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

\+ **RFA No.550/2016**

% ***9th October, 2018***

TRADEWEL SPARES (I) PVT. LTD.

..... Appellant

Through: Mr. Roshan Santhalia, Advocate (M. No.9560622223)

versus

M/S SCL INFRATECH LIMITED

..... Respondent

Through: Mr. Ajay Kumar Jha, Advocate (M. No.9811679632).

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 06.04.2016 by which the trial court has dismissed the suit for recovery of Rs. 3,26,075/- alongwith interest. The amount claimed in the suit was prayed as being the balance due on account of goods, being spare parts of

construction and mining equipments, supplied by the appellant/plaintiff to the respondent/defendant.

2. This Court may note that originally there were two defendants in the suit with the defendant no.1 being the Director of the defendant no.2-company/buyer company, but the defendant no.1 was deleted from the array of defendants, and therefore, there remained the sole defendant in the suit.

3. The case of the plaintiff was that on the orders being placed by the respondent/defendant, the appellant/plaintiff supplied to the respondent/defendant spare parts pertaining to construction and mining equipments. The supplies which were made by the appellant/plaintiff to the respondent/defendant are in terms of bills which commenced from the Bill dated 19.05.2008 and ending with the Bill dated 17.07.2009. The details of these bills have been given in para 4 of the plaint and this para 4 reads as under:-

> "4. That the details of all the goods which have been sold by the plaintiff company to the defendant company are as follows:

2008-09

S.No.	**Bill no.**	**Date**	**Challan No.**	**Bill Amt.**	**C Form Sr. No.**

1	1615	19.05.08	1662	64,147.00	533503
2	1616	19.05.08	1663	27,305.00	533503
3	1617	19.05.08	1664	21,012.00	533503
4	1624	24.05.08	1671	11,361.00	533503
5	1676	19.06.08	1725	3,514.00	533503
6	1776	01.09.08	1827	57,000.00	533504
7	1893	14.11.08	1947	1,17,130.00	533505
8	1978	22.12.08	2037	2,10,600.00	533505
9	1984	24.12.08	2043	88,506.00	533505
10	1992	29.12.08	2051	1,836.00	533505
11	1997	01.01.09	2056	1,17,130.00	1419526
12	2064	30.01.09	2124	7,824.00	1419526
13	2078	05.02.09	2142	26,760.00	1419526
14	2121	21.02.09	2186	39,602.00	1419526
15	2122	21.02.09	2187	65,155.00	1419526
16	2138	26.02.09	2203	9,684.00	1419526

2009-10

S. No	**Bill no.**	**Date**	**Challan no.**	**Bill Amt.**	**C Form Sr. No.**
17	2289	27.04.09	2365	9,990.00	1419527
18	2325	08.05.09	2401	21,716.00	1419527
19	2401	01.06.09	2475	1,625.00	1419527
20	2544	17.07.09	2623	32,997.00	1419528
21	2545	17.07.09	2624	53,668.00	1419528

Total Amt. of Bills= <u>Rs.9,88,562.00</u>

That the copies of all the bills, transport receipts and C-Forms as above mentioned have been annexed along with this plaint. Furthermore, the plaintiff company is in the custody, care and control of the originals of all the above mentioned bills, transport receipts and C-Forms and shall produce the same before this Hon'ble Court at the time of plaintiff evidence in order to prove the above mentioned documents."

4. The appellant/plaintiff pleaded that the respondent/defendant issued the necessary C-Forms with respect to all the bills. The parties entered into an Agreement on 24.11.2012, whereby, the respondent/defendant admitted its liability and took time for payments in equal installments within four months on or before 24.03.2013. The appellant/plaintiff pleads that it wrote six letters to the respondent/defendant requesting payment of the amount due of Rs. 3,26,075/- being the Letters dated 24.11.2012, 24.02.2013, 09.03.2013, 18.03.2013, 05.02.2014 and 31.07.2014, but all of them were of no avail, and therefore, the subject suit for recovery was filed on 13.03.2015.

5. The respondent/defendant did not appear in the suit proceedings. Hence, the respondent/plaintiff was proceeded *exparte*. There is no dispute that *exparte* proceedings against the

respondent/defendant are final and there is no application moved for setting aside the *exparte* proceedings against the respondent/defendant.

6. The appellant/plaintiff led evidence by deposition of Mr. Dinesh Bhalla of the appellant/plaintiff company who deposed as PW-1. He proved the necessary invoices, transport challans, C-Forms, statement of accounts and the Agreement dated 24.11.2012 entered into between the parties. These aspects are recorded in para 7 of the impugned judgment and this para 7 reads as under:-

