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

***Date of decision: 15th May, 2019***

\+ **CS(COMM) 1002/2018 and I.A. 8875/2018**

KRA INFRASTRUCTURE DEVELOPERS PVT. LTD...... Plaintiff

Through Mr. Harish Malhotra Sr. Advocate with Mr. R. K. Modi and Mr. Anoop Kumar, Advocates (M. No.9810006989)

versus

PRATIBHA- CRFG JV & ANR. ..... Defendants

Through Mr. Tarun Johri and Mr. Ankur Gupta, Advocates for D-2 (M. No.9810724907)

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**

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

1. The present suit for recovery of Rs.2,14,38,343/- has been filed by the Plaintiff – M/s KRA Infrastructure Developers Private Limited (*hereinafter, 'Plaintiff'*) against Defendant No.1 – Pratibha-CRFG JV (*hereinafter, 'Defendant No.1-JV'*) and Delhi Metro Rail Corporation (*hereinafter, 'DMRC'*). The case of the Plaintiff is that the Defendant No.1-JV is a joint venture of M/s Pratibha Industries Limited and China Rail First Group, which is a Chinese company. M/s Pratibha Industries Limited is the lead partner in the Defendant No.1-JV. The Defendant No.1-JV was awarded works by DMRC, of design and construction of tunnel by shield TBM and Janpath and Mandi House Stations by cut and cover method between Central Secretariat and Mandi House for underground works under the DMRC's MRTS project (*hereinafter, 'the Project'*).

2. The Plaintiff was sub-contracted a part of the said project by the Defendant No.1-JV in respect of identification and diversion of civil utilities (e.g. sewerage and water pipelines etc) and other road works for Mandi House Station as well as Janpath Metro Station for the DMRC project CC-01. It is the case of the Plaintiff that the work which was sub-contracted to the Plaintiff had been duly executed by the Plaintiff between September, 2011 to June, 2014 and all the relevant bills, including the final bill have already been submitted by the Plaintiff to the Defendant No.1-JV. The Defendant No.1-JV, however, was not making payments to various contractors who had been sub-contracted to carry out various works at the behest of the Defendant No.1-JV, including costs for labour etc. Since, the payments were not being made by the JV, the said sub-contractors lodged complaints with DMRC about the outstanding dues. The Defendant No.1-JV, thereafter, submitted letters from time to time to the DMRC giving the list of outstanding principal amounts of the various contractors. In one such letter, dated 1st September, 2016, the Plaintiff's name was included and the DMRC was asked to release payments in favour of the Plaintiff.

3. It is submitted that despite a large sum of money being due to the Plaintiff, due to disputes between the DMRC and Defendant No.1-JV, the amounts which are legitimately due to the Plaintiff are not being paid. According to the Plaintiff, the admitted liability of the Defendant No.1-JV towards the Plaintiff was Rs.1,81,19,055/-, which includes a sum of Rs.1,09,22,203 which is balance outstanding amount, along with Rs.71,96,852/- which is the security deposit. The Defendant No.1 - JV having not made the payments, the Plaintiff was constrained to file the present suit against the Defendants seeking recovery and the following

reliefs:-

> *"a) Pass a decree for Rs. 2,14,38,343/-(two crores fourteen lakhs thirty eight thousand three hundred forty three) in favour of the plaintiff and against the defendants.*
> *b) Pass a decree of permanent injunction thereby restraining defendant No.2 from in any manner releasing any payment to defendant No.l without first clearing the liability of the plaintiff as claimed in the present suit. Defendant No.2 be also restrained from releasing any bank guarantee furnished by defendant No.l in respect of the work relating to contract CC18 and CC23 issued by defendant No.l in favour of defendant No.l.*
> *c) Pendante elite and future interest @ 18% p.a. till realization of the amount in full.*
> *d) Cost of the suit be allowed to the plaintiff.*
> *e) Any other relief which this Hon'ble Court deems fit may also be granted to the plaintiff."*

4. Vide order dated 11th July, 2018, Defendant No.2/DMRC was directed not to release the bank guarantees of Defendant No.1-JV to the tune of Rs.2,14,38,343/-. Thereafter, DMRC appeared before Court and sought time to obtain instructions as to whether the said bank guarantees are still alive and valid with DMRC. On 19th September, 2018, none appeared for Defendant No.1-JV despite service. It is submitted that Defendant No.1-JV had knowledge of the present proceedings and, according to the counsel for DMRC, the Defendant No.1 was clearly informed of the pendency of the present proceedings in a collateral proceeding pending between the DMRC and Pratibha Industries/JV company. Despite the above, the JV did not appear and neither did it file its written statement in the present suit.

5. DMRC, thereafter, filed its written statement wherein it admitted a

sum of Rs.65,90,769/- is due in respect of this project to the Defendant No.1/JV.

