

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **13.09.2017**

DELIVERED ON : **26.10.2017**

Coram

The Honourable **Mr.Justice RAJIV SHAKDHER**
and

The Honourable **Mr.Justice ABDUL QUDDHOSE**

**Original Side Appeal No.42 of 2015
and M.P.Nos.1 and 2 of 2015**

M/s.HINGE TECH INDIA PVT. LTD.,
Rep. by its Director Mr.Yoon Hyangsik,
New No.13, Old No.47, Murugappa Building,
Gandhipuram Road, Kotturpuram,
Chennai-600 086

.. Appellant

Vs.

M/s.ATLAS CRANE PVT LTD.,
Rep. by its Director,
Mr.Senthil Muthu,
No.40, Naluthonnu Street,
Thirumalasai, Chennai-602 107.

... Respondent

Prayer : Appeal filed under Order XXXVI, Rule 2 of Original Side Rules read with Clause 15 of the Letters Patent, against the Fair and Decretal order dated 25.07.2014 in C.S.No.993 of 2008, on the file of this Court.

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For Appellants : Mr.K.S.Elangovan
for M/s.Achari and Antoni

For Respondent : Mr.G.RM.Palaniappan

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J U D G E M E N T**RAJIV SHAKDHER, J.**

1. This is an appeal, which is directed against the judgement and decree of the learned Single Judge dated 25.07.2014.

2. The appeal has been preferred by the original defendant, i.e., Hinge Tech India Private Limited (hereafter referred to as, "Hinge"). The learned Single Judge has decreed the suit in favour of the respondent, who is the original plaintiff, i.e., Atlas Crane Private Limited (hereafter referred to as, "Atlas"). Collectively, Hinge and Atlas would be referred to hereafter as, "the parties".

3. The suit instituted by Atlas is an action for recovery of a sum of Rs.43,79,754/-. The principal amount claimed is a sum of Rs.39,80,945/. The balance amount claimed is towards interest, purportedly, calculated at the rate of 12% per annum. Pertinently, the plaint does not refer to the period, for which, interest is calculated.

3.1. Hinge, being aggrieved, has preferred the present appeal.

4. The impugned judgement and decree has been assailed by Hinge on various grounds. In sum, Hinge says no amount is payable to Atlas.

5. Before we proceed further, it may be useful to refer to the broad, undisputed facts, which have emerged upon perusal of the record :

5.1. Evidently, Hinge issued two Purchase Orders (P.O.) in favour of Atlas. The first P.O. is dated 13.01.2007, and bears a value of Rs.2,13,00,000/-. Under this P.O., Atlas was required to, firstly, supply six (6) cranes of certain specifications set out therein, and secondly, to supply, one (1) set of apparatus described as : "3 Nos. 20/10Ton, Cap., Double Girder Box Type EOT Crane 23 650MM Span 2 Nos. 24,650MM Span 1 No. Overhang on both sides, Height of Lift 12M+1M; 3 Nos. 30/10Ton, Cap., Double Girder Box Type EOT Crane 23 650MM Span 1 Nos. 24,100MM Span 2 Nos. Overhang on both sides, Height of Lift 12M+1M; To supply of 1 set 80M Rail 2 Nos. & 4 set 70M 8 Nos. all accessory".

5.2. In so far as the second P.O. is concerned, which was valued at Rs.33,00,000/-, Atlas was required to supply one (1)

crane.

5.3. According to Atlas, Hinge had placed upon it the subject P.O.s, in order to supply, in turn, the very same cranes and materials, to two (2) Korea based Indian companies, i.e., Myong Shin India Private Limited (in short, "MSIPL") and GSW India Limited.

5.4. It is averred in the plaint that Hinge is also a Korea based company, which provides agency services to other Korea based corporate clients.

5.5. Furthermore, according to Atlas, five (5) out of the six (6) cranes referred to in P.O. dated 13.01.2007, were supplied to MSIPL, while one (1), crane was supplied to GSW India Limited. In so far as the P.O. dated 11.07.2007, was concerned, as per Atlas, the one (1) crane purchased from it, was supplied by Hinge to GSW India Limited.

