IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2023

PRONOUNCED ON : 20.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.S.(Comm.Div).No.143 of 2022

M/s.Doosan Bobcat India Pvt. Ltd.,
6th Floor, HTC Towers,
No.41, GST Road,
Guindy, Chennai – 600032, Tamil Nadu ... Plaintiff

vs

1.M/s.Surya Automative,
Partnership Firm
Plot No.5, Adarsh Market,
Nr.Kapodara Char Rasta
National Highway No.8
Ankleshwar – 393002, Bharuch
Gujarat, India.

2.Mr.Suresh Ramanlal Shah,
Partner
A/1-A, Sidhachakra Complex,
Near Sargam Shopping Centre,
Parle point Surat – 395007.

3.Mr.Manish Shah,
Partner
A/1A, Sidhachakra Apt. CPLX
Parle point, Ichhanath, Near Sargam Shopping Center,
Opp Modi Bangalow,
Surat – 395007, Gujarat. ... Defendants

Prayer: Civil Suit is filed under Order IV Rule 1 of Madras High Court Original Side Rules, read with Order VII Rule 1 of CPC read with Section 2(1)(c)(xviii) read with Section 7 of the Commercial Courts Act, 2015, praying to,

(a) Direct the Defendants to jointly and severally pay a sum of Rs.1,40,91,663/- (Rupees One Crore Forty Lakhs Ninety-One Thousand Six Hundred and Sixty-Three Only), towards the outstanding principal amount outstanding along with interest calculated at 24% per annum on the principal amount of Rs.1,14,01,219/- (Rupees One Crore Fourteen Lakhs One Thousand Two Hundred and Nineteen Only) from the Defendants to the Plaintiff from the date of the suit till the date of the payment;

(b) Direct the Defendants to pay the Costs of this suit.

For Plaintiff : M/s.A.K.Mylsamy & Associates

JUDGEMENT

The suit was filed by the plaintiff seeking recovery of money towards the cost of the machineries and machine parts supplied to the 1st defendant and other incidental amount payable by the 1st defendant to the plaintiff.

2. According to the plaintiff, it is engaged in the business of engineering, manufacturing and marketing of construction equipment. In its usual course of business, the plaintiff appointed 1st defendant as plaintiff's Dealer for the Gujarat region and had entered into a Letter of Intent dated 19.04.2019 with the 1st defendant. The defendants 2 and 3 are partners of the 1st defendant firm. In pursuance of the purchase orders placed by the 1st defendant for purchase of various machines and parts, the plaintiff had supplied the products from its office in Guindy, Chennai to the 1st defendant and delivered it in its warehouse located at Ankleshwar, Gujarat. As per the mutual understanding and terms of payment as stated in the invoices, the payments have to be made by the 1st defendant to the plaintiff within 60 days from the date of receipt of invoice incase of machineries and within 45 days from the date of receipt of invoice incase of machine parts. In the event of any

delay in making payments under the said invoices, the plaintiff is entitled to 24% interest on delayed payment. The plaintiff supplied various products to the 1st defendant from October-2019 to March-2021 and raised various invoices. The 1st defendant paid a sum of Rs.2,41,21,006.28/- towards portion of the amount raised under the invoices. The plaintiff made several oral and written request through emails and calls to the defendants requesting them to make full payment in time. Inspite of several emails to the defendants, a sum of Rs.1.76 Crores remained unpaid towards the costs in the invoice.

3. The plaintiff requested the 1st defendant to return two machines supplied to it under invoice dated 28.12.2019 due to statutory changes regarding Engine Norms from BS3 to BS4. Unfortunately, the premises of the defendants were sealed by its Lessor on account of default committed by the defendants in payment of rent. Ultimately, the plaintiff was forced to pay a sum of Rs.2,00,000/- to the Lessor of the defendants for making him to agree for release of the machines. Further, the 1st defendant also failed to remit GST amount collected from its customers on purchase of orders and as a result of their default in remitting GST amount, the plaintiff was compelled to pay an

additional GST to the tune of Rs.6,52,494/-.

4. The plaintiff after invoking the bank guarantee furnished by the 1st defendant was constrained to file a suit for recovery of the balance amount against the defendants. The split-up details of the amount payable to the plaintiff by the 1st defendant under various heads are mentioned as follows:-

S.No.	Particulars	Amount (in INR)
01.	Machines & Parts Billed	1,02,84,280
02.	Payment to landlord to take back the machines	2,09,950
03.	GST	6,52,494
04.	Expenses for re – Registration of the Machines	2,50,000
	Total Principal	1,13,96,724
05.	Interest at the rate of 24% calculated on the unpaid invoices from the due dates to the date of 16.11.2021 (As per the invoices)	26,94,939
06.	Interest at 24% per annum on the amounts mentioned in (1) to (5) above calculated from the date of this Plaint upto the actual date of payment made by the Defendants to the Plaintiff.	
	Total:	1,40,91,663
	In words: Rupees One Crore Forty Lakhs Ninety-One Thousand Six Hundred and Sixty Three Only.	

