

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****SUMMONS FOR JUDGMENT NO.73 OF 2016
IN
SUMMARY SUIT NO.215 OF 2016**

M/s.Godrej Industries LimitedPlaintiff

V/s.

Tricom India Limited and Anr.Defendants

Mr.Karl Tamboly a/w Mr.Hrushika Narvekar i/by Bharucha & Partners
for plaintiff.

Mr.Sumit Patni i/by S.S.Sinha for defendants.

CORAM : K.R.SHRIRAM,J

DATE : 24.10.2016

P.C.:-

1 This summary suit is filed by the plaintiff claiming sum of Rs.5,77,25,500/- plus interest of Rs.5,28,75,193/- as on 21.12.2015 plus further interest at the rate of 16% p.a. from the date of filing the suit until payment/realization.

2 The defendant no.1 had issued Optional Fully Convertible Debentures (OFCD) of Rs.13,13,50,500/- which was repayable on 30.11.2009. It is the case of the plaintiff that at the request of the defendant no.1 the plaintiff converted this OFCD into Inter-corporate Deposit (ICD) of Rs.13,13,50,500/- on 30.11.2009. This amount was

to be repaid by the defendant no.1 in two installments of Rs.4 crores and Rs.9,13,50,500/- on 31.3.2010 and 31.3.2011 respectively. The first installment was paid. The defendant no.1 was unable to repay the 2nd installment of Rs.9,13,50,500/-. At the request of the defendants extension to repay was granted. This amount of Rs.9,13,50,500/- was to be paid with interest @ 24% p.a. Time to repay this amount was extended from time to time as under and at every stage a supplemental agreement was entered into :-

Sr.No.	Date	Supplemental Agreement	Outstanding Amount (Rs)	Ultimate due date
1	31/3/2011	First	9,13,50,500	31/5/2011
2	31/5/2011	Second	9,46,93,825	29/7/2011
3	30/6/2011	Third	9,81,28,913	30/9/2011
4	27/9/2011	Fourth	8,13,50,500	31/10/2012
5	31/3/2012	Fifth	8,13,50,500	31/3/2014
6	17/7/2013	Sixth	10,54,00,000	15/8/2015

3 The sixth supplemental agreement dated 17.7.2013 gives the entire background of the matter wherein the defendant no.1 has admitted that it owes to the plaintiff a total sum of Rs.9,69,39,996/- as on 16.7.2013. It is also admitted by the defendant no.1 that it had issued various post dated cheques which were dis-honoured on presentation. The plaintiff and the defendant no.1 have agreed that the principal amount due as on 16.7.2013 was Rs.6,67,50,500/-. Of this, a sum of Rs.3,19,00,000/- was to be paid towards principal in

five installments as mentioned in clause-1 of the supplemental agreement dated 17.7.2013.

4 Thereafter as the defendant no.1 did not keep up the commitments, the plaintiff issued two letters demanding payment. The defendant no.1 by their letter dated 27.12.2013 has acknowledged its liability that a sum of Rs.5,77,25,500/- towards principal was due and payable to the plaintiff, the defendant no.1 had various financial difficulties and needed time to repay the balance amount. The defendant no.1 had also requested the plaintiff to revise the interest component.

5 The counsel appearing for the plaintiff submitted that these documents have not been disputed by the plaintiff and it is the plaintiff's own contention that an amount of Rs.5,77,25,500/- towards principal was due and payable to the plaintiff.

6 The defendant no.2 has filed an affidavit in reply for himself and on behalf of defendant no.1, in which, in my view, no defence of any nature has been taken for leave to defend. In the entire affidavit which runs into just about 3 pages the only defence, if I may say, is in paragraph-10 where the defendants have stated "I say that the defendant no.1 has substantial sum towards the principal

and only some amounts are remaining towards the principal. It is submitted that the total amount claimed by the plaintiff is hence disputed.” The defendants have not chosen to indicate how much amount towards the principal has been made. The defendants have only stated that as against ICD of Rs.13,30,50,500/-, they have made payment of Rs.11,22,70,729/-. However, this is totally contrary to the letter dated 27.12.2013 wherein the defendant no.1 has admitted that sum of Rs.5,77,25,500/- was payable towards principal. Moreover, in the supplemental agreement dated 16.7.2013 the defendant no.1 has admitted that sum of Rs.6,67,50,500/- plus Rs.3,01,89,496 aggregating Rs.9,69,39,996/- is due and payable to the plaintiff. As against this, when one considers Exhibit A to the affidavit in reply, after the last supplemental agreement dated 16.7.2013 was entered into, the defendant no.1 has paid only Rs.90,25,000/-. Therefore, even if credit for this payment is given against the principal amount of Rs.6,67,50,500/-, the balance principal amount will be Rs.5,77,25,500/- which is the amount the defendant no.1 has admitted in its letter dated 27.12.2013. Therefore, this defence of the defendants is baseless and misconceived.

7 Mr.Karl Tamboly for the plaintiff states that he has been served with copy of sur-rejoinder only in Court today and he has

proceeded on the basis of denial. In the sur-rejoinder filed, the defendants have for the first time stated that in January-2014 an understanding was arrived at with the plaintiff whereby it was agreed between the plaintiff to set off the payments made till that date towards the principal as the financial situation of the defendant no.1 was not good. This is nothing but a bald statement without any details. The defendants have not even indicated, even assuming there was a discussion, with whom did the defendants agree or who from the plaintiff agreed with this adjustment.

8 In the circumstances, in my view, the entire defence of the defendants is moonshine, baseless and misconceived.

9 From the aforesaid, it is quite clear that the defendant no.1 has admitted that a sum of Rs.5,77,25,500/- is payable to the plaintiff. None of the documents relied upon by the plaintiff are disputed. The defendant no.1 has no defence. The plaintiff should therefore, in my view, be entitled to a summary decree in the sum of Rs.5,77,25,500/- against defendant no.1. The suit therefore, stands decreed in the sum of Rs.5,77,25,500/-. As regards interest component, the defendant no.1 is granted leave to defend. On the decreed amount, the plaintiff is also entitled to interest @ 9% p.a. from the date hereof until payment/realization.

10 As regards the defendant no.2, no case is made out for a summary decree. I do not find any averments also as to how the defendant no.2 can be held personally liable. Therefore, unconditional leave to defend has to be granted to defendant no.2.

11 The defendants to file written statement within 4 weeks. Within 3 weeks thereafter parties to file their respective affidavit of documents and give inspection and complete discovery and inspection. Suit be listed for issues on 19.12.2016.

Summons for Judgment accordingly stands disposed.

(K.R.SHRIRAM,J)