5.6. For completeness of the narrative qua P.O.s, it would be relevant to note that there was a slight difference in the payment terms. The payment terms contained in the P.O. dated 13.01.2007, required moneys to be paid in the following stages : 30% advance upon the placement of the P.O. ; 40% after inspection (20% after first inspection, 20% after second inspection) ; and the balance 30% after delivery.

5.7. In so far as P.O. dated 11.07.2007 was concerned, it required moneys to be paid in the following manner : 30% advance upon placement of the P.O.; 40% after inspection (20% after first inspection, 20% after second inspection) ; 20% after installation; and the remaining 10% after six months.

5.8. The total value of the two P.O.s referred to above, as would be obvious, was a sum of Rs.2,46,00,000/-.

5.9. Atlas claims that a sum of Rs.39,80,945/-, which is relatable to P.O. dated 13.01.2007, has not been paid to it. Assertions to this effect are made in paragraph 7 of the plaint. Atlas, in this behalf, relies upon a facsimile ("fax") dated 03.10.2008, (Ex.P.12), which, admittedly, has been issued, by Hinge. The said fax is an extract of the account qua Atlas, maintained in the books of accounts of Hinge.

6. A perusal of the contents of the fax would show that it adverts to entries spanning between 01.04.2008 and 05.08.2008. The closing balance; which is a debit balance, is a sum of Rs.49,80,945.35.

6.1. Atlas avers in the plaint that after a balance was struck, in its favour, albeit, in the sum of Rs.49,80,945/-, Hinge paid a sum of Rs.10,00,000/- leaving an outstanding and

unliquidated amount equivalent to Rs.39,80,945/-.

6.2. It is, thus, this amount that Atlas has sought to recover from Hinge.

7. Upon the suit for recovery being filed, for the said amount, Hinge filed a written statement, which was duly amended upon permission being sought to that effect from the Court. The amended written statement was filed on 22.02.2012. In the said written statement, Hinge adverted to the description of the materials, which Atlas was required to supply to Hinge. Reference, in this regard, was made by Hinge to three (3) estimation orders of even date, i.e., 27.12.2006. The estimation orders, to which reference is made, are as follows : HTI_01, HTI_02 and HTI_03. Hinge claims that based on estimation orders, the PO dated 13.01.2007, was issued. Hinge has also accepted the fact that six (6) cranes were supplied against P.O. dated 13.01.2007, out of which, five (5) cranes were, in turn, supplied by it to MSIPL, albeit, without, a complete set of components, and that, one (1) crane received from Atlas was supplied to GSW India Limited, once again, without receiving a full set of the components.

7.1. Furthermore, Hinge has detailed out the payments

made from time to time against P.O. dated 13.01.2007. There is a specific averment with respect to the cheque numbers, dates and amounts said to have been paid by Atlas from time to time to Hinge. According to Hinge, the total amount paid to Atlas against P.O. dated 13.01.2007, was a sum of Rs.2,42,90,308/-.

7.2. The stand taken by Hinge, in the written statement, is to the effect that Atlas was not entitled to any payment, since, it had not complied with the terms of the agreement; in as much as: the goods were defective, were supplied late, work was not concluded, as agreed, and that, the entire set of components, as adverted to in the P.O., dated 13.01.2007, were not supplied.

7.3. Hinge, in fact, took the stand that, since, a complete set of components were not supplied, against P.O. dated 13.01.2017, it was required to source the components from other suppliers entailing an outgo of funds equivalent to Rs.23,04,406/- . The details with respect to the components purchased from other suppliers are set out in paragraph 13 of the amended written statement.

8. Based on the aforesaid broad stand taken by the parties in the suit, the following issues were drawn up :

"1. Whether the plaintiff is entitled for

recovery of suit claim?

