERVICES LTD. Defendant

Through: **None.**

% **Date of Decision : 9th April, 2015**

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN**

J U D G M E N T

MANMOHAN, J: (Oral)

1. Plaintiff has filed the present suit for recovery of principal amount of Rs. 53,50,551/- along with Rs.47,48,233/- towards interest @ 24% per annum upto February, 2012. Plaintiff also claims pendente lite interest @ 24% per annum on the principal amount of Rs.53,50,551/- from the date of filing of the suit till its realisation.

2. It is the case of the plaintiff that the defendant engaged the services of the plaintiff for carrying out Limited Scope Financial Due Diligence Review for various companies in India from time to time and the plaintiff carried out its services and submitted reports to the defendant for the various companies from time to time but the defendant failed to make the payment for the said

services to the plaintiff. The details of outstanding amount are mentioned in para 5 of the plaint which is reproduced hereinbelow-

“That accordingly, the plaintiff provided its services to the defendant in accordance with the various engagement letters accepted by the defendant following which the plaintiff carried out Limited Scope Financial Due Diligence Review for various companies in India for which the defendant had engaged the services of the plaintiff and submitted its report for the various companies to the defendant and raised invoices upon the defendant, the details of which are mentioned herein below:-

Sl. No.	Particulars	Date of Engagement	Invoice Date	Amount Payable
1.	Shetron Ltd.	23.10.2007	7.12.2007	USD 15,464/-
2.	Donear Industries Ltd.	20.06.2007	7.9.2007	USD 13,369/-
3.	Cals Limited	2.11.2007	9.1.2008	USD 12,000/-
4.	Green Rubber Group	5.9.2008	4.11.2008	USD 20,223/-
5.	Petchburi Terminal Company Ltd. (PTCL)	31.7.2008	25.11.2008	USD 15,040/-
6.	Phoenix Polypropylene Corporation	29.1.2008	29.12.2008	USD 15,010/-
7.	GEI Industrial Systems Ltd.	29.11.2007	27.3.2008	USD 13,191/-
Total =				USD 104,297/-
9.	Murli Agro Products Ltd. (MAPL)	8.1.2007	31.1.2007	GBP 7,122/-

Thus, the defendant is liable to pay to the plaintiff a sum of USD 104,297/- and GBP 7,122/-equivalent to

INR53,50,551/- (Rupees Fifty Three Lac Fifty Thousand Five Hundred Fifty One Only) in accordance with the invoices raised by the plaintiff upon the defendant from time to time, as mentioned herein above”.

3. The plaintiff has also filed its evidence by way of affidavit in support of the averments made in the suit and inter alia relied upon the following documents:-

- (i) Ex. PW1/2 to Ex.P1/9 are the copies Invoices raised by the plaintiff upon the defendant for services in respect of various companies.
- (ii) Ex.PW1/10 to Ex.PW1/21 are the various Emails exchanged between the plaintiff and the defendant.
- (iii) Ex.PW1/22 to Ex.PW 1/27 are the various Emails exchanged between the plaintiff and defendant wherein the Managing Director of defendant admitted and acknowledged its liability for the Invoices bearing Ex.PW 1/2 to Ex.PW 1/9.
- (iv) Ex. PW 1/28 to Ex.PW 1/29 are reminders issued by plaintiff to defendant.
- (v) Ex. PW 1/30 is office copy of legal notice issued by plaintiff to defendant and Ex. PW 1/31 is system generated return receipt of service of notice via email and Ex. PW 1/32 to Ex. PW 1/34 is postal receipt of dispatch of legal notice.
- (vi) Ex. PW 1/35 is calculation chart of outstanding amount duly certified by Accounts Department of defendant.

4. Having perused the paper book this Court finds that despite service of summons by email effected by the Registry of this Court as well as by the

counsel for the plaintiff, defendant failed to enter appearance. In fact, the defendant was proceeded ex-parte vide order dated 4th March, 2014. The said order is reproduced hereinbelow:-

“Despite service none appears on behalf of defendant. Accordingly, defendant is proceeded ex parte. Plaintiff shall file ex parte affidavit by way of evidence within four weeks from today. As prayed, documents shall also be filed by plaintiff within four weeks from today.

