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

COMMERCIAL SUMMARY SUIT NO. 27 OF 2022

Ratan N. Tata and Ors. .. Plaintiffs
v/s.
Prodea System Inc. .. Defendant

...

Mr. Karl Tamboly a/w. Ms. Atika Vaz, Ms. Anumeha Karnatak i/b. Shardul Amarchand Mangaldas & Co. for the Plaintiffs.

None for the Defendant.

...

CORAM : KAMAL KHATA, J.

DATED : 26TH JUNE 2023.

P.C. :

1. This Commercial Suit is instituted for recovery of an amount of USD 3,488,343 equivalent to INR 26,47,30,350.27/- along with interest at the rate of 18% per annum amounting to USD 36,79,676 equivalent to INR 27,92,50,629/- .

2. The Plaintiffs are the Trustees of Sir Dorabji Tata Trust (a registered Public Trust) who entered into an agreement with the Defendants a privately held registered technology and services management company in Delaware, Texas in or around September 2015. Under this agreement a project worth USD Five Million Dollars was envisaged by the Plaintiff for providing set-top boxes ("STBs") procured from the Defendants for distribution in the rural areas of India.

3. Under the Agreement, the Plaintiff raised the first purchase on 1st October 2015, for 1,00,000 STB (ROS 6000) for an amount of USD 5,000,000/- (USD Five Million Only) and invoice bearing no. 1507 dated 7th October 2015 evinced the same. On 30th October 2015, the plaintiff made payment as advance remittance of USD 1,650,000/- (USD One Million Six Hundred Fifty Thousand Only) to the Defendant evinced by an advance remittance debit advice dated 8th December 2015 that was issued by the bank confirming payment of USD 1,650,000 equivalent to INR 10,82,15,710.

4. The plaintiffs raised the second purchase order dated 28th November 2015 on the Defendant, for 3050 STBs (ROS m 3000) for an amount of USD 381,250/- (United States Dollar Three Hundred and Eighty-One Thousand Two Hundred and Fifty Only) evinced by invoice no 1508 dated 1st December 2015 raised by the Defendant. On 2nd February 2016 the Plaintiff made the stipulated payment to the Defendant as an advance debit remittance evinced by an advance debit remittance advice issued by the bank confirming payment of USD 381,250 equivalent to INR 26,155,945.99.

5. The purchase order dated 1st October 2015 for 100,000 STBs was cancelled and was replaced with 3 (three) purchase orders each dated 15th January 2016 for 33,000, 53,000 and 14,000 STBs

respectively. However, the purchase order dated 15th January 2016 for 14,000 STBs was never actioned. In due compliance with the terms of the purchase order, the sum of USD 2,120,000 (United States Dollar Two Million One Hundred and Twenty Thousand Only) was remitted to the Defendant on 3rd February 2016 evinced by an advance debit remittance advice issued by the bank confirming payment indicating payment of USD 2,120,000/- equivalent to INR 145,864,717.50.

6. Accordingly, in February 2016, the Defendant was obligated to supply to the Plaintiff 89,050 STBs. The Defendant however, defaulted on its obligation to deliver the STBs to the Plaintiff. By April, 2018 the Defendant had only supplied 13,431 STBs as opposed to 89,050 STBs that the Defendant was contractually obligated to supply as averred in the plaint at paragraph 5.10.

7. It is stated that the Defendant was unable to meet the timelines assured by the Defendant for delivery of the STBs. From 2016, the representative of the plaintiff repeatedly addressed several reminders to the Defendant requesting delivery of the balance STBs. The Defendant has neither denied any receipt of the amounts from the plaintiff nor its liability to deliver the STBs to the Plaintiffs. Emails dated 27th March 2018 and 28th April 2018 addressed by the Plaintiffs was responded to by the email dated

30th April, 2018 which stated that the remaining STBs would be shipped by November 2018 and the details thereof would be furnished when possible.

8. On and around 29th June, 2018 plaintiff once again addressed emails requesting the Defendant to supply the STBs in a timely manner to ensure that the Plaintiffs could continue with the installation seamlessly without a break. In the absence of response, the Plaintiffs on 3rd July 2018 and 5th July 2018 addressed to Defendant emails requesting the defendant to confirm the release of the balance shipment of the STBs. On 6th July, 2018 the Defendant responded vaguely stating that they would provide confirmation but did not commit to any delivery schedule of the balance STBs.

9. By an email communication dated 8th October 2018 addressed by the Plaintiff to the Defendant the telephonic discussion on 4th October 2018 between the representatives was recorded. It is stated that the Defendant would only supply 10,000 STBs and the order for 62,000 STBs would be cancelled and the balance amount would be repaid. The Defendant was requested to provide confirmation of the outstanding amount payable which the Defendant confirmed on 30th September 2018 to an outstanding of

$ 3,488,343/- (Exhibit X) In spite of several communications to the defendant when the defendant failed to supply any STBs, on 7^{th} January 2019 the Defendant sent an email with a scanned copy of the letter dated 6^{th} January 2019 executed by Mr. Hamid Ansari acknowledging the liability to pay the liquidated demand of money in the sum of $ 3,488,343/- to the Plaintiff. (Exhibit Z). It is stated that on 28^{th} February 2019 by its email to the Defendant the Plaintiff requested to complete the transaction in accordance with the letter dated 6^{th} January 2019 by 29^{th} March 2018.

