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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 276/2017**
BRIGHTSTAR TELECOMMUNICATIONS INDIA LTD.... Plaintiff
Through: Mr. Rajat Aneja & Mr. K.P. Singh,
Advs.
Versus
THE MOBILE STORE SERVICES LTD & ANR Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **16.05.2018**

1. The plaintiff has instituted this suit for recovery of Rs.10,90,10,076/- jointly and severally from the two defendants viz. The Mobile Store Services Ltd. and Essar Retail Holdings Pvt. Ltd.
2. The suit was entertained and summons thereof ordered to be issued.
3. The defendant no.1 was reported to be served at all the three addresses given, on 12th June, 2017, 30th June, 2017 and 4th May, 2017. The defendant no.2 was reported to be served on two of the addresses on 12th June, 2017 and 4th May, 2017.
4. The counsel for the defendants appeared before this Court on 5th September, 2017 and the suit was adjourned for completion of pleadings.
5. The defendants did not file written statement within the prescribed time and the plaintiff filed an application under Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC).
6. The counsel for the defendants appeared on 21st November, 2017 and stated that he will file the written statement along with an application for condonation of delay in filing thereof.

7. The suit was listed before this Court on 11th December, 2017 when though the written statement of the defendants was on record but none appeared for the defendants. The counsel for the plaintiff contended that the written statement had been filed beyond the prescribed time and without any application for condonation of delay. However, adverse orders were deferred and the suit adjourned to 20th December, 2017.

8. On 20th December, 2017 also, none appeared for the defendant and accordingly, right of the defendants to file written statement was closed. However, the plaintiff was not found entitled to a decree forthwith under Order VIII Rule 10 of the CPC and was relegated to proving its case.

9. The counsel for the defendants again appeared before the Joint Registrar on 7th February, 2018.

10. The plaintiff, on 10th April, 2018 examined its Assistant Manager to prove its case but again none appeared for the defendants and in the interest of justice, the suit was again adjourned to 2nd May, 2018 and on which date also none appeared to cross-examine the witness of the plaintiff to the extent permissible in law.

11. Today also, none appears for the defendants.

12. The defendants are proceeded against *ex parte*.

13. The witness of the plaintiff in his *ex parte* evidence has deposed a sum of Rs.9,29,41,399/- to be due from the defendant no.1 towards transaction with the plaintiff and has further deposed dishonour of cheques for the sum of Rs.9,50,00,000/-. The witness of the plaintiff has also deposed that the defendant no.2 Essar Retail Holdings Pvt. Ltd. had guaranteed payment to the plaintiff of the amounts due from the defendant

no.1 not exceeding Rs.10 crores.

14. The plaintiff has also claimed pre-suit interest at the rate of 18% per annum in accordance with the contract.

15. The suit claim is found to be within time.

16. A decree is accordingly passed in favour of the plaintiff, and against (a) the defendant no.1 The Mobile Store Services Ltd. for recovery of Rs.10,90,10,076/- along with *pendente lite* and future interest at the rate of 10% per annum from the date of institution of the suit till realization; and, (b) against the defendant no.2 Essar Retail Holdings Pvt. Ltd. jointly and severally with the defendant no.1, for recovery of the amounts to the extent of Rs.10 crores.

The plaintiff shall also be entitled to costs of the suit from the defendants.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MAY 16, 2018

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