

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CM-5017-C-2023 in/and
RSA-1257-2023 (O&M)
Date of decision: 10.05.2023

M/s Compag Automation System Pvt. Ltd. and others

...Appellants

Versus

M/s TDE Macno SPA

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Arun Sharma, Advocate for the appellant.

H.S. MADAAN, J.

CM-5017-C-2023

Keeping in view the averments mentioned in the application, the same is allowed. The date of hearing in the main case is preponed to today itself.

Main Case

Briefly stated facts of the case are that plaintiff TDE Macno SPA having registered office at Italy through its authorized representative had brought a suit for recovery of Euro 22,755.30/- equivalent to Rs.16,45,890.85/- along with interest and costs against defendants M/s Compag Automation System Private Ltd., and others.

2. As per case of the plaintiff, such company is engaged in business of supply of production for the motion control and

development of systems for regulation and control of industrial applications whereas defendant No.1 is a company involved in designing, hardware supply, software development and installation etc., whereas defendants No.2 to 4 are its Directors; about 15 years back, the defendants had approached the plaintiff company for procurement of products manufactured by it for their marketing in India and business dealings between the parties began, though, at small level; in the year 2012, the defendants allegedly contracted with a big and important customer namely 'Uflex' and the defendants placed frequent orders with the plaintiff for supply of the material; the plaintiff accordingly did so and allowed the payment period for 60 days but in due course, the defendants started postponing the deliveries and breaching the terms and conditions of making payment of dues.

3. According to the plaintiff, in the month of May, 2012, the defendants had placed an order for supply of material, which was manufactured by the plaintiff but subsequently the defendants cancelled the order to a large extent and took delivery of a very small portion, causing loss to the plaintiff to the tune of Rs.31,39,556/-; the defendants owed a sum of Euro 22,755.30 equivalent to Rs.16,45,890.85/- to the plaintiff but they did not pay the same giving rise to a cause of action to the plaintiff to bring the suit.

4. On being put to notice, the defendants appeared and filed a written statement, contesting the suit raising various legal objections.

On merits, submitting that initially the defendants were contacted by

the plaintiff in the year 1999 to offer goods manufactured by it and first agreement was signed on 03.08.1999; the business dealings between the parties started, however, quality of two items namely DFNT and DVET drives was not found satisfactory. According to the defendants, after several efforts during the period from year 2000 to 2010 many customers were created, however, the requisite support was not provided on the faulty hardware by the plaintiff despite several requests; the plaintiff had brought a new model OPD XP and low costs models Mini OPD and BIT drives; the defendants imported the goods and paid for the same but the products failed totally compelling the defendants to absorb the cost from the margin and own sources of funds; since products started giving problems in the customer's machines and the defendants attended the services on their own costs resulting in incurring lot of expenditure in that regard as well as replacement of hardware, the plaintiff kept on promising the solution but it was not so done however the payment was made continuously. According to the defendants, on account of faulty supplies, the defendants stopped lifting further material after delivery of goods; the defendants have suffered commercial loss to the tune of Rs.35 lacs; the plaintiff had refused to accept the responsibility to give any replacement material or services supplied and rather insisted on sending faulty material back to Europe which was not possible; the defendants wanted the plaintiff to offset at least 35% on recent faulty

supplies, but the plaintiff was not agreeable. According to the defendants, they have suffered further loss of Rs.75 lacs in business. Denying any liability to pay any amount to the plaintiff, defendants prayed for dismissal of the suit.

5. Plaintiff filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

6. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to a decree for recovery of Rs.16,45,890.85/- as prayed for? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the plaintiff has no locus standi to file the present suit? OPD.
4. Whether the plaintiff has no cause of action to file the present suit? OPD.
5. Whether no proper court fee has been affixed on the plaint? OPD.
6. Whether the plaintiff has filed the present suit only to harass and to humiliate the answering defendants? OPD.
7. Whether the suit of the plaintiff is hopelessly time barred? OPD.
8. Whether the plaintiff has not come with clean hands before Hon'ble Court and concealment of true and material facts in the present case? OPD.
9. Relief

7. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

8. After hearing arguments, the trial Court of Civil Judge (Jr. Divn.) Faridabad, vide judgment and decree dated 27.10.2017 by giving issue-wise findings decreed the suit filed by the plaintiff finding it entitled to receive a sum of Rs.16,45,890.85/- along with interest @

6% p.a., from the date of institution of the suit till its realization from the defendants within two months, failing which the plaintiff would be at liberty to recover the amount by way of filing execution petition.

9. Feeling aggrieved by the judgment and decree passed by the trial Court, the defendants had preferred an appeal before District Judge, Faridabad, that appeal was assigned to Addl. District Judge, Faridabad, who vide judgment and decree dated 02.08.2021 dismissed the appeal.

10. Still feeling dissatisfied, the defendants have knocked at the door of this Court by way of filing the present Regular Second Appeal.

11. I have heard learned counsel for the appellants besides going through the record and I find that there is no merit in the appeal. Both the Courts below considering the pleadings of the parties and by proper appraisal of evidence and correct interpretation of law have found merit in the claim of the plaintiff that the plaintiff is entitled to recover Euro 22,755.30/- equivalent to Rs.16,45,890.85/- as unpaid price of the goods supplied by it to the defendants. The version of the defendants that the goods supplied by the plaintiff were faulty due to which the same were refused by major clients of the defendants i.e. Uflex Noida etc. and resultantly, the defendants had to suffer losses on account of servicing of the goods and their replacement. Therefore, the dues of the plaintiff are offset by such losses suffered by the defendants was not found to have any element of merit and such version was

rejected.

12. The another plea raised that the agreement between the parties had expired and no technical support was provided to the defendants by the plaintiff, was also considered but not found to be proved on account of lack of evidence produced by the defendants. It had been observed by the trial Court that once the defendants had taken the supply of the goods from the plaintiff, then they cannot be allowed to raise the plea that the agreement between the parties had expired.

13. With regard to adjustment of the commercial losses said to have been suffered by the defendants on account of alleged poor quality of goods supplied and amount spent by the defendants in servicing of those goods or their replacement, the defendants had not claimed any set off or raised any counter claim. Furthermore, it has rightly been observed that the defendants have not produced any evidence that on the date of supply of goods or immediately thereafter, they had sent any intimation to the plaintiff regarding return/rejection of allegedly defective goods. No merit was found in any of the pleas put-forward on behalf of the defendants.

14. The Ist Appellate Court of Addl. District Judge, Faridabad has also given valid reasoning for agreeing with the trial Court with regard to the conclusion reached by it in accepting the claim of the plaintiff and rejecting the version set up by the defendants. Both the judgments and decrees passed by the Courts below are quite detailed, well reasoned, based upon proper appraisal and appreciation of

evidence and correct interpretation of law. I do not find any illegality or infirmity therein which might have called for interference by this Court in Regular Second Appeal. No substantial question of law arises in this appeal. The appeal is found to be without merit and is dismissed accordingly.

Pending CM(s), if any, stands disposed of.

10.05.2023

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No