10. It is stated that despite email communications dated 1^{st} March 2019, 11^{th} March 2019, 12^{th} March 2019 15^{th} and 28^{th} March 2019 by Plaintiff to Defendant no confirmation to adhere to the timeline was received ; though by an email dated 12^{th} March 2019 the Defendant claimed to make a slow but steady progress. By its email dated 8th May 2019, the Plaintiff indicated that they would initiate legal action against the defendant on account of their failure to adhere to the timelines. On 10^{th} May 2019 Ms. Ansari informed the representative of the Plaintiff that she was no longer a CEO of the Defendant and she had forwarded the emails to the concerned persons. In view of this, the Plaintiff were constrained to issue a legal notice dated 17^{th} May 2019 and terminated the Agreement between the parties, calling upon them

to repay the outstanding amounts in accordance with the acknowledgement vide letter dated 6th January 2019. Another legal notice dated 31st May 2019 was issued to the Defendant, calling upon them to provide details of the manner in which the payments remitted were utilized and sought details with regard to the discharge of the liability by the Defendant. On 1st June 2019, Ms. Ansari on behalf of the defendants responded to the advocate's notice stating that Mr. Andrew Tauhert would henceforth respond to the queries of the Plaintiff. By email dated 15th June 2019 the Defendant informed that they were in the process of negotiating with another entity who would finance them and thereafter they would consider a payment plan. On the other hand by an email dated 23rd June 2019 to the Defendant, the Plaintiff called upon them to pay the outstanding liability within seven days of receipt of the letter. Correspondence and negotiations ensued between the Plaintiff and the Defendant as more particularly narrated in paragraphs 5.37 to 5.49 of the plaint.

11. Eventually, on 17th December 2019 in an email addressed to the Plaintiff's Advocates, the Defendant just sought further time to make such payment, not disputing its liability to make payment to the Plaintiff.

12. The Plaintiff referred the matter to the Maharashtra State

Legal Services Authority (MSLSA) in compliance with the provisions of Section 12-A of the Commercial Courts Act, 2015. It is stated that the Defendant communicated with the MSLSA agreeing to mediation via video conferencing but it failed to pay the mediation fees that were asked to be deposited although three opportunities were offered to make the payment being 15th March 2021, 20th March 2021 and 22nd March 2021. In view of the Defendant's failure to respond and failure to pay, the MSLSA issued a non-starter report dated 22nd March 2021 recording the said reason. I accept this contention and declare that the suit is filed within the limitation period.

13. The Learned Counsel for the Plaintiff, submitted that the leave under Clause XII of the Letters Patent was granted on 8th March 2022. It was submitted that the period between 15th March 2020 to 2nd October 2021 ought to be excluded for calculating the limitation period in view of the Orders of the Supreme Court on account of Covid Pandemic.

14. The Plaintiff has filed the Affidavit in support of Claim, Affidavit of evidence in lieu of examination in chief, compilation of documents and Affidavit of service on Defendant No. 1 all dated 3rd May 2023 with postal remarks "return to sender unable to

forward".

15. None appeared for the Defendants on the various dates that the matter was listed on board.

16. In view of the provisions contained in Order XXXVII Rule 2(3) of the Code of Civil Procedure, 1908, in the event of default on the part of the defendants to enter appearance, the averments in the plaint are required to be deemed to be admitted and the Plaintiff becomes entitled to a decree.

17. I have heard Mr. Tamboly with whose assistance I have examined the original documents tendered by the Plaintiff in support of his claim. It is apparent from the averments and the documents more particularly the letter dated 6th January 2019 (Exhibit Z) that the Defendants who admitted receipt of $4,151,250/- as well as their liability to repay the sum of $3,488,343/- have failed to pay on the ground that they were to negotiate a lower interest rate on account of their financial constraints. Plaintiffs are thus entitled to a decree.

18. Hence, the following order:

a. The suit stands decreed against the Defendants.

b. Defendants do pay the sum of $ 3,488,343 (USD

Three Million Four Hundred and Eighty Eight Three Hundred and Forty Three Only) equivalent to ₹ 26,47,30,350.27/- (Twenty Six Crores Forty Seven Lakhs Thirty Thousand Three Hundred Fifty and Paise Twenty Seven Only) along with further interest @ 18 % per annum amounting to $ 3,679,676/- equivalent to (INR 27,92,50,629 only) from 3rd February 2016 till 14th December 2021 being the sum of ₹ 56,72,609/- (Exhibit A)

c. Defendants do pay interest @ 18% per annum on the principal sum of $ 3,488,343 at the conversion rate of ₹ 82.67 (on the date of the decree) from the date of the decree till payment or realization.

d. Defendants to pay costs of the suit estimated at ₹25,00,000/-

e. Refund of Court fees in accordance with High Court Rules and the shortfall shall form the additional component of the costs.

f. Decree to be drawn up expeditiously.

g. The Plaintiffs are at liberty to move in execution without awaiting the sealing of the decree.

(KAMAL KHATA, J.)