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

\+ CS(COMM) 299/2016

COMBA TELECOM LTD ..... Plaintiff

Through: Mr. Shiv Charan Garg, Advocate with Mr. R.K. Kashyap and Mr. Imran Khan, Advs.

versus

S TEL PVT LTD ..... Defendant

Through: None

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

<u>O R D E R</u>

% **22.08.2016**

1. The plaintiff has filed the present summary suit for recovery of USD 6,63,683, equivalent to Rs.4,04,95,643/- against the defendant in respect of goods supplied.

2. Mr. Garg, learned counsel for the plaintiff submits that the plaintiff is a Hong Kong based company having a business of manufacturing and trading of telecom equipments worldwide. For conducting its business in India, the plaintiff has taken on lease, a premises in Delhi from where all its Indian operations are being dealt with and controlled. The defendant company is stated to be a licensed Telcom operator operating from Gurgaon and Chennai.

3. As per the averments made in the plaint, in the year 2009, the defendant had approached the plaintiff at its New Delhi office to purchase

Tower Mounted Amplifiers (TMAs), its accessories and components for the Guwahati operations being conducted by it. It is the plaintiff's stand that not only had the defendant company through its office situated at Gurgaon, approached the plaintiff company in New Delhi to purchase the equipments, the presentation in respect of the said equipment was given by the plaintiff at its Delhi office and the negotiations between the parties on the price were also held at the Delhi office. After being satisfied with the technical and commercial aspects of the equipments, the defendant had issued a purchase order dated 01.12.2009 in favour of the plaintiff, for supply of 1560 units of TMAs @ USD 290 per unit, totalling to USD 452,400. The original purchase order has been filed by the plaintiff alongwith the documents under index dated 27.10.2014 and is marked as Annexure P-4.

4. The plaintiff company had supplied the aforesaid goods and had raised two invoices on the defendant, one dated 06.02.2010 for USD 420,500 (Annexure P-5) and the second one dated 06.02.2010 for USD 31,900 (Annexure P-6). The aforesaid goods were dispatched by ship from China to the port at Calcutta and were cleared by the plaintiff's forwarding agent based in the said city. Two letters dated Nil forwarded by the clearing agent of the plaintiff based in Calcutta confirming *inter alia* that they had cleared the goods in question, have been filed as Annexure P-7 (colly). The letter dated 13.07.2010, issued by the forwarding agent of the plaintiff to the defendant, intimating them that all the formalities relating to the custom clearance of the shipment in question had been undertaken by paying the requisite custom duty in respect of 1560 units is marked as Annexure P-8.

5. Thereafter, the said goods were duly received by the defendant and in terms of the purchase order, they were liable to pay 50% of the invoice amount to the plaintiff within 15 days from the date of delivery and the balance 50% within 180 days from the date of the invoice. In other words, in terms of the purchase order dated 01.12.2009 issued by the defendant, it was liable to pay USD 226,200 to the plaintiff on or before 21.02.2010 and the balance USD 226,200, on or before 21.08.2010. However, the defendant had failed to make any payment to the plaintiff. As a result, several e-mails were exchanged between the parties. The plaintiff sent its first e-mail dated 25.03.2011 to the defendant demanding payment in respect of the goods supplied (Page 124). Vide e-mail dated 21.10.2011, the defendant company had assured the plaintiff that they were taking steps to clear the outstanding dues but had sought cooperation due to delay of funding (Page 93). The contents of the said e-mail is reproduced hereinbelow:-

> *"Dear Geetika,*
>
> *As we have already explained, we have been hampered by external conditions, including uncertain regulatory environment and a delay on funding, over which we have no control.*
>
> *Despite these difficult conditions, we are making all necessary efforts to ensure a smooth and uninterrupted continuation of our telecommunication services. As reassured to you on earlier occasions, we are taking all steps to address all outstanding issues with you and ensure that established dues are cleared and we once again seek your cooperation and patience to tide over this difficult phase.*

We shall be reverting with the payment outlook on obtaining the visibility from our bankers which is expected to come by this month end.

With regards,

Akhilesh Vashisht
HEAD-SCM HO
STtel Private Limited"

6. Despite the above assurance, exchange of several e-mails and telephonic conversions between the parties, the plaintiff states that it did not receive any amount from the defendant. The e-mails exchanged between the parties have been filed by the plaintiff along with the list of documents and collectively marked as Annexure P-9.

7. Vide e-mail dated 18.10.2012, the defendant had again assured the plaintiff that they were working out a plan for repayment of the outstanding amount of USD 452,400 in due course, but had expressed their inability to give a specific plan for making the payments (Page 80). The said e-mail is reproduced hereinbelow:-

"Dear Mr. Gagan,

We would work out a plan and let you know in due course, at this moment we are not in position to give you a plan.

We assure you that we would work out to sort this out.

Regards,

Pawan Mehta"

8. Learned counsel for the plaintiff states that after waiting for almost two years, the plaintiff was compelled to file the present summary suit against the defendant praying inter alia for a decree of Rs.4,04,95,643/- (amounting to USD 663,863), which includes interest @10% per annum, reckoned from September, 2010 (the date when 180 days specified in the purchase order dated 01.12.2009 had expired) till the date of institution of the suit. The plaintiff has also claimed future interest @ 10% per annum.

9. Summons in the prescribed form were issued to the defendant in the suit on 15.12.2014, returnable for 23.04.2015. The defendant was served at its Chennai address on 04.03.2015 but it did not enter appearance within the stipulated period of 10 days. Vide order dated 23.04.2015, the matter was placed by the Joint Registrar before the Court for appropriate orders. Till date, the defendant has failed to enter appearance or take any steps to defend itself. In such circumstances, learned counsel for the plaintiff seeks a decree in terms of Order XXXVII Rule 2(3) of the CPC on the ground that the defendant has failed to enter appearance or file a leave to defend application.

10. The Court has perused the averments made in the plaint and the documents filed by the plaintiff. Since most of the documents filed by the plaintiff are e-mails exchanged between the parties, the plaintiff has filed an affidavit in compliance of Section 65-B of the Evidence Act under index dated 09.12.2014, certifying *inter alia* that the said documents are computer generated documents obtained after downloading the e-mails from the computer system maintained by it in its office on a regular basis and hard copies of the print outs have been retrieved to be filed in court, as Annexure P-9 (colly).

11. Having regard to the fact that the present suit is uncontested and the plaintiff has pointed out the relevant documents to demonstrate that the defendant has admitted its liability to pay USD 452,400 to the plaintiff for the goods supplied and has failed to pay any amount after receiving the goods in terms of the purchase order dated 11.12.2009, it is deemed appropriate to decree the suit in favour of the plaintiff and against the defendant, on an assumption that the averments made in the plaint are deemed to be admitted.

12. Accordingly, the plaintiff is held entitled to a decree for a sum of Rs.4,04,95,643/- which includes the interest @10% per annum as reflected in the computation at para 16 of the plaint together with pendentelite and future interest @ 10% per annum on the principal amount, alongwith costs. Decree sheet be drawn accordingly.

13. The suit is disposed of.

HIMA KOHLI, J

AUGUST 22, 2016
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