6. It was also submitted by learned counsel appearing for the Plaintiff that DMRC owned huge sums of money to Defendant No.1 in respect of other projects awarded to it i.e., CC-18 and CC-23. Accordingly, the following order was passed on 28th November, 2018:-

> *"Written statement of Delhi Metro Rail Corporation (hereinafter, 'DMRC') has been filed in which it is claimed that the DMRC has to pay an amount of Rs.65,90,769/- to Defendant No.1. The final bill is yet to be finalized between the parties. However, Mr. Harish Malhotra, learned Senior Advocate for Plaintiff submits that DMRC owes a huge sum of money to Defendant No.1 under two other orders, viz., CC-18 and CC-23. This is controverted by learned counsel for DMRC. It is submitted by learned counsel for the DMRC that in fact, DMRC has to recover the payment from Defendant No.1.*
>
> *It is directed that the DMRC shall intimate Defendant No.1, who is not appearing before this Court, about the pendency of the present suit. In any event until the next date, the <u>DMRC shall withhold the payment of at least Rs.65 lakhs to Defendant No.1 so that the interest of the Plaintiff who was a subcontractor of Defendant no.1 is safeguarded</u>.*
>
> *List on 25th January, 2019."*

7. On 25th January, 2019, Defendant No.1 was proceeded ex-parte and DMRC was also directed to file a complete statement of account in respect of payments to be released to Defendant No.1. Admission/denial insofar as the Plaintiff and Defendant No.2 are concerned was concluded on 13th March, 2019.

8. On 2nd May, 2019, the Court was informed by learned counsel for

DMRC that the lead partner in the JV - M/s Pratibha Industries Ltd. is under insolvency proceedings and the NCLT has already taken cognizance of the same. The matter was thereafter taken up for arguments today.

9. A perusal of the statement of accounts filed by DMRC, insofar as contract CC18 is concerned, shows that it is the stand of DMRC that it has to recover a sum of Rs.77,72,26,691.45/- from another joint venture – M/s FEMC – Pratibha JV. Insofar as CC23 is concerned, the DMRC is to recover a sum of Rs.9,89,18,875.17/- from the same entity. It is, however, not disputed that DMRC is in possession of bank guarantees to the tune of Rs.76.97 crores for contract CC-23. Insofar as CC-18 is concerned, DMRC is a holding performance bank guarantee for a sum of Rs.54.48 crores.

10. A perusal of the affidavit and statement of account filed by the Defendant, however, shows that the joint venture which was involved in the said contracts, CC-18 and CC-23 is different from the joint venture in the present case, i.e., Defendant No.1-JV. In CC-18 and CC-23 the joint venture is M/s FEMC – Pratibha JV. Thus, the Plaintiff's submission that the adjustment ought to be made between the two JVs would not be tenable.

11. Insofar as the present JV is concerned, the lead partner Pratibha Industries Limited is under liquidation. The Defendant No.1 - JV has already been proceeded ex-parte. DMRC has admitted that qua the present contract Rs.65,90,769/- is due to be paid. Paragraph C of the written statement reads as under:

> *"C. That the answering Defendant hereby submits that an amount of Rs.65,90,796/- is due and payable by the DMRC to the JV."*

12. In view of the admission by DMRC that the amount of Rs.

65,90,769/- in paragraph C of its written statement, is due and payable by the DMRC to Defendant No.1 - JV qua this contract and the JV having already requested DMRC to make the payment directly to the Plaintiff vide its letter dated 1st September, 2016, the said payment may be released by DMRC to the Plaintiff. This shall be without prejudice to the DMRC's claim against the JV or M/s Pratibha Industries Ltd., in respect of any cross contract, including the present contract. DMRC shall make the said payment to the Plaintiff, directly, within a period of eight weeks.

13. The Defendant No.1-JV itself is not a party to the insolvency proceedings. The moratorium order passed, relied on by the Plaintiff is against M/s Pratibha Industries Ltd. and not against Defendant No.1 - JV and hence, section 14 of the Insolvency Bankruptcy Code, 2016 would not be applicable to the present case. In respect of the said amount, DMRC would not be liable in any manner. After deducting this amount from the amount admitted by Defendant No.1 to be due to the Plaintiff i.e. Rs.1,81,19,055/-, the outstanding claim of the Plaintiff against the Defendant No.1 – JV, would be a sum of Rs.1,15,28,286/- (Rs.1,81,19,055 – Rs. 65,90,769). In respect of the said amount and any interest which may be due to the Plaintiff, since Defendant No.1 – JV has not appeared before the Court or filed any written statement or set up any defence, a decree is liable to be passed in favour of the Plaintiff and against the Defendant No.1/JV which has chosen not to appear before the Court. The amounts paid to the Plaintiff by DMRC i.e. Rs.65,90,769/- shall be suitably adjustable against any cross-default clauses which the DMRC may have either against Pratibha Industries Ltd. or Defendant No1 - JV.

14. The suit is decreed in the following terms:

i) A decree is passed in favour of the Plaintiff against DMRC, for a sum of Rs.65,90,769/-.

ii) A decree for a sum of Rs.1,15,28,286/- is passed in favour of the Plaintiff against Defendant No.1, along with simple interest @ 10% per annum, from date of filing of suit till date of payment.

15. All pending I.As. also stand disposed of.

**PRATHIBA M. SINGH**
**JUDGE**

**MAY 15, 2019**
**B**
**(*corrected and released on 21st May, 2019*)**