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

%   **Date of decision: 19th February, 2018**

\+   **CS(COMM) 916/2016, IA No.1544/2017 (u/O VII R-11 CPC) and IA No.1545/2017 (for condonation of 8 days delay in refilling).**

GREEN FACADE SOLUTIONS PVT LTD ..... **Plaintiff**

Through: Ms. Manmilan Sidhu, Adv.

versus

ODEON BUILDERS PVT LTD ..... **Defendant**

Through: Mr. Karunesh Tandon, Mr. Mohit Kapoor and Mr. Shander Shekher, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for recovery of Rs.2,54,73,672/- with interest, pleading (i) that the plaintiff is engaged in the business of aluminium fabrication and is also the supplier and installer of aluminium facades for all types of residential as well as commercial projects; (ii) that the defendant received contract from several sources for construction of certain projects and appointed the plaintiff as its sub contractor with respect to works at (a) Agro Mall, Rohtak; (b) OPD, Rohtak; (c) ITI, Rohtak; (d) CSOI Club, Delhi; (e) Soulstice Educational, Gurgaon; (f) Rewari; (g) Maandi Farm, Delhi; and, (h) Club House; (iii) that the plaintiff, upon receipt of aforesaid work orders from the defendant in March, 2011, constructed the required buildings and all other works as per specifications required by the defendant; (iv) however the following balance payments are due from the defendant to the plaintiff:-

"SUMMARY OF BALANCE PAYMENTS IN RESPECT OF THE ABOVEMENTIONED PROJECTS

S.No.	PARTICULARS	AMOUNT (IN Rs.)
1.	AGRO MALL, ROHTAK	40,27,980
2.	OPD, ROHTAK	20,91,514
3.	ITI, ROHTAK	1,39,610
4.	CSOI CLUB, DELHI	4,00,000
5.	SOULSTICE EDUCATIONAL, GORGAON	14,59,073
6.	REWARI	19,967
7.	MAANDI FARM, DELHI	6,50,918
8.	CLUB HOUSE	23,15,052
	TOTAL	**1,11,04,114**

";

(v) that the defendant, instead of making the aforesaid payment offered to the plaintiff to take up the work on another project i.e. construction of National Institute of Immunology, Faridabad at a discount rate of 30% of the base rate agreed with the principal client i.e. Engineers Indian Limited by the defendant; (vi) the plaintiff offered a discount of 18% which was not agreed and as such the work was awarded to R.K. Builders by the defendant; (vii) the plaintiff was again approached by the defendant to take up the work on the project of National Institute of Immunology, Faridabad since the beneficiary of the project i.e. Engineers India Limited (EIL) was pressing the defendant for completion of the project and the sub contractor hired by the defendant was unable to keep pace with the progress of the work; (viii) that the plaintiff in good faith agreed to complete the work through mutual verbal agreement between the parties and no work order was issued by the defendant to the plaintiff; (ix) that the beneficiary of the project i.e. EIL was making regular payments from time to time to the defendant but the defendant failed to make payment to the plaintiff and the mobile phone of the Director of the defendant remained switched off; (x) that the defendant was initially making payment of material supplied by the plaintiff's vendors as well as the plaintiff company but after the certification of "1st RA bill" the defendant stopped making payment; (xi) that the "1st RA bill" was certified at a discount rate of 27% as against the plaintiff's offer of 18% and when the plaintiff represented to the defendant, the defendant kept on promising that they would decide the discount percentage on completion of the project; (xii) that the plaintiff raised bills from time to time and payment was made by the defendant directly to the vendors; (xiii) that the defendant paid an amount of Rs.15,00,000/- and did not pay the amount which was "made by the beneficiary of the project to the defendant company"; (xiv) that eventually the defendant stopped responding and later got their own workers to complete the remaining work, using the material and resources of the plaintiff; (xv) that the defendant have also not provided the necessary Form-C of the Central Sales Tax despite repeated requests of the plaintiff and the plaintiff has to pay tax at differential rate amounting to Rs.16,94,760/-; (xvi) that the last payment was received by the plaintiff on 26th July, 2013 when the work on project site at National Institute of Immunology, Faridabad was in progress; (xvii) "the plaintiff company has also served a legal notice dated 18th March, 2016 calling upon the defendant company *inter alia* to pay to the plaintiff the outstanding amount of Rs.3,65,77,787/- including the amount of Rs.2,54,73,672/- pertaining to project work at National Institute of Immunology, Faridabad along with interest at 24% per annum"; and, (xviii) no response was received from the defendant;

2. Para 22 of the plaint is as under:-

> *"22. That the Cause of Action first arose when the last payment for the Project Work for National Institute of Immunology, Faridabad was received on 26.07.2013 of an amount of Rs.20,00,000/-. The cause of action further arose when the work got completed for the abovementioned project in February, 2014 and the payment was made by the Defendant Company to the vendors mobilized by the Plaintiff Company on 20.02.2014 of Rs.5,53,271/-. The cause of action further arose when even after repeated requests made by the Plaintiff Company to pay the outstanding amount vide letters dated 29.04.2014, 18.12.2014 and 15.03.2015, the Defendant Company failed to discharge their contractual obligation for payment of the due amount. The cause of action further arose when the Plaintiff Company issued a legal notice dated 18.03.2016 requesting the Defendant Company to make the due payment and is continuing."*

3. The suit was entertained and summons thereof ordered to be issued. Pleadings have been completed.

4. The defendant has filed an application being IA No.1544/2017 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) for rejection of the plaint and in which also pleadings have been completed and which is listed for hearing today.

