

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

C.S.No.789 of 2010

Guangxi Liugong Machinery
Company Limited,

Registered Office at No.1, Liutai Road,
China

Rep. By Manager (Operation)

Mr.T.K.Elangovan

Liugong India Pvt. Ltd., having
Regional Office at 4/84, Mudichur Road,
(Opp. TMG Arts College)
Manimangalam,
Chennai - 601 301.

... Plaintiff

Versus

Rais Equipment Private Limited,
Rep. By its Managing Director,
Regd. Office at No.14, Pasumarthy Street,
2nd Land, Kodambakkam,
Chennai - 600 026.

... Defendant

Plaint filed under Order VI Rule 1 of O.S.Rules read with Order XXXVII Rule 1 of CPC praying to pass a judgment and decree directing the defendant to pay a sum of Rs.2,37,94,970/- together with future interest @ 3% p.a. from the date of plaint till date of realisation and costs of the suit.

For Plaintiff : Mr.Anirudh Krishnan for
M/s.Sarvabhauman Associates

For Defendant : Set ex parte

JUDGMENT

The plaintiff would aver as follows:

1.1. The plaintiff is a Public Limited Company engaged in the business of manufacture of construction equipment/HEMM like loaders, excavators, fork lifts, motor graders etc., and established its business in India in the year 2002-2003. During August 2007, the plaintiff established its Indian subsidiary viz., "Liugong India Private Limited" having its branch office at Chennai and it started importing/assembling and selling the machines in India. It also continued to supply machineries directly to its customers, who were willing to do so from China.

1.2. The plaintiff would further aver that the defendant is one such company, which had placed orders on the plaintiff and importing machineries from China and the normal practice adopted in the course of its business is that the defendant would place an import purchase orders on the plaintiff and the machineries would be supplied to them through shipment and payment would be made through Telegraphic Transfer after 180 or 190 days as stipulated in the terms and conditions annexed to the import purchase order from the date of Bill of Lading. The plaintiff, upon

receipt of the purchase orders, would import machineries so required in the necessary documents such as Invoices, Packing List, original Bill of Lading, Certificate of Origin and Marine Insurance Policy would be dispatched to the defendant within seven days after departure of vessel from China through DHL courier. The defendant had placed 12 purchase orders and the terms and conditions were also effected and the defendant has also taken delivery on the value of US Dollars 5,03,857.95.

1.3. The plaintiff would further state that the defendant after taking delivery of the shipment, made a partial payment of 15,000 USD by Telegraphic Transfer on 26.02.2009 and did not pay the balance amount of 4,88,857.95 USD due, despite several requests, reminders and demand and in this regard, the representative of the plaintiff's subsidiary company in India also met the defendant to make out the payment. A joint meeting was also convened on 16.02.2010 at the behest of the plaintiff's company and as per the Minutes of the Meeting and also the Board Resolution dated 26.01.2010, the defendant had agreed that they are due and payable a sum of 4,87,127.29 US dollars and agreed to make the said payment

in installments commencing from April 2010 ending before the month of September 2011. However, the defendant had gone back on the promises and failed to make repayment of the amount as agreed and therefore, left with no other option, the plaintiff is constrained to file the present suit for recovery of the money with interest and costs.

2. When the matter was listed on 11.12.2014, the learned counsel appearing for the defendant filed a memo reporting "no instructions". Therefore, this Court directed the Registry to send notice to the defendant returnable by four weeks and subsequently, the name of the defendant was printed in the cause list and despite that they did not enter appearance and therefore, this Court, vide order dated 27.01.2015, had set the defendant *ex parte* and directed the learned Additional Master for recording evidence.

3. The General Manager (Finance) of Liugong India Private Limited has filed the proof affidavit in lieu of chief examination as per the authorisation given to him in the light of the Board Resolution dated 05.02.2010 and marked Exs.P1 to P5.

4. The learned counsel appearing for the plaintiff has drawn the attention of this Court to the pleadings, oral

and documentary evidence and would submit that it is not in dispute that the defendant had placed 12 purchase orders and goods were also supplied to him and inspite of repeated requests, the defendant had not paid the amount due and payable under the said invoices and in order to resolve the issue, a joint meeting was also convened, wherein the representatives of the plaintiff as well as the defendant had participated and the defendant also agreed and admitted that they are due and payable a sum of 4,87,127.29 US dollars and agreed to make out the payment in installments commencing from April 2010, ending with September 2011 and it was also reduced to writing in the form of Minutes, marked as Exs.P4 and P5 respectively, however the defendant had gone back on the promises and did not make the payment as agreed and therefore, the plaintiff is constrained to file the suit for recovery of money along with the interest and costs.

5. This Court has considered the submissions made by the learned counsel appearing for the plaintiff and also perused the materials placed before it.

6. This Court, upon perusal of the pleadings, framed the following issues:

1) Whether the plaintiff supplied machineries, in accordance with 12 purchase orders placed by the defendant?

2) Whether the defendant had admitted and agreed to pay the amount claimed by the plaintiff in terms of the Board Resolution dated 26.01.2010 as well as the minutes of the Board meeting?

3) Whether the plaintiff is entitled to a judgment and decree as prayed for?

4) To what other reliefs, the plaintiff is entitled?

Issue No.1

7. It is not in serious dispute that the defendant had placed purchase orders numbering 12 and in terms of the purchase orders, the plaintiff has also effected supply of machineries and the necessary documents had also been sent to the defendant and the defendant had also taken delivery of the machineries supplied by the plaintiff to the total value of 5,03,857.95 US Dollars. The defendant made a partial payment of 15,000 US Dollars and did not pay the balance amount of 4,88,857.95 US Dollars and inspite of repeated requests and demand, the defendant did not make the payment and therefore, in order to resolve the issue, a joint meeting was convened and as per the Board Resolution and Minutes, marked as Exs.P3 and P4 respectively, the

defendant agreed to make out the payment in installments commencing from April 2010 ending with the month of September 2011 and despite the said undertaking, the defendant did not pay the amount due and payable to the plaintiff in installments. Therefore, Issue No.1 is answered in affirmative in favour of the plaintiff.

Issue No.2

8. A perusal of Exs.P3 and P4 would disclose that though the defendant agreed to make out the payment in installments, ought to have started paying the dues in installments commencing from April 2010, but he did not pay the amount. Therefore, Issue No.2 is also answered in favour of the plaintiff.

Issue No.3

9. A perusal of Exs.P1 to P5, coupled with the pleadings, would disclose that despite the plaintiff supplied the machineries as per the purchase orders, marked as Exs.P2 series, the defendant have not choose to repay the amount in installments and therefore, the plaintiff is entitled to get a judgment and decree as prayed for.

10. In the result, there shall be a judgment and decree directing the defendant to pay a sum of Rs.2,37,94,970/- together with interest at the rate of 3%

p.a. from the date of plaint till the date of realisation and the plaintiff is also entitled to the cost of the suit.

List of Witnesses:

PW1 : Ashok Kumar

List of Exhibits:

<i>Exhibit s</i>	<i>Description of Documents</i>	<i>Date</i>
Ex.P1	Original Board Resolution from the plaintiff company	05.02.2010
Ex.P2	Purchase orders received by the plaintiff company together with invoices	---
Ex.P3	Original Board Resolution	26.01.2010
Ex.P4	Minutes of Meeting containing admission of liability by the defendant	16.02.2010
Ex.P5	Statement of accounts	---

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15.04.2016

//Certified to be a true copy//

Dated this the day of 2016

S.s/01.08.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.