IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 67 OF 2016
IN
SUMMARY SUIT NO. 641 OF 2016

Normet India Private Limited .. Applicant

In the matter of :

Normet India Private Limited .. Plaintiff
Vs.
Hindustan Construction Company Limited .. Defendant

Mr.V.K. Ramabhadran, senior advocate a/w. Mr.Kunal Mehta and Mr.Naishadh Bhatia and Mr.Brendon Pereira i/b Crawford Bayley & Co. for plaintiff.

Ms.Swati Singh i/b Advaya Legal for defendant.

CORAM : K.R.SHRIRAM, J.
DATE : 10TH OCTOBER, 2016

P.C.

1 The plaintiff has filed this suit seeking a summary decree in the sum of Rs.7,07,30,889/- of which Rs.5,32,80,558/- is the principal amount and the balance interest with further interest at 12% per annum from the date of the suit till payment/realization.

2 The plaintiff has filed this suit on the basis of Written Contracts as mentioned in paragraph 2.1 of the plaint and confirmed statements of accounts as mentioned in paragraph 2.2 of the plaint. The defendant had

placed various purchase orders upon the plaintiff for supply of chemicals (CC) and spares (LTC) used in civil constructions. Based on the purchase orders, the plaintiff supplied construction chemicals used in civil construction to 5 different sites of the defendant, i.e., in Arunachal Pradesh, Vishakhapatnam, Jammu and Kashmir, East Sikkim, Bhutan and construction spares to 3 different sites viz., in Padar, Pare and Bhutan. Copies of the purchase orders are annexed to the plaint read with the rejoinder. Based on the purchase orders, the plaintiff supplied construction chemicals/spares and raised various invoices. Copies of the invoices are also annexed to the plaint/rejoinder. Copies of the delivery challans are also annexed to the plaint and to the rejoinder.

3 In the invoice raised by the plaintiff, there is a specific provision that if on the due date payments are not made, interest @ 3% per month will be charged. The defendant did not make payment as agreed, but, however, paid certain amounts. The amounts outstanding for each of the supplies are as under :

Sr.No.	**Project/Head of Claim**	**Outstanding Principal amount**
1	Arunachal Pradesh CC	Rs.30,18,464/-
2	Vizag CC	Rs.1,31,436/-
3	Jammu & Kashmir CC	Rs.52,31,665/-
4	East Sikkim CC	Rs.77,11,431/-

5	Bhutan CC	Rs.2,78,27,278/-
6	Padur LTC	Rs.4,23,076/-
7	Pare LTC	Rs.6,40,417/-
8	Bhutan LTC	Rs.82,96,791/-

4 The defendant issued balance confirmation as against the project mentioned at serial nos.1, 2, 3, 5, 7 and 8 above as under :-

Sr.No.	**Head of Claim**	**Balance Confirmation**	**Page Nos.**
1	Arunachal Pradesh CC	Balance confirmation date - 27th March 2015- Amount confirmed – Rs.33,28,386/-	58 of the plaint
2	Vizag CC	Balance confirmation date - 2nd March 2015- Amount confirmed – Rs.1,27,693/-	Page 73 of the plaint
3	Jammu & Kashmir CC	Balance confirmation date – 2nd March 2015- Amount confirmed – Rs.78,05,553/-	Page 97 of the plaint
5	Bhutan CC	Balance confirmation date - 2nd March 2015- Amount confirmed – Rs.2,76,00,261/-	Page 22 of the plaint
7	Pare LTC	Balance confirmation date - 27th March 2015- Amount confirmed – Rs.16,67,094/-	Page 26 of the plaint
8	Bhutan LTC	Balance confirmation date - 2nd March 2015- Amount confirmed – Rs.1,42,63,272/-	Page 147 of the plaint

As the payments were still not forthcoming, the plaintiff through their advocates, issued notice dated 5th May 2015 to the defendant. In the notice, the plaintiff has claimed a sum of Rs.6,62,22,886/- plus interest thereon at 12% per annum amounting to Rs.1,54,04,730/-, aggregating to Rs.8,16,27,616/-. The plaintiff also has annexed copies of all statements of accounts payable project-wise.

