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

Date of decision: 5th December, 2018

\+ **CS (COMM) 1115/2016 & I.A. 5971/2014**

HINDUSTAN CLEAN ENERGY LTD ERSTWHILE MOSER BAER CLEAN ENERGY LTD. ..... Plaintiff

Through: Mr. Tarun Singla, Advocate (M-9810202014) along with Mr. Sidhartha Kala, AR

versus

PYRAMID SPACES PVT LTD ..... Defendant

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. The present suit for recovery was filed under Order XXXVII CPC seeking a recovery a total principal sum of Rs.21,06,90,112/-. The suit was registered and summons for appearance were issued in the prescribed form. After the Defendant entered appearance, leave to defend application was filed by the Defendant. The matter was heard on the last date i.e., 10th October, 2018. After conclusion of arguments, Ld. Senior Counsel for the Defendant sough an adjournment on the ground that he shall seek instructions. Today, the matter was listed for counsel for the Defendant to report with their instructions. None has appeared for the Defendant since morning. The matter was passed over on three occasions. The counsel for the Plaintiff has sent a message to the Defendant's counsel and attempted to contact them but to no avail. Despite three passovers, none appears for the

Defendant. Accordingly, the Court proceeds further to decide the matter.

2. The factual background of the suit is that the Plaintiff entered into a transaction for purchase of land, with the Defendant vide MOU dated 2nd May, 2011 with the Defendant. The Plaintiff was to purchase the land located in villages Kamalpur & Rajpar, Taluka Dasada, District Surendra Nagar, Gujarat at the consideration amount of Rs.7,65,001/- per acre. The said amount included the cost of land at Rs.6,00,000/- per acre along with the mutation and Non-Agricultural Conversion User Charges.

3. Another MOU was also entered into on 28th June, 2011 with the Defendant company for acquisition of 300 acres of land in Villages Zainabad & Ahmedgarh, Taluka Dasada, District Surendra Nagar, Gujarat for sale consideration of Rs.8,10,001/- per acre which included the land cost of Rs.6,45,000/- along with mutation and Non-Agricultural Conversion User Charges.

4. The Defendant was paid an advance sale consideration amount of Rs.32,42,48,279/- through Real Time Gross Settlement (R.T.G.S.) during the period of 9th May, 2011 to 6th December, 2011, initially. Thereafter by 5th March, 2012, a total sum of Rs.41,44,74,303/- was paid to the Defendant. The details of the payments made are contained in paras 10 and 11 of the plaint. However, despite the payment of Rs. 41,44,74,303/-, the total land that was transferred to the Plaintiff is stated to be to the tune of sale consideration amount of Rs.33,47,55,950/-. Out of the said amount, Rs.5,45,61,601/- was paid directly to the farmers. Thus, a total amount of Rs.13,42,79,954/- remained with the Defendant in the form of extra payment for which no land was transferred. In addition, the Plaintiff also claims the Bin Kheti Premium which was to be paid to the Government to the tune of

Rs.4,57,72,255/-. On the said amounts, interest is also prayed for.

5. On the last date when submissions were made on the leave to defend application, it was argued that the actual payment was not made by the Plaintiff but was made by third parties and hence the suit by the Plaintiff is not maintainable. It was further submitted that time was not the essence of the contract between the parties. Since, there is no specific admission or acknowledgment of the debt, the Order XXXVII suit was not maintainable.

6. The counsel for the Plaintiff submits that out of the total amount an amount of Rs.12,10,72,191/- was in fact paid by the Plaintiff itself and the remaining payments were made on the instructions of the Plaintiff by its Prospective & Strategic Buyer companies, namely, Ujjawala Power Private Limited, Responsive SUTIP Limited and Chattel Construction Private Limited. It is thus submitted that the Plaintiff is entitled to sue as the amounts were paid under the MOUs between the Plaintiff and the Defendant.

7. A perusal of the plaint and the leave to defend application as also submissions made on the last date clearly shows that the receipt of the amounts is actually not disputed. What is disputed is merely the locus of the Plaintiff and the submission that time was not the essence of the contract. These MOUs go back to the date of 2nd May, 2011 and 28th June, 2011. Seven years is a long period for performance of any contract. The Defendant does not dispute the receipt of the money or the transactions entered into.

8. The execution of the two MoUs is admitted. In paragraph (s) and (y) of the affidavit accompanying the Leave to Defend application, the Defendant merely states that the advance amount `was substantially adjusted' or `entire amount was adjusted'. No specific figures are

mentioned. The entire allegation in the leave to defendant is that the Plaintiff defaulted in performing obligations under the MoU, but there is no denial of receipt of the amounts mentioned in the Plaint. The further stand of the Defendant is that it had issued corporate guarantees and some cheques of which it sought return due to the losses caused to it by the Plaintiff. In this regard, suits are claimed to have been filed by the Defendant in the courts in Gujarat. It is further claimed that the accounts are not yet settled and it has to recover sums from the Plaintiff. The leave to defend application is also not pressed today inasmuch as none has appeared for the Defendant.

9. A perusal of the pleadings shows that the Plaintiff states in reply to the leave to defend application that the Defendant has admitted the receipt of the amount of Rs. 41,43,42,972/- in its Balance Sheet. Corporate guarantees were issued by the Defendant for Rs. 2 crores each as also three cheques for Rs.5 crores were also issued. This Court is satisfied to the extent that payments were made under the MOUs to the Defendant, and the unutilized amount cannot be retained by the Defendant. This is however without prejudice to the claim of the Defendant that it is entitled to liquidated damages from the Plaintiff in the proceedings filed in Gujarat. Since separate proceedings are claimed to be pending in the said court, this Court has not gone into the merits of the said claims of the Defendant against the Plaintiff.

10. The Plaintiff is thus entitled to a sum of Rs.13.42 crores. However, in respect of the Bin Kheti Premium amount which is prayed for by the Plaintiff, apart from the notification of the Government which prescribed the rates for Bin Kheti Premium, no evidence has been placed on record showing that the premium was in fact paid by the Plaintiff or anyone on its

behalf. Thus, this amount is not liable to be granted in favour of the Plaintiff. If the Plaintiff is able to obtain any evidence to show that it in fact deposited the said amounts with the Governmental Authorities, the remedies of the Plaintiff are left open, provided the same is maintainable in law.

11. The leave to defend application is dismissed as having not been pressed. A decree for the sum of Rs.13,42,79,954/- is granted along with interest @ 8% p.a. from the date of filing of the suit till date of decree. Defendant would be entitled to adjustment of any amounts which have been paid by the Defendant either in the form of encashment of corporate guarantees or securities. If the payments are not made within 8 weeks, then interest @ 12% p.a. would be payable on the decretal amount.

12. Suit is decreed in the above terms. Decree sheet be drawn accordingly. Costs to the extent of the Court fee and legal expenses are granted to the Plaintiff.

13. The suit and all pending I.As. stand disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 05, 2018
Rahul