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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 22 OF 2018

IN

COMMERCIAL SUIT NO. 8274 OF 2017

Ashoka Aluminium Pvt. Ltd. ... Applicant

vs.

Metcorp Overseas and 3 Ors. ... Respondents

Mr. Ashish Agarkar for the Applicant.
Mr. Shoaib I. Memon for Defendant nos. 1 to 4.

CORAM : A.K. MENON, J.
DATE : 16th JULY, 2018

P. C.

1. This Summons for Judgment seeks a decree in a sum of Rs.1,43,31,031/-. The Particulars of claim are at Exhibit I to the plaint which seeks recovery of principal sum said to be an admitted sum of money paid as advance by the plaintiff to defendant no. 1 in respect of purchase orders placed for Aluminum scraps and interest thereon @ 24% per annum.

2. The plaint proceeds on the basis that the sum of Rs. 2,61,64,477/- was due towards refund of advance amounts paid in respect of goods ordered by the plaintiff. Paragraph 19 of the plaint sets out a list of dates commencing with date of purchase order, payment of advance against purchase order and refund of Rs. 10,00,000/- on 21st April, 2015.

3. According to the plaintiff the cause of action first arose on 25th April, 2017 when a demand notice was issued addressed to the defendants. Copy of the demand notice is not annexed to the plaint. In the circumstances a query was put to the Counsel for the plaintiff as to the basis on which suit is filed. It is submitted that the suit is on the basis of admission of liability for the aforesaid sum of Rs. 1,43,31,031/- as disclosed in the ledger accounts of the plaintiff maintained by the defendant. In this respect my attention invited to Exhibit H to the plaint which is purportedly the ledger account of the plaintiff in the books of the defendant.

4. On behalf of the respondent a serious objection is raised inasmuch as inspection of these ledger accounts has not been granted despite requests. On a query to the learned counsel to the plaintiff as to why inspection was not granted, he states that the original of these ledger accounts are not available with the plaintiff. It is further contended that copies of these ledger accounts were received by emails. On a further query as to whether the email(s) attaching the ledger accounts were disclosed in the plaint, it is submitted that the matter is quite old and the emails are not traceable.

5. The relevant averments in relation to Exhibit-H viz the ledger confirmation is to be found in paragraph 17 of the plaint. The said paragraph is silent on the aspect of how the ledger account is said to have been received by the plaintiff. Paragraph 17 records that the admission of the liability is to be found in the signed ledger confirmation and invoices. Since original of these are not available and has not been offered for inspection, it is not possible to accept the contention of the plaintiff

that the suit claim is based of any acknowledgment. In the circumstances, there are triable issues that arise including as to whether the defendant had confirmed the amount due if any from the defendant to the plaintiff. I therefore pass the following order :

(i) Unconditional leave is granted to the defendant to defend the suit.

(ii) Written statement to be filed within 8 weeks.

(iii) Affidavit of documents to be filed within four weeks thereafter.

(iv) Discovery and inspection and Admission and denials to be completed within a period of four weeks thereafter.

(v) List the suit for framing issues per CMIS.

(A.K. MENON, J.)

Rajeshwari Ramesh Pillai

Digitally signed by Rajeshwari Ramesh Pillai
Date: 2018.07.17 10:56:59 +0530