5 In response to the said notice dated 5th May 2015, the defendant, by their letter, dated 29th May 2015, informed the plaintiff's advocate that the defendant is still open for discussion with the plaintiff and the plaintiff's representative can meet the employee of the defendant to explore an amicable payment schedule. The defendant had not denied that any amount was payable to the plaintiff. In my view, simply saying *"We deny each and every contention and allegations in the legal notice and nothing at this juncture may have been deemed to have been admitted"* is not enough particularly when the defendant has offered to sit across with the plaintiff and amicably work out the payment schedule. After this reply, no further reply in detail dealing with all the allegations of the plaintiff has been put forth by the defendant.

Thereafter, the parties met on 26th June 2015 and it will be useful to reproduce the Minutes of the Meeting, copy whereof is annexed to the plaint, as under :

> *"The purpose of the meeting is to discuss and agree on amicable payment schedule on account of outstanding amount, as claimed in winding up notice dated 5th May 2015 u/s. 433(e) & 434 (1)(a) of the Companies Act, 1956 by Normet.*
>
> *AC and VS informed Normet that HCC is under financial stress and therefore HCC will not be able to pay the entire amount claimed in winding up notice dated 5th May 2015 in one go. After taking instructions from CEO of HCC, AC suggested that HCC shall pay the outstanding amount to Normet, by way of installments of Rs.50 Lacs per month starting from July 2015 till the time entire amount is paid.*

MM informed that since a lot of time has already been lost in negotiations, therefore, Rs.50 Lacs per month is not acceptable as it will take over a year to clear all the dues. MM suggested that Normet is willing to consider if HCC agrees pays at least Rs.75 Lacs per month.

AC informed that it is not possible for HCC to pay Rs.75 Lacs per month due to the current financial situation of HCC.

After long discussion both the parties could not arrive at amicable payment schedule."

(emphasis supplied)

AC is Amitava Chakraborty and VS is Veer Sidhwani, Vice-President and General Manager, respectively of the defendant. MM is Milon Mukhopadyay, MD of the plaintiff.

6 From the Minutes of Meeting dated 26th June 2015, it is quite obvious that the amount claimed by the plaintiff in its notice dated 5th May 2015 has not been disputed. The stand of the defendant is that it was under financial stress and cannot pay the entire amount in one go but can pay in installments of Rs.50 Lakhs. The defendant has, therefore, admitted its liability to the plaintiff. In the affidavit in reply, the defendant has not denied the meeting or the contents of the Minutes of the Meeting. In fact, the defendant is silent.

7 Therefore, the defendant not having denied the amounts as claimed by the plaintiff in their advocates' notice dated 5th May 2015 and on the

contrary having acknowledged its liability and due to financial stress, was seeking time to pay in installments of Rs.50 lakhs, in my view, even if there is no specific confirmation of accounts for East Sikkim CC and Padur LTC (Sr.No.4 and 6 in Para 3 above), the defendant is deemed to have confirmed its liability for all amounts on 26th June 2015. This will have a bearing on the defence of limitation taken by the defendant in its affidavit in reply.

8 The counsel for the defendant did not make any oral submissions save stating the defendant's defence is what is stated in the affidavit in reply.

9 I have considered the affidavit in reply. The defences raised are (a) the defendant on various occasions raised several quality issues with respect to the material supplied by the plaintiff; (b) the claims are time barred; (c) there was no agreement between the plaintiff and the defendant for payment of interest at 12% per annum; (d) they have not admitted liability by way of balance confirmation.

10 Except the issue of limitation, all other defences are baseless, misconceived and after thoughts. I will hasten to add it does not mean that issue of limitation has much foundation. I shall deal with that separately.

The defendant has not produced a shred of document to show that there were quality and quantity issues. These are just bald allegations. In fact, by way of balance confirmation and Minutes of Meeting, the defendant has admitted the amounts payable to the plaintiff.

11 As regards balance confirmation, in paragraphs 19, 23, 30 and 34 of the affidavit in reply, the averment simply reads *'I deny that the defendant has admitted its liability by way of balance confirmation'*. There is no explanation. They have not even dealt with each of the document annexed to the plaint based on which the plaintiff states the defendant has confirmed its liability. The plaintiff has annexed copies of the Balance Confirmation and Minutes of Meeting. The defendant does not deny having issued the balance confirmation or the Minutes of Meeting. This also is a bogus defence.

12 Coming to the issue of limitation, it will be better to deal with it project-wise. The plaint was lodged on 22nd July 2016.