> "7. Shri Dinesh Bhalla - PW1, has proved copy of Board Resolution of the Plaintiff as Ex.PW1/1 (in the affidavit of evidence, it has been exhibited as Ex.CW1/1), PW1 has tendered his affidavit of evidence as Ex.PW1/A in which he has reiterated the averments made in the Plaint in his examination in chief. He has proved the carbon copies of invoices, vide which the Plaintiff has sold the goods to the Defendant Co. as Ex.PW1/2 to Ex.PW1/22; transport challans as Ex.PW1/23 to Ex.PW1/43, photocopies of five C-forms, as Ex.PW1/44 to Ex.PW1/48, Statements of Account from the Books of the Plaintiff as Ex.PW1/49 to Ex.PW1/53. PW1 has also exhibited Ex.PW1/54 which is an agreement arrived at between the parties dated 24.11.2012, whereby the Plaintiff and Manager (Accounts) of the Defendant Co. decided and settled that Rs.3,26,075/- is payable to the Plaintiff in 3 equal instalments within a period of 4 months i.e. on or before 24.03.2013. He has deposed that it was agreed that in case full payment is not received by 24.03.2013 then interest @ 24% would be borne by the Defendant Co. He has further stated that agreement Ex.PW1/54 acknowledges payment of Rs.1,00,000/- vide cheque No.829706 dated 30.11.2012 drawn on State Bank of Hyderabad out of the outstanding amount of Rs.4,26,075/-. He has also proved the copy of the legal notice sent to the Defendant No. 2, alongwith postal receipt and Courier receipt as Ex.PW1/55 (Colly.)."

7. The Trial court has, however, dismissed the suit as being barred by limitation by observing that the last bill for supply is dated 17.07.2009 and the Agreement dated 24.11.2012 which was relied upon to extend the limitation is beyond three years from 17.07.2009, and therefore, since the acknowledgment had to be within the limitation period and could not be beyond the limitation period of three years commencing from 17.07.2009, therefore, the Agreement dated 24.11.2012 could not be used by the appellant/plaintiff to extend the limitation. Suit was therefore dismissed as being barred by limitation.

8. Counsel for the appellant/plaintiff has rightly argued that the Agreement dated 24.11.2012 is not an acknowledgment for increasing limitation but the Agreement is an agreement enforceable by law because by this Agreement dated 24.11.2012/Ex.PW1/54, the respondent/defendant agreed to pay the time barred debt as provided in Section 25(3) of the Contract Act, 1872. Section 25 of the Contract Act reads as under:-

> "**Section 25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.**—An agreement made without consideration is void, unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of [1][documents], and is made on account of natural love and affection between parties standing in a near relation to each other ; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless.

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.-Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.-An Agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given."

9. The agreement dated 24.11.2012/Ex.PW1/54 reads as under:-

"Ref. No.TSIPL/2012-13/3755 Dated 24.11.12

To,
The Executive Director
M/s. SCL Infratech Ltd.
(Foremerly Srinivasa Constructions Ltd.)
Plot No.30, Sector-32,
GURAON-(Haryana)

Kind Attn:- Mr. D. Srinivas
Sub: Regarding Payment

Dear Sir,

With reference to our outstanding payment & Legal Notice served by M/s. D.K. Kaushik & Asociates vide dated 15.11.2012, we hereby acknowledge to receive the payment of Rs.1,00,000 (Rupees One Lac only) vide cheque no.829706 dt. 30.11.12 drawn on State bank of Hyderabad out of our outstanding amount of Rs.4,26,075/- (Rupees Four Lac Twenty-Six Thousand Seventy-Five Only).

Further we agree to receive the balance payment of Rs.3,26,075/- in 3 equal instalments within a period of Four Months i.e. on or before 24.03.13. In case the full payment is not received by 24.03.13 then interest from date of bill till realization @ 24% and legal charges will have to borne by M/s. SCL Infratech Ltd.

We also request you to issue the pending 'C' Form at the earliest.

Thanks & Regards For M/s SCL Infratech Ltd.

Tradewel Spares (I) Pvt. Ltd.

Sd/- Sd/-

D.K. Bhalla
M:-99531-44831

Mr. Anupam Bose
(Manager Accounts)
(Gurgaon Office)

Cc:- 1. Hyderabad office"

10. In my opinion, the Agreement dated 24.11.2012/Ex.PW1/54 squarely falls within Section 25(3) of the Contract Act and this agreement can be said to be an agreement to pay the time barred debt by the respondent/defendant, and therefore, the same is legally enforceable as per Section 25(3) of the Contract Act. The subject suit therefore could have been filed within three years from 24.11.2012, and since the subject suit has been filed on 13.03.2015 i.e. before expiry of three years from 24.11.2012, therefore, the subject suit filed was very much within limitation.

11. In view of the aforesaid discussion, this appeal is allowed. The impugned Judgment of the trial court dated 06.04.2016 is set aside. The suit of the appellant/plaintiff is decreed for Rs. 3,26,075/- alongwith interest @ 14% per annum simple from 24.11.2012 till filing of the suit and the same rate of interest, *pendente lite* and future till payment. This Court may note that, though, the Agreement dated 24.11.2012 fixes the liability of the respondent/defendant for interest @ 24% per annum simple, however, in my opinion, interest @ 14% per annum simple will suffice in the interest of justice, taking into consideration the fact that the transaction is a commercial transaction and in such a commercial transaction for sale of goods, interest has to be paid as per the provision of Section 61 of the Sale of Goods Act, 1930. The appellant/plaintiff will also be entitled to costs of the suit as also costs of the appeal. Decree sheet be prepared. Appeal is allowed and disposed of in terms of the aforesaid observations.

OCTOBER 09, 2018/Ne **VALMIKI J. MEHTA, J**