2. Whether the plaintiff has supplied all the items for erection of cranes as specified in the purchase order of the contract?

3. What relief the plaintiff is entitled to?"

9. After considering the pleadings and the materials on record, the learned Single Judge concluded that the action was, essentially, a suit for accounts. Therefore, having regard to Ex.P.14, which is the statement of account of Hinge in the books of accounts of Atlas, a sum of Rs.39,80,942/- was found by the learned Single Judge as the sum due and payable by Hinge to Atlas.

9.1. In so far as Hinge's defence was concerned, which is that, major components were not supplied, as was recorded in the minutes of the joint meeting held on 30.09.2008, (Ex.P.10), the learned Single Judge appears to have relied upon a letter dated 01.10.2008 (Ex.P.11), addressed by Atlas to Hinge. Based on this letter, the learned Single Judge concluded that the balance work, which Atlas was required to carry out related only to wiring, and that, MSIPL had taken the components from the

cranes supplied to it for making use of the cranes. The conclusion was that because of this, Atlas had been mulcted with the burden of making additional supplies. This conclusion, according to the learned Single Judge, got fortified as Hinge had not replied to the letter.

9.2. Furthermore, the learned Single Judge observed that no explanation was given for non-payment of the balance amount. In sum, the learned Single Judge concluded that Hinge was required to pay to Atlas an outstanding amount equivalent to Rs.39,80,000/-.

10. We have examined the pleadings and the material on record closely. What emerges therefrom, is as follows :

10.1. That, though, the plaintiff avers that the claim made in the suit, amounting to Rs.39,80,945/- is relatable only to P.O. dated 13.01.2007, simple math and appreciation of evidence on record would show that this is not the correct position. The reason is plain, and is, accordingly, explained hereafter : Admittedly, the value of the P.O. dated 13.01.2007, is a sum of Rs.2,13,00,000/-. In the plaint, there is a reference to another P.O., i.e., P.O. dated 11.07.2007 (to which we have made a reference above), which is valued at Rs.33,00,000/-. According

to Hinge, it made payments to Atlas to the tune of Rs.2,42,90,308/-. The details of cheques, via which payments have been made, are set out in the amended written statement. The fact that these payments have been made is sought to be established by Hinge by placing on record the statements of account rendered by its Banker, i.e., Standard Chartered Bank, (Ex.D.67).

10.2. A perusal of the statement of account shows that the cheques detailed out in paragraph 10 of the amended written statement stand debited to the account of Hinge with a corresponding credit in favour of Atlas. The fact that a sum of Rs.2,42,90,308/- has been paid by Hinge is not refuted by Atlas. Therefore, quite clearly, the payments made by Hinge would have been towards both P.O.s, i.e., P.O. dated 13.01.2007 and 11.07.2007. Thus, based on the pleadings and the supporting bank statement (Ex.D.67), one can conclude that, if at all, what was payable by Hinge to Atlas was only a balance sum, which is Rs.3,09,692/-.

10.3. However, Atlas claims the suit amount based on the fax dated 03.10.2008 (Ex.P.12), sent by Hinge to Atlas. As noticed above, this was an extract of the account of Atlas maintained in the books of Hinge. As per this extract, as on

05.08.2008, Hinge was liable to pay a sum of Rs.49,80,945.35. Atlas, has admitted and in this behalf, relied upon its own statement of account (Ex.P.14), to demonstrate that on 16.09.2008, it received a sum of Rs.10,00,000/- from Hinge. Thus, based on these two documents (Ex.P.12 and P.14), Atlas claims the balance sum of Rs.39,80,942/- from Hinge.

10.4. Both parties admit that a joint meeting was held between the representatives of Hinge and Atlas. The minutes of the joint meeting are contained in Ex.P.10.

10.5. The learned Single Judge has also adverted to the minutes. For the sake of convenience, the relevant part of the said minutes are extracted :

"..... 1. So, it is decided to pay Rs.2.5 lakhs through Hinge Tech and the balance against completion of 30 T/10T Crane at MSI Site.

