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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 19th September, 2018

Pronounced on: 10th October, 2018

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CS(COMM) 1661/2016

THE VIRTUAL EDUCATION TRUST

..... Plaintiff

Through : Mr.Vijay Kant Srivastava, Adv.

versus

KARNATAKA STATE OPEN

UNIVERSITY, MYSORE

..... Defendant

Through : None being defence struck off.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This suit is for recovery of money of ₹1,16,38,850/- along with interest pendentlite @ 18% per annum.

2. The brief facts of the case as alleged in plaint are:

a) the plaintiff is a registered trust under the Trust Act and has been formed for the purpose of bringing world class and cost effective learning to individuals through internet at their door steps. The defendant is State Open University established by the Government of State of Karnataka under Karnataka State Open University Act, 1994, which was established to advance and disseminate learning and knowledge by a diversity of means, including the use of any communication technology to provide opportunities for higher education to the population, generally through distance education system;

- b)* for advancement of its aims and objects, the defendant approached the plaintiff trust to impart various programmes through CD-ROM, internet, counseling, on-line chatting with faculty, practicals and assignments to the students through the support centers created by the plaintiff trust all over the country and thus sought services and facilities of the plaintiff trust and they both initially entered into a collaboration vide a MoU dated June 2007. Thereafter, the plaintiff and defendant also entered into a MoU dated 24.08.2012 as a supplementary MoU with previous MoUs forming an integral part of the latest MoU for the period of 5 years and its renewal was based upon performance and on mutually agreed terms and conditions;
- c)* it was further agreed that the plaintiff will provide study centres for delivery of various programs of the university through distance mode and provide back office support for registration/enrollment of students, deposit of fee to the university account, distribution of study material and delivery of counseling sessions to the students and to arrange conducting of examinations. The defendant's responsibility was to finalize admissions as per rules of the university after receipt of application and fees. The defendant was also responsible for the whole process of examination, evaluation and declaration of the result, issue of marks cards and award of Degree/Diploma/Certificates to the successful candidates;
- d)* it was also agreed that the plaintiff trust shall have all its employees at its payroll. The distance education programmes shall be delivered by the plaintiff through distance education/

internet mode all over India and abroad. The plaintiff shall provide study material to the students and all administrative support to the university and act as facilitator between university, study centres and the students;

- e) as per the MoU dated 24.08.2012, plaintiff was fulfilling its duties and responsibilities diligently. The plaintiff provided logistics and administrative support to the defendant in the conduct of various examinations by the university and raised the bills for reimbursement;
- f) the plaintiff sent various letters and reminders dated from 04.06.2015 to 07.09.2016 but, the defendant failed to pay the amount liable to be given to the plaintiff incurred by the plaintiff for conducting above said examination. Rather, defendant sent a notice dated 12.05.2016 seeking explanation of the plaintiff trust as to why the MoU dated 24.08.2012 should not be terminated. It was mentioned in the notice per decision of the Supreme Court in *Professor Yashpal & Anr vs. State of Chattisgarh & Anr.* dated 11.02.2005, the University Grant Commission has restricted the activities of distance education by the universities in the country to their respective territorial jurisdiction. Consequently, UGC by the letter dated 27.06.2013 directed the defendant university to restrict its area of operation within its territorial jurisdiction. Thus, the board of management of university by its meeting held on 02.08.2014 decided to stop distance programmes vide notification dated 01.07.2015 and 21.09.2015. It was further mentioned in the notice the defendant vide notification dated 05.03.2016

terminated the MoU entered into between the university and its all the academic corroborated institutions/study centers including the plaintiff trust;

- g)** plaintiff had been duly discharging its responsibilities and providing support in conduct of various examinations qua the students admitted by the university time to time. The plaintiff incurred various expenses relating to conduct of examinations from the period April, 2013 to July, 2015 for which dues are outstanding to be paid by the university;
- h)** the university cannot run away from paying its dues to the plaintiff as the plaintiff was always providing support in conducting examinations of the students whose admissions were finalized by the defendant university. The plaintiff was providing facility of study center and other administrative and logistics support in conducting examinations by the university of the students admitted by the university;
- i)** the defendant is well within the knowledge of order dated 05.05.2016 in a Writ Petition 3459/2016, *Center for Management and Technical Education Pvt. Ltd. vs. University Grant commission & Ors.* wherein Mumbai High Court held pending the hearing and final disposal of the Writ Petition, defendant was directed to complete all the procedure to accept the examination forms, to conduct examination of the present students, to declare the result and to issue the mark-sheet, certificate to the students to enable and permit the existing students to complete their various courses undertaken pursuant to the MOU dated 23.08.2012;

