IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL SUMMARY SUIT NO. 643 OF 2018

Monsher Fire Protection Systems (P) Limited A private limited company, incorporated Under the Companies Act 1956, having its registered office at 403, Tantia Jogani Estate, 4th floor, Off N.M. Joshi Marg, Next to Lodha Pavilion, Lower Parel, Mumbai 400 011.	]	.. Plaintiff

<u>**Versus**</u>

1. **M/s. REM Enterprises** Having its registered office at First Floor, Vikeye Complex, Notun Bosti, Dimapur 791 112, Nagaland	]	
2. Temjem Imna Along Longkumer Sole Proprietor of M/s. REM Enterprises, Having its registered office at First Floor, Vikeye Complex, Notun Bosti, Dimapur 791 112, Nagaland <u>AND</u> MH 10, Old Ministers Hill, Kohima, Nagaland – 797001.	]	.. Defendants

Mr.Karl Tamboly a/w. Mr.Sameer Tapia, Senior Partner, Ms.Komal Joshi, Ms.Aditi Bajaj i/b ALMT Legal for plaintiff.

CORAM	:	**N.J. JAMADAR, J.**
Reserved for Judgment on	:	**5th December 2019**
Judgment Pronounced on	:	**9th December 2019**

JUDGMENT :

1. This commercial division summary suit has been instituted, for recovery of an amount of Rs.19,22,24,000/- along with interest on the principal amount of Rs.14,60,00,000/- at the rate of 36% per annum, on the basis of the invoice raised by the plaintiff against the defendants. The suit claim has been subsequently reduced to Rs.15,82,24,029.50

2. The facts can be summarized as under :-

(a) The plaintiff is a private limited company incorporated and registered under the Companies Act, 1956. The plaintiff deals in the business of providing trading and contracting services to a wide range of customers in Maharashtra and across India. The defendant No.2 is the sole proprietor of the defendant No.1- proprietorship firm. The defendant No.1 also deals in the business of trading.

(b) At the instance of the defendants, the plaintiff had purchased 9670 Metric Tons of rice from Nagaland Development Corporation Limited ('NDCL'). The plaintiff sold and delivered the said rice to the defendants by raising invoice, dated 10th April 2017. The delivery of the goods was acknowledged by the defendant No.2 in the capacity of the proprietor of the defendant No.1, under the delivery note of even date. The invoice contains the terms of sale and delivery, payment of interest @ 36% per annum on the delayed payment, i.e., beyond 15 days. The total price of the goods sold and delivered is Rs.14,60,00,000/-.

(c) The defendants issued cheques drawn on State Bank of India, Dimapur Branch, Nagaland towards payment of the price of the goods. Details of the cheques are as under :

Date		Cheque amount
29th August 2017	:	Rs.4,50,00,000/-
29th August 2017	:	Rs.4,50,00,000/-
27th October 2017	:	Rs.3,60,00,000/-
30th March 2018	:	Rs.2,00,00,000/-

However, the cheques were returned unencashed on presentment.

(d) The plaintiff issued statutory demand notices under the Negotiable Instruments Act, 1881 on the dishonour of each of the cheques. The defendants did not comply with the demand. Hence the plaintiff issued the notice on 16th October 2017 calling upon the defendants to pay the outstanding amount of Rs.14,60,00,000/- along with interest accrued thereon at the rate of 36% per annum. The defendants paid no heed. Hence, the instant suit for recovery of the aforesaid amount.

3. The writ of summons was served on the defendants by hand delivery on 7th March 2019, and also by registered post. An affidavit of service along with service report and copy of the postal receipt and delivery report is filed on 25th March 2019. Despite the personal service of the writ of summons, the defendants did not tender appearance within the period stipulated by order XXXVII Rule 3(1) of the Code of Civil Procedure, 1908 ('Code') or any time thereafter till date.

4. In view of the default on the part of the defendants in entering appearance, the Court has to proceed on the premise that the allegations in the plaint are deemed to be admitted, as provided in Sub-rule (3) of Rule 2 of Order XXXVII.

5. In the intervening period, the defendants have made certain payments towards the outstanding amount. One Mr.Sherwin Nazareth, Authorized Signatory of the plaintiff has filed an affidavit, dated 20th August 2019 affirming that by that date, the defendants had paid an amount of Rs.3,09,99,970.50 as shown in the table at Exh.'A' annexed to the said affidavit. The plaint was accordingly amended and the suit claim came to be scaled down to Rs.15,82,24,029.50.

6. The learned counsel for the plaintiff tendered, across the bar, a statement to the effect that subsequent to the amendment also, the defendants made certain payments and, as of today, a sum of Rs.5,04,99,970.50 has been paid by the defendants. The learned counsel for the plaintiff, thus, urged that the amended suit claim be decreed after adjusting the said amount of Rs.5,04,99,970.50.

7. Evidently, the defendants have not tendered appearance. Yet, to ascertain as to whether the instant suit falls within the purview of any of the clauses of Sub-rule (2) of Rule 1 of Order XXXVII, I have examined the material on record. As indicted above, the suit is based on the invoice raised by the plaintiff against the defendants to evidence the sale and delivery of the rice. The copy of the invoice (Exh.'B') and the delivery note (Exh.'C') evidence the sale and delivery of the rice, which was procured by the plaintiff from NDCL under the auction order dated 7th April 2017.

8. From the perusal of the invoice, it becomes evident that the invoice contains the particulars of the seller and purchaser, the description of the goods, the quantity, the rate per metric ton, the total price, the terms of delivery, the period for payment and the stipulation for payment of interest at the rate of 36% per annum on the outstanding amount beyond the period of fifteen days. It is not controverted that the defendants acknowledged the receipt of the goods under the delivery note (Exh.'C').

9. The aforesaid terms of the invoice, when accepted by the defendants, partake the character of a written contract. Thus, the claim falls within the ambit of Sub-clause (i) of Clause (b) of Sub-rule (2) of Rule 1 of Order XXXVII of Code. Moreover, the facts that the defendants had drawn cheques, as indicated above, towards the payment of the price of the goods and those cheques were dishonoured on presentment, as evidenced by the memos issued by the drawee bank with the remark *"ACCOUNT CLOSED/TRANSFERRED TO",* and the defendants failed to pay the amount covered by the cheques, despite the statutory notice issued under the Negotiable Instruments Act, 1881 and the notice dated 16th October 2017, which preceded the suit, bring the case within the ambit of Clause (a) of Sub-rule (2) of Rule 1 of Order XXXVII of Code as well. Furthermore, the fact that the defendants had made part payments towards the price of the goods for which the invoice was raised itself constitutes an admission of liability.

10. In view of the above, there is no other go but to allow the suit claim, after adjusting the amount which has been already paid.

11. The suit, thus stands, decreed as under :

(i) The defendants do pay a sum of Rs.14,17,24,030/- to the plaintiff along with interest at the rate of 18% per annum on the sum of Rs.14,17,24,030/- from the date of the suit till realization.

(ii) The defendants do pay costs of Rs.5,00,000/- to the plaintiff, quantified under Section 35 of the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act, 2015.

(iii) The plaintiff is also entitled to refund of Court-fees, if any, in accordance with the rules.

(iv) The decree be drawn up and sealed expeditiously.

(v) The Commercial Suit stands disposed of in above terms.

(N. J. JAMADAR, J.)