5. The defendants 2 and 3 in their capacity as partners of the 1st defendant's firm are jointly and severally liable to pay the suit amount. On these pleadings, the suit was laid by the plaintiff for recovery of money.

6. Though service was effected on the defendants by paper publication, they failed appear before this Court and hence, they were set *exparte* on 30.03.2023. Thereafter, the *exparte* evidence was recorded and one Infant Benitto-Authorised representative of the plaintiff was examined as PW.1 and 16 documents were marked on behalf of the plaintiff as Exs.P1 to P16.

7. Ex.P1 is the extract of the board resolution authorising PW.1 to represent and give evidence on behalf of the plaintiff. Ex.P2 is the letter of intent entered between the plaintiff and 1st defendant. Ex.P4 is a purchase orders placed by the 1st defendant for purchase of various machines and parts. Ex.P5 is the office copy of invoices(40 Nos) raised by the plaintiff for supply of various machines and parts to 1st defendant from October-2019 to March-2021. Ex.P6 is office copy of two invoices raised by plaintiff dated 28.12.2019. P7 is a letter by plaintiff to defendants dated 21.06.2021. P8 is office copy of two invoices evidencing proof of payment of GST by plaintiff. P9 is office copy of legal notice issued by plaintiff. P10 is print out of Statement of Account of plaintiff for proof of payments received from 1st defendant. Ex.P11 is copies of e-mails by plaintiff to defendant sent from

07.09.2020 – 17.05.2021. P12 is e-mail by plaintiff to defendant mentioning outstanding payment dated 18.05.2021. P13 and 14 are e-mail by plaintiff to defendant dated 24.05.2021 and 03.06.2021 respectively. P15 is webcopy of order in A.No.298 of 2022.

8. A perusal of Ex.P5 invoices raised by the plaintiff and Exs.P7 and P8 various emails sent by the plaintiff to the defendants would *prima facie* prove supply of machines and its parts to the 1st defendant by the plaintiff. Those supplies were made at the request of the 1st defendant under purchase order namely Ex.P4.

9. A perusal of Ex.P5 series invoices raised by plaintiff for supply of machine and machine parts in 40 Nos would suggest the total value of machines supplied was only Rs.2,00,25,570.40 (Rupees two crores, twenty thousand five hundred seventy and 40 paise only). The said amount includes GST as per invoice. The split of the same is mentioned in the table below with invoice number and total amount (including GST):-

S.No.	Invoice Number	Amount
1	191GIN000130	Rs.21,24,000

S.No.	Invoice Number	Amount
2	20INGIN0264	Rs.20,07,504.50
3	19INGIN00087	Rs.21,83,000
4	19INGIN000132	Rs.20,65,000
5	20INGIN0268	Rs.20,07,504.50
6	20INGIN0269	Rs.20,07,504.50
7	2019TNIN001011	Rs.20,35,500
8	20IBHIN0334	Rs.6,746
9	20IBHIN0344	Rs.1,883
10	20IBHIN0487	Rs.684
11	20IBHIN0488	Rs.1858.50
12	20IBHIN0502	Rs.3115.20
13	20IBHIN0518	Rs.108.56
14	20IBHIN0558	Rs.6,546.83
15	20IBHIN0638	Rs.1,501.36
16	20IBHIN0751	Rs.17,982.52
17	20IBHIN0939	Rs.10,966.87
18	20IBHIN01004	Rs.2,796.33
19	20IBSIN0313	Rs.27,49,055.48
20	20IBSIN0456	Rs.5,12,126.32
21	20IBSIN0509	Rs.2,960.62
22	20IBSIN0590	Rs.1,72,202.98
23	20IBSIN01845	Rs.4,31,168.38
24	20IBSIN01846	Rs.11,03,292.57
25	20IBSIN01891	Rs.50,567.18
26	20IBSIN01947	Rs.22,602.14
27	20IBSIN02002	Rs.26,265.25

S.No.	Invoice Number	Amount
28	20IBSIN02004	Rs.1,06,062.36
29	20IBSIN02046	Rs.1,009.66
30	20IBSIN02069	Rs.52,058.14
31	20IBSIN02123	Rs.14,587.49
32	20IBSIN02124	Rs.448.74
33	20IBSIN02157	Rs.1,038.00
34	20IBSIN02235	Rs.1,45,319.81
35	20IBSIN02286	Rs.24,608,13
36	20IBSINO2370	Rs.6,826.71
37	20IBSIN02376	Rs.18,223.42
38	20IBSIN02399	Rs.9,721.05
39	20IBSIN02408	Rs.66,758.10
40	20IBSIN02470	Rs.24,465.79
		Rs.2,00,25,570.40

Therefore, as per documentary evidence available on record plaintiff supplied machines and parts to defendants for the value of Rs.2,00,25,570.40/-. In para 12 of proof affidavit PW1 clearly admitted plaintiff received payment against the said invoices to the tune of Rs.2,41,21,006.28/-. In that case, it is not clear how plaintiff claim a sum of Rs.1,02,84,280/- was due from defendant as per his legal notice marked as Ex.P9.

