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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.42 OF 2016

IN

COMMERCIAL SUIT NO.470 OF 2016

Thermax Ltd.

...Plaintiff

vs

National Textile Corporation Ltd.

...Defendant

.....

Mr. Vishal Thakur and Mr. Ranjit Shetty, i/b. Argus Partners, for the Plaintiff.

Ms. Mamta Sadh, i/b. Joseph B. Fernandes, for the Defendant.

.....

CORAM : S.C. GUPTE, J.

DATED : JUNE 12, 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Summons for Judgment is taken out in a Summary Suit, which seeks a decree in the sum of Rs.1,50,89,923.78, plus interest. The suit claim arises out of a contract for sale of goods, the terms which are evidenced by purchase order dated 11 December 2009. The purchase order is **Exhibit 'A'** to the plaint. There is no dispute between the parties that the equipment forming part of this purchase order, namely, Steam Boiler and Thermic Fluid Heater with accessories, referred to therein, was duly delivered by the Plaintiff to the Defendant. The dispute is in respect of the terms of payment.

3. The terms of payment referred to in the purchase order inter alia require payment of 10% of basic cost of materials as mobilization advance, further 10% payable against approval of drawings and 50% against delivery of material at site. These three payments, aggregating to 70% of the total price, have been duly paid by the Defendant to the Plaintiff. The dispute pertains to the balance 30% amount payable by the Defendant to the Plaintiff. Out of the balance 30%, 20% was payable on pro-rata erection of the equipment and the remaining 10% was payable after commissioning, testing and handing over of the equipment and getting final approval for the same from all concerned authorities. It is the case of the Plaintiff that, though the Plaintiff was ready to erect and commission the equipment at site, the land for such erection and commissioning was not made available by the Defendant to the Plaintiff. On the other hand, it is the case of the Defendant that the Plaintiff was required to seek concurrence of the Defendant before dispatch of materials, since there was some issue with the State Government for allotment of land. It is the case of the Defendant that keeping in mind safety of the material lying uninstalled at site, an approval was sought by the Defendant from the Plaintiff before dispatching the equipment. It is also submitted that, as a result of supply of the material without such concurrence, when the site was not ready for installation, there have been thefts of the material forming part of the equipment and, as a result, even a police case has been filed. It is the case of the Defendant that the Plaintiff is responsible for the safety of the material. It is also submitted that in accordance with a decision taken at a meeting held at the Defendant's premises on 25 February 2013 (which

decision has been duly minuted and placed on record by the Plaintiff itself), the parties had decided to reinspect the quantity and quality of the material supplied and lying idle in the premises under the security of the Plaintiff by a particular date and after such assessment, prospective buyers were to be found for such materials and the pending issues were to be resolved amicably.

4. These matters of defence raised by the Defendant in its reply to the Summons for Judgment do give rise to triable issues on which evidence needs to be led by the parties. On these triable issues, the Defendant deserves to get an unconditional leave to defend the suit.

5. Accordingly, the Defendant is granted unconditional leave to defend the suit. The written statement to be filed within a period of four weeks from today. The suit to appear on board after four weeks for directions. The Summons for Judgment is disposed of accordingly.

(S.C. GUPTE, J.)