5. The counsel for the defendant has contended that the pleadings in the plaint are vague and the plaintiff has not filed a single document showing any liability of the defendant. It is further contended that the accounts statement at page 28 of Part III file is also not of the plaintiff.

6. I may at the outset state that the only documents filed by the plaintiff are under the list of documents dated 8th July, 2016 and all of which are photocopies. The plaintiff, even if entitled not to file the original documents in terms of dicta of this Court in ***Aktiebolaget Volvo Vs. R. Venkatachalam*** (2009) 160 DLT 100, after the written statement of the defendant of denial of any liability, ought to have put the said documents to the defendant during admission/denial and which also the plaintiff has failed to do.

7. As far as the photocopies of the documents filed by the plaintiff are concerned, the plaintiff at serial no.2 of the list of documents has described the document at serial no.2 as "bill raised by the plaintiff and certified by the defendant" as filed at pages 3 to 18. However a perusal of pages 3 to 18 shows the document at pages no.3 to 18 to be a document titled summary of payment on the letterhead of the plaintiff and addressed to the defendant but which does not appear to be reflecting any amount as claimed in the plaint and the counsel for the plaintiff herself states that the same is illegible. The figure which can be deciphered from the said document shows the amount of the cumulative bill to be Rs.82,97,064/-. The counsel for the plaintiff on enquiry, states that the defendant failed to certify the other RA bills and thus they have not been filed.

8. I am unable to understand. Even if that be the case of the plaintiff,

it is incumbent on the plaintiff to file the same before the Court. Though the counsel for the plaintiff refers to some final RA bills showing the amount claimed to be due but admittedly the same has also not been filed along with the plaint, though the counsel for the plaintiff states that it was filed along with the replication. It is suffice to state that the same is not in Part III file and this being a commercial suit it was incumbent upon the plaintiff to file the documents along with the plaint and no subsequent documents can be taken on record without leave of the Court.

9. I may also mention that though the plaintiff in the plaint has made elaborate pleadings with respect to outstanding of Rs.1,11,04,114/- as set out hereinabove but the counsel for the plaintiff states that the suit claim is not for recovery of the said amount but for recovery of only Rs.2,54,73,672/- which pertains only to the work on the project of National Institute of Immunology, Faridabad.

10. I may in this context also note that there is no averment in the plaint as to of what total value the plaintiff carried out the work with respect to the National Institute of Immunology, Faridabad and out of which Rs. 2,54,73,672/- is claimed to be due. The plaintiff, in para 20 of the plaint has pleaded the factum of having issued legal notice to the defendant and therein having claimed outstanding amount of Rs.3,65,77,787/- including the amount of Rs.2,54,73,672/- pertaining to the project at National Institute of Immunology, Faridabad; else, there is nothing in the plaint with respect to the said amount of Rs. 2,54,73,672/- or the payments with respect thereto. So much so that the plaintiff has not even placed before this Court copies of its own ledgers showing any outstanding from the defendant or copies of its own balance sheets

showing any such outstanding. Though the plaintiff along with the plaint has filed a statement of its account with Union Bank of India for the period 1st July, 2013 to 1st August, 2013 but the counsel or the plaintiff is unable to explain the purport of filing the same. The plaintiff, in the plaint has claimed part payment on 26th July, 2013 of Rs.20,00,000/- from the defendant and on the basis of which the claim in the suit is stated to be within time but the counsel for the plaintiff is unable to show even such receipt in the statement of account filed.

11. Ms. Manmilan Sidhu, Advocate appearing for the plaintiff now states that the matter be adjourned for her senior Mr. P. Vinay Kumar, Advocate, who has now been engaged, to appear.

12. Suits, especially commercial suits, cannot be conducted by the counsels in this fashion.

13. Not only so, the plaint is found to be disjointed, vague, lacking in material particulars and not disclosing a cause of action for the relief claimed or the suit claim being within time. Inspite thereof, the plaint was entertained and summons thereof issued. Though the defendant, in its written statement has denied its liability, but the plaintiff has not filed any document from which the plaintiff can, in trial, prove its claim. This Court in ***Godfrey Phillips India Ltd. Vs. P.T.I. Private Ltd.*** 2017 SCC OnLine Del 12509 has held that though as per procedure prescribed by CPC ordinary suits have to be mandatorily put to trial, when entail disputed questions of fact but in commercial suits, Courts need not hold trial, even if there are disputed questions of fact, if a Court comes to conclusion that plaintiff lacks real prospect of succeeding in the suit and that commercial suits can be disposed summarily. The plaintiff, in the

present case is found to have failed to place any pleading or material before this Court on the basis of which it can be said that plaintiff has any prospect of succeeding.

14. Thus the plaint is rejected.

No costs.

RAJIV SAHAI ENDLAW, J

FEBRUARY 19, 2018
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