

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

% Decided on: 8th September, 2017

+ **CS(COMM) 1350/2016**

HONDA LOGISTICS INDIA PVT. LTD Plaintiff

Represented by: Mr. Rajesh Baweja,
Advocate

versus

NATIONAL HAULERS & ORS.Defendants

Represented by: None.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

IA 2534/2017 (u/O V R. 20 CPC)

1. By this application the plaintiff had sought substituted service to the defendants; however since the defendants have already been served and not appearing, learned counsel for the defendant does not press the present application.

2. Application is dismissed as withdrawn.

CS(COMM) 1350/2016

1. The plaintiff company has instituted the present summary suit against the defendants, praying inter alia for a decree of ₹1,07,98,654/- (Rupees One crore seven lakhs ninety eight thousand six hundred and fifty four only) along with interest @ 18% p.a. from the date of issuance of cheque in question, that is, 31st March, 2016.

2. Briefly stated, plaintiff is a private limited company engaged inter alia in the transportation of bikes and spare parts of Honda Motorcycle and Scooter India Pvt. Ltd. Defendant no.1 is a family concern and its affairs are mainly run by and for the benefit of defendant no. 2 and 3. Defendant no. 2 and 3 are proprietor/partners/authorized representatives of defendant no. 1 and are duly responsible for the day to day affairs and working of defendant no. 1.

3. It is the case of the plaintiff that the defendants approached the plaintiff for the work of trailer manufacturing and after discussions, plaintiff initially placed upon the defendants Purchase Order bearing no. 740 dated 10th December, 2012 for fabrication and manufacturing of 26 Motor Cycle Carrier Double Axle Trailers TR-08, 18.75 mtr as per details and terms and conditions of the Purchase Order for a total sum of ₹ 3,64,00,000/- (Rupees three crore sixty four lakhs). Besides other terms and conditions in the aforesaid Purchase Order, there was a specific clause for delivery and installation, fixing time within which the trailers were to be delivered and installed. In accordance therewith, if the trailers were not delivered within 90 days, any delay thereafter would attract liquidated damages of 1% per week. The aforesaid Purchase Order was duly accepted by the defendants on 20th December, 2012 and was signed by defendant No.2 on behalf of the defendants.

4. The aforesaid Purchase Order was later amended by Purchase Order bearing no. 740-1 dated 29th March, 2013 with requirement of additional axle for a total sum of ₹ 3,95,20,000/- (Rupees three crores ninety five lakhs and twenty thousand only) @ ₹ 15,20,000/- (Rupees fifteen lakhs twenty thousand only) per trailer.

5. The defendants had only supplied 14 trailers out of a total of 26 trailers. Defendants have acknowledged and confirmed a balance of ₹ 1,07,98,654/- (Rupees One crore seven lakhs ninety eight thousand six hundred and fifty four only) due by them in favour of plaintiff vide its acknowledgment of liability/balance confirmation letter dated 31st March, 2015 signed by defendant No.3 on behalf of defendants. The defendants, while acknowledging their liability, send the advance payment vide post dated cheque dated 31st March, 2016 for a sum of ₹ 1,07,98,654/- signed by defendant No.3 on behalf of defendants.

6. The plaintiff, after intimating the defendants through the letter dated 9th May, 2016 duly served upon the defendants through Registered AD post, courier and email, presented the aforesaid cheque bearing no. 004342 dated 31st March, 2016 drawn on HDFC Bank A/c no. 00902560001989 for a sum of ₹1,07,98,654/- (Rupees One crore seven lakhs ninety eight thousand six hundred and fifty four only) for realization of the amount of cheque with its banker namely Mizuho Bank Ltd., DLF Capitol Point, Baba Kharag Singh Marg, New Delhi within three months from the date of cheque. However, the said cheque was dishonoured due to “funds insufficient” vide return memo outward clearing dated 19th May, 2016.

7. Plaintiff also initiated criminal proceedings, that is, a complaint case under section 138 & 141 of the Negotiable Instrument Act, 1881 read with Section 420 of Indian Penal Code, 1860 against the defendants.

8. Plaintiff served upon the defendants a legal notice dated 2nd June, 2016 vide Registered Post and courier on 4th June 2016 under Section 138 of the Negotiable Instruments Act, 1881. Despite service of notice and filing of

criminal complaint, the defendants failed to pay the outstanding amount. Hence, the present suit.

9. Summons in the suit were issued to defendants under Order XXXVII CPC on 30th September, 2016. The defendants were served through courier on 17th May, 2017. However, the defendants did not enter appearance within the stipulated period as specified under Order XXXVII CPC.

10. Since the defendants have failed to enter appearance, the allegations as briefly narrated above, are deemed to be admitted on the part of the defendants in view of Order XXXVII, Rule 2(3) CPC. Thus, it stands established that defendants have defaulted in refunding the advance received. Thus, the plaintiff is entitled to a decree of ₹1,07,98,654/- (Rupees One crore seven lakhs ninety eight thousand six hundred and fifty four only) as claimed in the plaint with interest thereon.

11. Accordingly, the suit is decreed in favour of the plaintiff and against the defendants jointly and severally directing them to pay a sum of ₹1,07,98,654/- (Rupees One crore seven lakhs ninety eight thousand six hundred and fifty four only) to the plaintiff along with interest @ 9% p.a. with effect from 19th May, 2016, the date when the cheque in question was dishonoured, till realization along with costs quantified as ₹1,07,000/- being the court fee and ₹25,000/- towards litigation expenses. Decree sheet be drawn accordingly.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 08, 2017
‘ga/Anu’