

\$~2

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

+ CS(COMM) 1051/2016 & IA No.8647/2018 (u/O VIII R-10 CPC)

CMI ENERGY INDIA PVT LTD

..... Plaintiff

Through: Mr. Rama Shanker and Ms. Seema
Sharma, Advs.

Versus

ARUN GOEL

..... Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

04.12.2018

1. The plaintiff instituted this suit for recovery of principal amount of Rs.2,34,92,366.29 paise along with pre-suit interest @ 18% per annum of Rs.84,75,250/- i.e. for total sum of Rs.3,19,67,616/-.
2. The suit came up first before this Court on 8th August, 2018, when summons thereof ordered to be issued. The order dated 18th January, 2018 records that summons had been served on the defendant on 10th January, 2018. The counsel for the defendant also appeared before this Court on the said date.
3. The defendant did not file written statement and instead filed IA No.10966/2018 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) for rejection of the plaint and which application was dismissed vide order dated 29th August, 2018.

4. The defendant having not filed the written statement within the prescribed time, the plaintiff filed IA No.8647/2018 under Order VIII R-10 CPC. The counsel for the defendant, on 29th August, 2018, stated that he will be making an application for condonation of delay in filing written statement.

5. Neither any application has been filed nor does anyone appear for the defendant today.

6. The defendant is proceeded against *ex-parte*.

7. The feasibility of decreeing the suit under Order VIII Rule 10 of CPC and/or of relegating the plaintiff to *ex-parte* evidence has been explored.

8. It is the plea of the plaintiff (i) that it was earlier known as General Cable Energy India Private Limited; (ii) that the defendant purchased underground cables and wires from the plaintiff on credit, from 19th February, 2014 till 24th April, 2014, of the total value of Rs.2,64,39,876.29 paise; (iii) that after giving credit of Rs.29,47,510/-, a sum of Rs.2,34,92,366.29 paise was due from the defendant to the plaintiff; and, (iv) that the defendant, as per the custom and usage of the trade is liable to pay interest @ 18% per annum.

9. The plaintiff, along with the plaint, has filed its Memorandum and Articles of Association along with Certificate of incorporation pursuant to change of name and the invoices, amount where of is claimed in the suit.

10. The defendant, in its application under Order VII Rule 11 of the CPC pleaded, (a) that the dealings of the defendant were with General Cable Energy India Private Limited; (b) that whatsoever amount was payable by

the defendant to General Cable Energy India Private Limited was fully settled on 13th May, 2015 and a letter dated 13th May, 2015 titled “full and final settlement of account” was exchanged; and, (c) that in view of the said settlement, nothing is due from the defendant towards the transaction alleged.

11. The defendant, along with its application aforesaid filed a copy of the letter dated 13th May, 2015 of General Cable Energy India Private Limited to the defendant and which *inter alia* is of settlement for Rs.1,44,92,305/- against the outstanding dues of Rs.2,57,42,365.66 paise.

12. The order dated 29th August, 2018 of dismissal of Order VII Rule 11 of the CPC application aforesaid records that it was admitted by the defendant that the cheques for Rs.1,44,92,305/- issued by way of settlement were dishonoured. This Court in order dated 29th August, 2018 thus held that the defendant could not rely on the settlement, the payments whereunder had admittedly not been made by the defendant.

13. Though the settlement dated 13th May, 2015 records the outstanding liability from the defendant to the plaintiff of Rs.2,57,42,365.66 paise but the plaintiff in this suit has claimed a sum of Rs.2,34,92,366.29 paise only towards the principal amount.

14. The plaintiff is thus held entitled to a decree forthwith in the said principal amount of Rs.2,34,92,366.29 paise and the need to relegate the plaintiff to *ex-parte* evidence is not felt. As far as the claim of the plaintiff for interest is concerned, it is deemed appropriate to grant interest to the plaintiff, instead of @ 18% per annum for the pre-suit period, @ 12% per annum and *pendente lite* and future @ 9% per annum.

15. A decree is accordingly passed, in favour of the plaintiff and against the defendant of recovery of principal amount of Rs.2,34,92,366.29 paise with interest @ 12% per annum with effect from 24th April, 2014, being the date of the last of the invoices, till the institution of the suit and *pendente lite* and future @ 9% per annum.

16. The plaintiff shall also be entitled to costs of this suit. Professional fee assessed at Rs.1 lakh.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

DECEMBER 04, 2018

‘bs’..