2. **Atlas has agreed to complete the job as early as possible after settling the above 2.5 lakhs deathman problem.**

3. **We are agreeing to complete the supply of all the major components within today completely and cables within 3 days.**

4. Atlas request your manpower assistance to complete early the job.

5. Also request **M/s Hinge Tech to release the payment against supply of all the balance materials.**"

(emphasis is ours)

10.6. A perusal of the aforementioned minutes would show that four issues were raised and discussed at the joint meeting held on 30.09.2008.

(i). First, the compensation to be paid with respect to a death of an employee. It appears that it was agreed that a sum of Rs.2,50,000/- would be paid to the family of the employee via Hinge and in so far as the balance amount was concerned, it would be paid after completion of supply of the crane referred to therein, which was stationed at the site of MSIPL.

(ii). Second, Atlas had agreed to complete the job as early as possible, after payment of Rs.2,50,000/- to the family of the deceased employee.

(iii). Third, Atlas agreed to supply all major components by the end of the day, and as regards supply of cables a leeway of three (3) days was given.

(iv). Fourth, Atlas was requested to make available its

<http://www.judis.nic.in> manpower to complete the job at hand.

(v). Fifth, Hinge was to release payments against supply of

balance material.

11. These facts, which emerge upon perusal of Ex.P.10, have to be seen in the light of the testimony of P.W.1, the Director of Atlas. P.W.1, in his cross-examination, which was held on 10.08.2011, inter alia, deposed as follows :

" I have supplied all the spares, **only hook and electrical items were not supplied.** One crane was supply to GSW. I deny that there were some old spare parts in the crane supplied to GSW. I deny the suggestion that as there was non compliance of contract with the defendant, the defendant was forced to purchase materials from outside. There was resolution held on 30.09.2008 as per Ex.P.10. **In Ex.P.10, it has been mentioned that I have not completed the job. Since, the payment was not made by the defendant, I did not complete the job. I have also not supplied major components and cables as per Ex.P.10.** The balance 30% will be at the time of delivery. I **deny the suggestion that since** I have not supply the major components and cables the defendant has **not made the balance payment. On 30.09.2008, resolution, it has been**

mentioned that all major components will be supplied on the same day by the plaintiff and the cables within three days from 30.09.2008. Clause 5 of Ex.P.10 states that the defendant shall make the payment on delivery of the balance materials. Witness adds : **We went to the defendant place with the materials, since they have not made the payment, we came back along with the materials. I do not know after 30.09.2008 agreement, whether I have made any delivery or not. There was not proper record for delivery challan maintained by the defendant. I have also not filed any record for delivery of any spares for the crane after 30.09.2008, if I am having any records, I will verify and file the same.** I have not received any letter from the defendant on 10.04.2007, 05.07.2007, 29.09.2007, 06.10.2007, 08.10.2007, 15.10.2007 and 22.10.2007. On 01.10.2007, **I have sent a letter to the defendant which is marked as Ex.P.11. In that letter I have admitted that I have not completed the work and not supplied few materials."**

(emphasis is ours)

show that P.W.1 accepts that he had not supplied hook and electrical items. P.W.1 also accepted that he had not supplied major components and cables, as is reflected in the resolution dated 30.09.2008 (Ex.P.10). P.W.1 further accepted that all major components had to be supplied on 30.09.2008 itself, and that, cables were required to be supplied within three days from 30.09.2008, against payment upon delivery being made by Hinge. P.W.1 went on to state, on his own, that an attempt was made to supply materials to Hinge, and since, payments were not made, the representatives of Atlas returned with the materials. However, to a suggestion as to whether any delivery of material had been made after 30.09.2008, P.W.1, feigned ignorance. P.W.1 also stated that proper record of delivery challans was not maintained. The witness, i.e. P.W.1, thus, accepted that he had not filed any record qua delivery of spares made after 30.09.2008.