Sr.No.	**Project/Head of Claim**	**Limitation**
1	Arunachal Pradesh CC	2 out of 6 invoices raised on 25th and 29th May 2013. Still, entire claim is within limitation. I say this because the balance confirmation dated 27th March 2015 and Minutes of Meeting dated 25th June 2015 extends limitation as it is an acknowledgement of liability.
2	Vizag CC	Entire claim is within limitation as all invoices raised in 2014.
3	Jammu & Kashmir CC	Entire claim is within limitation as all invoices raised in 2014 and 2015.

5	Bhutan CC	Entire claim is within limitation as all invoices are raised from October 2013 onwards.
7	Pare LTC	Entire claim is within limitation as all invoices are raised between 22nd October 2013 and 4th December 2013.
8	Bhutan LTC	7 out of 24 invoices raised between 23rd August 2012 and 28th February 2013. Still, entire claim is within limitation. I say this because the defendant made part payment of Rs.5,96,000/- on 19th January, 2015 and further the Minutes of Meeting dated 23rd June, 2015 extends limitation. Balance confirmation dated 2nd March, 2015 also constitutes an acknowledgement of liability and extends limitation.

13 So far as East Sikkim is concerned, all the 16 invoices were raised in 2011 and 2012. The plaintiff has produced copies of 2 C-forms under the Central Sales Tax (Registration and Turnover) Rules, 1957 issued by the defendant. Copies of C-Form, form part of Exh.'Y' to the plaint. These C-forms issued have been issued on 28th May 2012 for 8 invoices and on 2nd August 2012 for 2 invoices. For the 1st 6 invoices, no 'C' forms are produced. In my view, these C-forms also constitute an acknowledgement of liability and extend the limitation period but that will be only in respect of two invoices dated 7th January 2012 and 18th January 2012 for Rs.6,76,596/- and Rs.6,85,994/-, respectively, totalling to Rs.13,62,529/-. In the Minutes of the Meeting dated 26th June 2015, the defendant has also acknowledged liability. Therefore, this claim only to the extent of Rs.13,62,529/- principal amount as against Rs.77,11,431/- *prima-facie*

appears to be within limitation.

14 As regards Padur LTC, all 7 invoices are raised between 26th February 2013 and 24th March 2014. But in view of the contents of the Minutes of the Meeting dated 26th June 2015 which constitutes acknowledgement of liability and a promise to pay the outstanding, in my view, the entire claim for Padur LTC will be within limitation.

15 As regards the interest claim of 12% per annum, the invoices raised by the plaintiff provide for interest at 36% per annum but the plaintiff is claiming only 12% per annum. Moreover, in the notice, dated 5th May 2015, the plaintiff has claimed interest at 12% per annum on the outstanding amounts and the defendant, in its reply or in the Minutes of Meeting, has not disputed the claim of interest. In fact, as stated earlier, the defendant has sought time to pay the amounts in installments.

16 In the circumstances, in my view, all the defences raised by the defendant, except to the extent mentioned in paragraph 13 above, are nothing but moonshine and misconceived. There are confirmations of balance made by the defendant to the plaintiff. After the winding up notice was sent, parties have met and the defendant has not even questioned figures

and the claim in the notice, dated 5th May 2015. On the contrary, the defendant has admitted the claim and sought time to pay in monthly installments of Rs.50 Lakhs.

17 Therefore, though the defendant, in my view, has not made out any triable issue, except to the extent mentioned in paragraph 13 above, I would, still, grant an opportunity to the defendant to defend the suit but with condition attached. The condition for leave to defend is the defendant to deposit, within six weeks, a sum of Rs. 5 Crores with the Prothonotary and Senior Master of this Court. Once the amount is deposited, the Prothonotary and Senior Master shall invest the same in fixed deposit with a nationalized bank for a period of one year to be renewed year to year until hearing and final disposal of the suit.

18 Within two weeks of deposit of this amount, the defendant to file written statement and serve copy thereof upon the plaintiff.

19 Within two weeks thereafter, the parties to file their respective affidavits of documents and also complete discovery and inspection of the documents relied upon by each other and file statement of admission and denial with reasons for denial.

20 Suit in such a case to be listed for issues on 9^{th} January 2017.

21 If the defendant does not deposit the amount, as directed above, the suit be placed for directions on the first Friday after the expiry of six weeks period.

The summons for judgement accordingly disposed.

(K.R. SHRIRAM, J.)