- j)* plaintiff fulfilled its responsibilities during the subsistence of MoU dated 24.08.2012, there was never any single complaint of the plaintiff trust by the students or the university. The university is liable to pay the outstanding payment of ₹1,16,38,850/-;
- k)* the plaintiff duly responded to the notice dated 12.05.2016 and explained why the MoU should not be terminated till such time all issues and dues are fully settled by the university. Yet the defendant once again issued a notice dated 04.06.2016 thereby again terminating the MoU. The defendant cannot run away from its liability which had already occurred in favour of the plaintiff against the defendant prior to alleged notification of termination dated 05.03.2016; and
- l)* the defendant till date has not paid the due amount to the plaintiff and whenever the plaintiff has demanded its amount, the defendant has chosen not to respond to any of the invoices, demands and reminders of the plaintiff; hence this suit.

3. Upon due service and failure to file the written statement in Court, the right of the defendant to file the written statement was closed vide order dated 17.08.2017. Even the defence of the defendant was struck off vide order dated 22.09.2017 and matter was listed for evidence of the plaintiff, if any.

4. During the course of evidence, the plaintiff has examined sole witness *PW1* Shri Satya Parkash who tendered his affidavit of evidence as *Ex.PW1/1* and relied upon the documents *Ex.PW1/A* to *Ex.PW1/L* as well as *Ex.PW1/M* being the plaint itself.

5. Before proceeding further, let me go through the documents exhibited by the witness. *Ex.PW1/A* is Special Power of Attorney dated 22.11.2016 by plaintiff in favour of the witness; *Ex.PW1/B* to *Ex.PW1/E* are the memorandum of understanding dated 16.06.2007; 23.10.2008; 17.07.2010; and 24.08.2012 respectively executed between the parties; *Ex.PW1/F* is the breakup of expenses incurred and claimed by the plaintiff from defendant to the tune of ₹1,16,38,850/- concerning the period from April-June 2013 to June-July 2015; *Ex.PW1/G* is reminder letter dated 07.09.2016; *Ex.PW1/H* and *Ex.PW1/I* are the letters dated 31.05.2013 and 12.05.2015 for the demand of till July 2015; *Ex.PW1/J* is the notice dated 12.05.2016; *Ex.PW1/K* is the notice of plaintiff on 15.06.2016; *Ex.PW1/L* is requisite certification under Section 65B of the Indian Evidence Act, 1872 pertaining to the different electronic records in the form of printout, copies and extracts of records as mentioned above; and *Ex.PW1/M* is the plaint itself bearing signatures of the witness at points A and B thereon.

6. From the perusal of the record above, the plaintiff has been able to prove the defendant has failed to clear the outstanding amount against it on the basis of memorandum of understandings *Ex.PW1/B* to *Ex.PW1/E* and failed to clear the amount as depicted in *Ex.PW1/F* despite service of notice *Ex.PW1/K*.

7. The acts of the defendant in not filing the written statement despite service raises a valid and legal inference that it has no defence to the case of the plaintiff for recovery of the suit amount in its entirety on all counts. Even otherwise the above version of the witness goes unrebutted and unchallenged from the defendant – whose defence has already been

struck off by this Court and defendant has not even challenged the said order.

8. Under the given facts and circumstances of this case where the defendant reclused itself from the proceedings and did not care to either file the written statement in due time or preferred any appeal against the order dated 17.08.2017, a decree for a sum of ₹ 1,16,38,850/- is passed in favour of the plaintiff and against defendant. The plaintiff shall also be entitled to interest @ 9% pa on the suit amount from the date of filing of the suit till the date of realisation. Costs of the suit is also awarded to the plaintiff and against the defendant. Decree Sheet be drawn.

YOGESH KHANNA, J

OCTOBER 10, 2018

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