List the matter before Joint Registrar for making exhibits on documents on 1.4.2014.

List the matter before Court on 13.5.2014.”

5. Since the present suit was filed on 30th March, 2012 and all the invoices mentioned in para 5 of the plaint were more than three years old on the date of filing of the suit, this Court is of the view that the claims raised in the present petition are barred by limitation. However, as partial claim of the plaintiff has been admitted by the defendant in its email dated 11th January, 2010 which is exhibit PW 1/22, this Court is of the view that the plaintiff is entitled to decree of US \$ 50,000/- along with interest. The email dated 11th January, 2010 is reproduced hereinbelow:-

“Dear Harish Sirji

Thanks for your explanation, guidance and support, Sir,

As requested (A) please do NOT perform ANY transaction for any entity without the receipt of duly executed mandate, and (B) to the extent possible, please invoice to ultimate client with mile-stone=ayments (under copy to us), please.

1. GT THAILAND

We are arranging to remit Baht 300,000 being the amount as per unsigned mandate annexed.

We are unable to locate the mandate for LEGAL DD mentioned in invoice 2, hence for time being it is being set-aside.

Also, as pointed out VAT should not have been charged for

'export' of services, hence is being ignored.

The remittance would be sent by Wings Express Pte Ltd. Since the mandate was NOT signed by Silverdale (Suisse) therefore no provision was made in the books for the expenses.

We would have preferred the invoice for Baht 300,000 in full and final settlement addressed to Wings Express, in order to proceed with release of payment; however, as desired by you, as an exception in this case, we shall arrange for payments without it.

2. NCT, Jayant Agro and Gulshan

Could you please write to NCL and Jayant Agro directly with cc to finance@silverdalegroup.com We are at your service in terms of legal assistance (notice) and otherwise (chasing) to recover the moneys.

Re:2(c) Gulshan

Please confirm if you would be kind enough to accept USD10,000 in full and final settlement, which would mean both of us (GT and Silverdale) would lose money in the transaction.

We would strive to make the payment (INDIRECTLY) by end of February 2010.

3. Re (a) Murli, (b) Donear, (c), Shetron, (d) Cals, (e) GEI, (f) Neha, (g) Shiva, (h) PTC (i) Green Rubber, and (j) PPI

We would arrange for (INDIRECT) payment of USD 50,000 for 3(a) to 3(j) EXCLUDING 3(i) and 3(j). For 3(i) Green Rubber: we require your help to sue the Company for the payments. Being a foreign company, hopefully your aura will help. For 3(j) PPI: the matter is already being legally contested, we would have to wait for Court ruling before we can act on it.

SUMMARY:

- 1. USD9,000 (~ Baht30,000) by 15 Jan 2010*
- 2. USD 10,000 by 28 Feb2010*
- 3. USD 10,000 by 31March 2010*

4. *USD 10,000 by 31May 2010*
5. *USD 10,000 by 31July 2010*
6. *USD 10,000 by 30 Sept 2010*
7. *USD 10,000 by 30 Nov 2010*

As discussed, except for first 2 payments, all other payments are LIKELY to be paid INDIRECTLY.

We are fully committed to improve upon the above payment schedule and do pray that the actual payment time-line would be much significantly lower than that mentioned hereinabove, please.

Would you be kind enough to most benignly grant your consent to the above plan, so that we can arrange for 1st payment ASAP, to be followed by 2nd payment, please.”

6. This Court also finds that all the invoices of the plaintiff herein stipulate that outstanding payments shall attract simple interest @ 2% per month.

7. Consequently, keeping in view the categorical and unambiguous acknowledgement in the email dated 11th January, 2010, the present suit is decreed for an amount in Indian rupees equivalent to US \$ 50,000/- along with interest @ 24% from the date of the email Ex. PW 1/22 till the date of its realisation. Registry is directed to prepare a decree sheet accordingly.

With the aforesaid observations, the present suit stands disposed of.

MANMOHAN, J

APRIL 09, 2015

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