IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.411 of 2016

Indian commerce & Industries Co Private Ltd.,
Represented by its Director Mr.C.Ravindran,
Beehive Buildings, 57 Prakasam Road,
Broadway, Chennai - 600 108. ... Plaintiff

Versus

M/s. Global Gases India Pvt. Ltd.,
No.813, B-Wing, 8th Floor, The Capital,
Bandra - Kurla Complex, Bandra-East,
Mumbai - 400 051. ... Defendant

Plaint filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure praying to pass a judgment and decree:

a) directing the defendant to pay a sum of Rs.38,81,519/- which is together with interest at the rate of 18% per annum on the outstanding payment of Rs.16,62,201/-(Rupees Sixteen lakhs sixty two thousand two hundred and one only) from this date till the date of payment.

b) directing the defendant to pay cost of the suit.

For Plaintiff : Mr.A.K.Mylsamy & Associates

For Defendant : No appearance

J U D G M E N T

The suit has been filed by the Plaintiff against the Defendant seeking recovery of a sum of Rs.38,81,519/- together with interest at the rate of 18% per annum on the outstanding payment of Rs.16,62,201/- (Rupees Sixteen lakhs sixty two thousand two hundred and one only) from this date till the date of payment.

2. According to the plaintiff, they are engaged in the business of rendering structural Engineering services including Pre-Engineering Building (PEB) services to various industries. It is stated that during May 2011, the defendant Company approached the plaintiff with regard to the requirement of Steel superstructure Roof sheeting, Turbovents, Polycarbonate translucent sheet etc., for the Pre-Engineered Building (PEB)for its proposed plant at Mmbattur, Chennai by stating that it is engaged in the business of manufacture of gases for Industrial use. After series of discussions and correspondences, the Defendant finalized the details of their requirements vide their email dated 29.09.2011 and requested the plaintiff to submit their final quotation. Further, it is stated that the plaintiff had sent its proposal vide its letter dated 29.09.2011 to the defendant's office at Chennai fixing a sum of Rs.1,16,82,000/- for the said work. As per the Purchase Order, the defendant is required to release

the amounts due to the plaintiff inter-alia in the following manner:-

S.No.	*Description of Service*	*Percentage of amount to be released*
1.	Mobilization advance against our plaintiff's Corporate Guarantee	30% of the contract value + service tax & cess
2.	Progressive earmarking of requisite steel and coils at Plaintiff's works duly verified and certified by defendant's Architects	30% of the contract value + service tax & cess
3.	Progressive delivery of fabricated steelwork and cloaking materials at site	30% of the contract value + service tax & cess
4.	Progressive completion of installation	5% of the contract value + service tax & cess + VAT
5.	Virtual completion against plaintiff's performance Guarantee for the defects liability period of 12 months.	Balance 5% amount

3. The plaintiff further submits that, the defendant's representative one Mr.Murali Mohan from Chennai, after going through the proposals of the plaintiff had sent an email dated 30.09.2011 confirming the design and detailed engineering sent by the plaintiff. Accordingly, the defendant after having accepted the above proposals of the plaintiff, its representative from Chennai had placed a Purchase Order No.GGIPL/2011-12/004 dated 03.10.2011 for a basic value of Rs.1,16,82,000/- for manufacture and erection of Steel superstructure, Single Skin Roof, Turbovents, Polycarbonate translucent sheets etc., to the used in the PEB at its plant at

Ambattur, Chennai. The plaintiff acknowledged the Purchase Order vide its letter dated 03.10.2011 and proceeded with the PEP work at the defendant's site at Ambattur. The plaintiff sent its drawing and plans in respect of the PEB work of the defendant to the Architects which were duly acknowledged by the defendant's Architects at Chennai vide its emails dated 28.10.2011, 31.10.2011 and 05.11.2011. After the commencement of the PEB work by the plaintiff and till its completion in the year 2014, the plaintiff had raised the following invoices on the defendant:

S.No.	***Invoice Date***	***Invoice Amount (in Rs.)***	***Amount received after TDS (in Rs.)***	***Remaining Amount due (in Rs.)***
1.	04.10.2011	38,65,574.00	38,65,574.00	---
2.	20.10.2011	38,65,574.00	31,00,000.00	7,65,574.00
3.	12.01.2012	38,65,575.00	45,53,841.00	(6,88,266.00)
4.	25.10.2012	11,82,172.00	6,41,667.00	5,40,505.00
5.	04.12.2013	9,01,220.12	---	9,01,220.12
6.	28.03.2014	6,56,293.92	5,13,126.00	1,43,167.92
Total		**1,43,36,409.04**	**1,26,74,208.00**	**Rs.16,62,201.04**

4. All the works in relation to the aforesaid invoices were duly certified by the Architect M/s.C.R.Narayana Rao, Chennai vide certification letter dated 11.11.2011, 20.01.2012, 31.10.2013, 27.02.2014 and 31.03.2014. The plaintiff further states that after receipt of the invoices the defendant deliberately did not make the full payment to the invoices raised by the plaintiff. The plaintiff in good faith completed the entire PEB

work at the defendant's factory at Ambattur.

5. The plaintiff has been continuously pressing the defendant for the outstanding sum of Rs.16,62,201/- along with interest of 18% per annum calculated from the date of invoices till the date of actual repayment. The defendant by its email dated 09.05.2014 had categorically acknowledged the above amounts payable to plaintiff and promised to settle all the dues payable to the plaintiff by 30.06.2014. The plaintiff has once again sent a letter dated 20.07.2015 to the defendant as a final reminder demanding the repayment of Rs.16,62,201/- together with interest. However, payment has not been forthcoming from the defendant till date of filing this suit.

6. The plaintiff has filed a suit in the year 2015. The plaintiff also issued a legal notice dated 30.09.2015. The General Manager of the defendant had sent an email dated 14.10.2015, promising the Plaintiff to settle the outstanding dues in the following manner:-

S.No.	*Month*	*Amount (in Rs.)*
a.	December 2015	Rs.1,66,220/-
b.	January 2016	Rs.4,98,660/-
c.	February 2016	Rs.9,97,321/-
Total		**Rs.16,62,201/-**

7. However, the defendant did not take any steps to honour its

commitment. The defendant also acknowledged the outstanding payment payable to the plaintiff vide its email dated 02.06.2016. Therefore, the plaintiff filed the suit for recovery of money for a sum of Rs.38,81,519/- together with interest at the rate of 18% p.a. on the outstanding payment of Rs.16,62,201/- from the date till the date of payment.

8. After the filing of the suit, suit summons were duly served on the defendant to their address on 18.01.2017. The defendant failed to appear before this Court on several occasions. Hence, the matter was posted before the learned Additional Master - I for recording evidence. One Mr.C.Ravindran, Director of the plaintiff Company has been examined as PW1. He has filed proof affidavit and Exs.P1 to P14 have been marked on the side of the plaintiff.

9. Despite service of summons on the Defendant and their name printed in the cause list, there is no representation on behalf of the Defendant either by counsel or by itself. Hence, the sole defendant is set exparte.

10. In view of the above, the court is of the view that the suit claim

has been proved. Accordingly, the plaintiff is entitled to decree as prayed for. In the result, the suit is decreed as prayed for and the suit is decreed as prayed for with costs.

04.06.2019

av/arr

Index : Yes/ No
Internet : Yes/ No
Speaking Order/ Non-speaking Order

To

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KRISHNAN RAMASAMY, J.

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