

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 315/2016 & IA No.4303/2016 (for condonation of 61 days delay in filing the suit)

HYTHRO ENGINEERS PVT LTD Plaintiff

Through: Mr. Davinder N. Grover, Mr. Vijay
Laxmi Grover & Mr. Samant Singh,
Advs.

Versus

U S ADCOM PVT LTD Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **06.04.2018**

1. The sole plaintiff instituted this suit for recovery of Rs.1,72,06,522.54 paise with interest from the sole defendant.
2. The suit was entertained and summons thereof ordered to be issued.
3. The order dated 29th August, 2016 records that as per the report, the defendant was unserved by ordinary process as well as by speed post but the counsel for the plaintiff had filed affidavit of service and despite service neither written statement was filed nor the defendant appeared. However, further opportunity was given to the defendant to file written statement. The defendant did not file written statement and did not appear thereafter also and was proceeded against *ex parte* vide order dated 19th May, 2017 and the plaintiff relegated to *ex parte* evidence.
4. The plaintiff in its *ex parte* evidence has examined its authorized representative Mr. Sheikh Islam and closed its *ex parte* evidence.

5. The *ex parte* arguments of the counsel for the plaintiff have been heard.
6. The counsel for the plaintiff draws attention to Exhibit PW1/O at page 49 of Part III file, original of which was shown to Joint Registrar at the time of recording of evidence and returned and the exhibit mark put on a photocopy and which contains an admission of the defendant of a sum of Rs.2,07,52,581/- to be due to the plaintiff.
7. The counsel for the plaintiff, on the basis of *ex parte* evidence of the plaintiff, has shown that the plaintiff had a contract from the New Delhi Municipal Council (NDMC) for maintenance of various public toilets in the NDMC area and had given the advertising rights all around and above the said toilets to the defendant and the payment aforesaid was due from the defendant to the plaintiff on the said account.
8. The counsel for the plaintiff has further demonstrated that out of the sum of Rs.2,07,52,581/- admitted to be due as on 25th April, 2012, payments were made from time to time with the last of the said payments having been made on 22nd October, 2012 and four cheques for Rs.1.56 crores were returned dishonoured.
9. I have enquired from the counsel for the plaintiff as to how this suit, filed first on 22nd December, 2015 and thereafter repeatedly filed on 19th January, 2016, 25th February, 2016, 8th March, 2016, 31st March, 2016, 1st April, 2016 and 2nd April, 2016 is within time.
10. The counsel for the plaintiff seeks adjournment to satisfy this Court in this respect.

11. During the hearing, it has also transpired that the defendant is contesting the winding up proceedings and the proceedings under Section 138 of the Negotiable Instruments Act, 1881 filed by the plaintiff.

12. In view of the same, it appears that the defendant has not been properly served with the summons of this suit.

13. The counsel for the plaintiff to also inform of the present suit and the next date of hearing to the defendant, in writing, in the aforesaid two proceedings, also through the advocate/s appearing for the defendant in the said proceedings.

14. It is also found that though present suit was filed as a commercial suit but the counsel for the plaintiff on 19th May, 2017 stated that he is not pressing the suit as a commercial suit.

15. Once the suit is not pressed as a commercial suit, the same is below the minimum pecuniary jurisdiction of this Court and is ordered to be transferred to the District New Delhi, Patiala House Courts where the Section 138 of the Negotiable Instruments Act proceedings are stated to be pending.

16. The further proceedings in the suit hereafter be undertaken before the District Court.

17. The files of the suit be immediately forwarded to the District Judge, New Delhi District, Patiala House Courts, New Delhi.

18. The plaintiff to appear before the Additional District Judge / District Judge, New Delhi District, Patiala House Courts, New Delhi on 15th May, 2018.

RAJIV SAHAI ENDLAW, J

APRIL 06, 2018/‘gsr’..

CS(COMM) 315/2016

Page 3 of 3