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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 53/2019 & IA No.446/2020 (u/O VII R-14 r/w O-XVI R-1&1A CPC)**

ALLIANCE INDIA MINING PVT. LTD. Plaintiff

Through: Mr. Akash Tomar, Adv.

Versus

UMBRA MINING PVT. LTD. Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **06.03.2020**

1. The plaintiff instituted this suit for recovery of principal amount of Rs.1,88,78,767/- together with pre-suit interest at 24% per annum of Rs.1,33,19,621/- i.e. for a total sum of Rs.3,21,98,388/-.
2. It was the case of the plaintiff that the plaintiff, at the request of the defendant and as per orders placed by the defendant, had carried out mining work of removing the over burden, drilling, blasting, mucking, stacking, transporting the stones for feeding the crusher of the defendant company and was from time to time raising bills on the defendant and a sum of Rs.1,88,78,767/- was outstanding from the defendant to the plaintiff.
3. The suit came up first before the Joint Registrar on 29th January, 2019 when summons thereof were ordered to be issued. Mr. Pulkit Tare, Advocate for the defendant appeared before the Joint Registrar on 5th April, 2019 and the suit was adjourned to 13th May, 2019 for completion of pleadings. On 13th May, 2019 Ms. S. Rama, Advocate for the defendant

appeared before the Joint Registrar and yet another opportunity for completion of pleadings was granted and the suit adjourned to 1st August, 2019. On 1st August, 2019 none appeared for the defendant and no written statement also had been filed and the matter was ordered to be placed before the Court. Vide order dated 27th September, 2019, the defendant was proceeded against *ex parte* and the plaintiff relegated to leading *ex parte* evidence. The counsel for the plaintiff, on 27th September, 2019 also stated and as recorded in the order of that date, that the defendant, after the institution of the suit, had paid a sum of Rs.70,00,000/- to the plaintiff in two tranches.

4. The plaintiff, in its *ex parte* evidence examined two witnesses and closed its *ex parte* evidence and the suit posted before this Court.

5. The plaintiff has filed IA No.446/2020 for placing the latest ledger and for leading additional evidence. The counsel for the plaintiff states that the latest ledger is sought to be produced to prove payment after the institution of the suit of Rs.70,00,000/- and to show that now only the principal amount of Rs.1,18,78,767/- is due from the defendant to the plaintiff.

6. The aforesaid plea can be noticed without the ledger and without any additional evidence.

7. IA No.446/2020 is disposed of.

8. The plaintiff, on the basis of pleadings and *ex parte* evidence led, has proved entitlement to the principal amount from the defendant. However the plaintiff is not found entitled to pre-suit interest @24% per annum, especially in the light of the falling interest rates and the pre-suit interest is limited to 9% per annum.

9. An *ex parte* decree is accordingly passed, in favour of the plaintiff and against the defendant, of recovery of Rs.1,18,78,767/- with interest @9% per annum from 30th January, 2016 till the date of institution of the suit and with interest @7% per annum from the date of institution of the suit till after three months herefrom and thereafter interest @9% per annum.

10. The plaintiff shall also be entitled to costs of the suit computed at the court fees paid plus Rs.1,00,000/- towards professional fee and expenses.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MARCH 06, 2020

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