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

\+ CS(COMM) 941/2016

NBCC LTD. & MAHAVIR HANUMAN & ANR ..... Plaintiffs
Through: Ms.Marilyn Khakha, Advocate.

versus

TAMEERAT GROUP ..... Defendant
Through: Ex parte

% Date of Decision: 02nd January, 2018.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

<u>J U D G M E N T</u>

<u>MANMOHAN, J</u>: (Oral)

1. The present suit has been filed for the recovery of additional expenditure of Rs.1,31,31,490/- incurred by the plaintiffs for completion of the external development works in NBCC Town in Kekhra District Baghpat, U.P.

2. Since none appeared for the defendant despite publication in the newspaper, it was proceeded *ex parte* vide order dated 09th February, 2017.

3. The relevant facts of the case are that the plaintiffs had entered into an agreement with the defendant, a group of contractors and engineers, for the construction of external development works in NBCC Town on the Delhi-Saharanpur Highway, Khekra, District Baghpat, U.P. (hereinafter referred to

as the 'Project'). It is pertinent to mention that the plaintiff no.1 is an unincorporated joint venture between NBCC (India) Ltd. and Mahavir Hanuman Realtor Private Limited for the construction of this project. Plaintiff no.2 is NBCC (India) Ltd.

4. The tender for the said project was originally awarded to the defendant for a total cost of Rs.4,01,02,675.19 vide letter of acceptance dated 19th August, 2010 issued by the plaintiffs. Pursuant to the said letter of acceptance, a detailed letter of award dated 13th October, 2010 was issued by the plaintiffs in favour of the defendant. As per Clause 7 of the said letter of award, the project had to be completed within 15 months from the tenth day of issue of the letter of intent i.e. by 22nd January, 2012. It was agreed between the parties that the defendant had to complete its work relating to the project within the stipulated time. As per Clause 76.1 of the GCC, the courts at Delhi have the jurisdiction to deal with the matters pertaining to the contract.

5. Ms. Marilyn Khakha, learned counsel for the plaintiffs states that since the inception of the project, the defendant failed to meet any of the deadlines stipulated in the contract, despite extension given by the plaintiffs. She emphasizes that despite extension of the date of completion up to 31st July, 2012, which was more than six months from the date of completion stipulated in the contract, the project was abandoned by the defendant mid-stream.

6. She points out that the plaintiffs through a letter dated 28th February, 2011 brought to the defendant's notice that the work relating to the project needed to be expedited on all "fronts", failing which appropriate clauses of the contract would be invoked. She states that in the light of the slow

progress of work, the plaintiff no.1 issued a notice dated 01st December, 2011 to the defendant to show cause as to why action under Clause 72 of GCC be not taken against the defendant for committing breach of contract.

7. Ms. Marilyn Khakha also states that NBCC sent a letter dated 08th June, 2012 to the defendant stating that the job assigned to it had only been executed to the tune of Rs.55,86,000/- which was merely 14% of the total contract value. It was further noted in the said letter that the work had come to a standstill since 16th March, 2012.

8. She points out that a second notice was issued on 21st August, 2012 to the defendant to show cause within seven days as to why action under Clause 72 of General Conditions of Contract should not be taken against it.

9. Learned counsel for the plaintiffs states that NBCC terminated the contract with the defendant for the external development works vide letter dated 16th October, 2012 under Clause 72 of the GCC. She reiterates that the total work executed by the defendant was only to the tune of Rs.55.80 lakhs i.e. 14% of the total work. She contends that it was evident vide the 5th R.A.Bill dated 08th November, 2012 issued by the defendant that the defendant had accepted the termination of the contract. According to the plaintiffs, the work left incomplete by the defendant was valued at Rs.3,56,51,739/-

10. She states that M/s Kashyapi Infrastructure Pvt. Ltd. was awarded the balance work of construction of external development works for a total contract value of Rs.4,76,93,718/- vide letter of award dated 17th April, 2013. She contends that the additional expenditure incurred by the plaintiffs was Rs.1,12,26,354/- and the same was arrived at by deducting the value of

work left incomplete by the defendant from the bills raised by M/s Kashyapi Infrastructure Pvt. Ltd.

11. Ms. Marilyn Khakha, learned counsel for the plaintiffs states that after adjusting the said amount against performance guarantee and the amount withheld from the defendant, the additional expenditure incurred by the plaintiffs works out to Rs.91,21,222/-.

12. Further, according to her, in accordance with Clause 72.1 of the GCC, the plaintiffs are entitled to compensation for delay at 10% of the tendered value i.e. Rs.40,10,268/-. Therefore, the total amount payable by the defendant to the plaintiffs is Rs.1,31,31,490/-.

13. The plaintiffs have placed on record their evidence by way of affidavit of Sh.Dinesh Kumar, AGM (Engg.), NBCC. In the said affidavit, the witness has proved the letter of acceptance, letters of awards, General Conditions of Contract, letters and notices issued by the plaintiffs as well as the running bills submitted by the defendant and the expenditure incurred by the plaintiffs for completion of the contract through M/s Kashyapi Infrastructure Pvt. Ltd.

14. Keeping in view the aforesaid facts and the documents on record as well as the arguments advanced by the learned counsel for the plaintiffs, this Court is of the view that the plaintiffs have proved their case and are entitled to be compensated in accordance with Clause 72.1 of GCC as well as for the additional expenditure incurred for completing the contract left incomplete by the defendant.

15. Accordingly, the present suit is decreed for Rs.1,31,31,490/- along with the *pendente lite* and future interest @ 8% per annum. This Court may

mention that it is awarding the interest @ 8% per annum as that is the normal rate at which the banks are lending monies now-a-days.

MANMOHAN, J

JANUARY 02, 2018
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