10. It is settled law that admission is best evidence. In proof affidavit

PW1 admitted plaintiff received Rs.2,41,21,006.28/- more than the value of machineries supplied by it. Even in plaint averment in Paragraph 9, it is admitted by plaintiff that against the invoices raised, it received a payment of Rs.2,41,21,006.28/-. Therefore, as per admission of plaintiff it received more amount than the value of machines supplied by it as per Ex.P5 invoice series. In that case plaintiff is not entitled to maintain the suit for recovery of alleged outstanding amount.

11. Even in legal notice Ex.P9 plaintiff claimed as per invoices it supplied machines and it's parts to the defendants for the value of Rs.1,02,84,280/-. If a sum of Rs.2,41,21,006/- paid by defendant is taken into consideration, plaintiff is not entitled to any amount from defendant.

12. As per plaintiff case it raised 40 invoices for supply of machines and it's parts to the defendants from October 2019 to March 2021. Even in Ex.P7 letter dated 21.06.2021 by plaintiff to defendants it was mentioned as a sum of Rs.1,08,74,280/- was due from defendants to plaintiff. As mentioned earlier, if sum of Rs.2,41,21,006.28/- received by plaintiff is given credit to no amount will be due to the plaintiff from defendants. Hence, suit claim under

the head supply of machines and parts not proved. Even if GST amount claimed by plaintiff under Ex.P14 is added to value of machineries under Ex.P5 series, still in view of admission by plaintiff it received Rs.2,41,21,006.28/- from defendants no amount is due to be paid to the plaintiff.

13. A combined reading of Exs.P9, P10, P11, P12 and P13 would make it clear that there were communication between the plaintiff and 1st defendant regarding return of machines. However, there is no acceptable evidence available on record to show that the plaintiff paid a sum of Rs.2,00,000/- to the lessor of the 1st defendant to facilitate the return of the machines. Though in the proof affidavit filed by the plaintiff, it is stated Ex.P13 is the copy of the cheque under which payment was made to the landlord of the 1st defendant, the same was not marked. In fact, Ex.P13 which is marked is only a email print out addressed to the 1st defendant. In such circumstances, the plaintiff failed to prove his claim regarding payment of Rs.2,00,000/- to the landlord and expenses towards re-registration of the machines. In these circumstances, the suit claim under the head payment

made to landlord to take back the machines and expenses for re-registration of the machines are not proved.

14. In view of discussions made earlier, in the light of Ex.P5 and admission of plaintiff regarding receipt of payment against invoices raised by it, suit claim is not proved.

15. **<u>In Nutshell</u>**:-

(i) The suit is dismissed.

(ii) In the facts and circumstances of the case, there will be no order as to costs.

20.06.2023

Index : Yes / No
NCC : Yes / No
dm

List of witnesses examined on the side of the plaintiff:-

P.W.1. - Mr.A.Infant Benitto – Authorised Representative of the Plaintiff

List of documents marked on the side of the plaintiff:-

Sl. No.	EXHIBTS	DATE	DESCRIPTION
1.	P1	22.08.2022	Authorization letter of Mr.Infant Benitto
2.	P2	19.04.2019	Letter of Intent issued by the Plaintiff to the D1
3.	P3	03.07.2019	Bank Guarantee No. 6246BGFD002120 obtained by the D1 in favour of the Plaintiff
4.	P4		Purchase Orders placed by the D1
5.	P5	10.10.2019 to 11.03.2021	Invoices raised by the Plaintiff on the D1
6.	P6		Proof of Payments received from the D1
7.	P7	07.09.2020, 07.10.2020, 06.11.2020, 09.12.2020, 08.01.2021, 05.02.2021, 08.03.2021, 06.04.2021, 12.04.2021,	Emails sent by the Plaintiff to the Defendants

Sl. No.	EXHIBTS	DATE	DESCRIPTION
		04.05.2021, 05.05.2021 and 17.05.2021	
8.	P8	18.05.2021	Email sent by the Plaintiff to the Defendants regarding outstanding payments
9.	P9	28.12.2019	Invoices No. 19INGIN000129 & 191NGIN000131 issued by the Plaintiff for Return Sales of 2 machines
10.	P10	24.05.2021	Email sent by the Plaintiff to the Defendants
11.	P11	03.06.2021	Email sent by the Plaintiff to the Defendants
12.	P12	21.06.2021	Letter sent by the Plaintiff to the Defendants
13.	P13	28.07.2021	Cheque bearing No.000023 given by the Plaintiff to the Landlord of the D1's leased premises to release the machines
14.	P14	-	Invoices evidencing proof of payment of GST by the Plaintiff on behalf of the D1
15.	P15	12.10.2021	Legal Notice issued by the Plaintiff
16.	P16	18.04.2022	Order in A.No. 298 of 2022 granting leave to sue before this Hon'ble Court

List of witness examined on the side of the Defendants:-

-NIL-

List of documents marked on the side of the Defendants:-

-NIL-

S.SOUNTHAR, J.

dm

Pre-delivery judgment
made in C.S.(Comm.Div).No.143 of 2022

20.06.2023