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12. In so far as Ex.P.11 (i.e., letter dated 01.10.2008), was concerned, P.W.1 accepted that the letter reflected that Atlas had not completed the work and had not supplied "few materials". This crucial part of the testimony of P.W.1 has not been considered by the learned Single Judge. Learned Single Judge's

reasoning, is based, purely, on the contents of Ex.P.11 (which is a self-serving letter dated 01.10.2008), addressed by Atlas to Hinge.

12.1. As noticed above, even in this letter, there is an admission of the fact that certain work was required to be fulfilled. According to us, what should have been the baseline for the learned Single Judge, to ascertain as to whether the entire supplies were made, were the contents of the minutes of the meeting held on 30.09.2008 (Ex.P.10). Clearly, as per the said minutes, which are accepted by both the parties, Atlas had failed to supply major components. As noticed by us above, P.W.1, in his cross-examination, accepts that Atlas has not placed on record any material to show that major components were, in fact, supplied to Hinge, as agreed in the meeting held on 30.09.2008. Therefore, in our view, issue No.(ii), which related to whether Atlas had supplied all items of Cranes as specified in the P.O., could not have been found in favour of Atlas.

13. In so far as issue no.(i) is concerned, what is required to be taken into account is the fact that Hinge had claimed that, since, entire supplies were not made, alternate arrangements were made, which entailed an outgo of funds equivalent to

Rs.23,04,406/-. Though, details of components purchased as well as suppliers, from whom these components were received, along with values, have been set out in paragraph 13 of the amended written statement, this aspect of the matter was not proved by Hinge, by placing on record the relevant evidence.

13.1. Furthermore, while, Hinge claimed in its written statement that all payments had been made, and nothing was due and payable, it neither made a claim by way of set off, nor did it lodge a counter claim for supplies it had not received from Atlas.

13.2. Therefore, what we have before us, in a nutshell, is the value of two P.O.s and the total payments made by Hinge to Atlas. As indicated above, the total value of P.O.s is equivalent to Rs.2,46,00,000/-, as against which payment to the tune of Rs.2,42,90,308/- have been made by Hinge. Thus, at best, what Atlas could have claimed against Hinge was a sum of Rs.3,09,692/-.

13.3. It was sought to be argued on behalf of Atlas that the P.O.s did not factor in tax, and therefore, Atlas was entitled to claim the same, as moneys towards Value Added Tax (VAT) had been paid by it to the relevant statutory authorities. For this purpose, our attention was drawn to the P.O.s dated 13.01.2007

and 11.07.2007. While, P.O. dated 13.01.2007, does show that it excluded VAT, P.O. dated 11.07.2007, shows that it included VAT.

13.4. That being said, according to us, this aspect of the matter cannot be taken into account, at this stage, as no pleading in this behalf has been made by Atlas in the plaint. Furthermore, no such case has been set up by Atlas, and therefore, quite logically, no evidence was filed, in this behalf, by it, before the learned Single Judge.

13.5. Thus, issue No.(i), according to us, though, should have been answered in favour of Atlas, the relief ought to have been confined in terms of issue No.(iii) to the differential sum, i.e., Rs.3,09,692/-.

14. Therefore, having regard to the foregoing discussion, we are inclined to partly allow the appeal.

14.1. Hinge will pay to Atlas a sum of Rs.3,09,692/- with interest at the rate of 12% per annum, for the period commencing from the date of the suit, till the date of realization. The impugned judgement and decree shall stand varied accordingly.

15. The appeal is disposed of, in the aforementioned terms.

16. Resultantly, pending applications shall stand closed.
There shall, however, no order as to costs.

(R.S.A.,J) (A.Q.,J)
26.10.2017

Speaking Order/
Non-speaking order

Index : Yes/No

Internet : Yes

gg/kk

To

The Sub Assistant Registrar (Original Side),
High Court, Madras.

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RAJIV SHAKDHER,J.

AND

ABDUL QUDDHOSE,J.

gg/kk



Common Judgement
in O.S.A.No.42 of 2015

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