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

Date of Decision:- 18.09.2023

\+ CS(COMM) 211/2023 & I.A. 6717/2023 -O-38.

F1 INFO SOLUTIONS AND SERVICES PRIVATE LIMITED
..... Plaintiff

Through: Mr. Manish Jha, Mr. Kumar Kislay, Mr. Ankit Tripathi, Advs.

versus

NEXSTGO COMPANY LIMITED & ANR. ..... Defendant

Through:

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J(ORAL)

1. This is a suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) seeking recovery of an amount of USD 3,63,604.10 i.e. INR 2,98,71,040 with interest @ 12% p.a.
2. Both the defendants were served with summons of the suit in Form 4 of Appendix B of Order XXXVII CPC through Email, speed post and Courier. Till date none of the two defendants have either entered appearance nor have they applied for leave to defend. In these circumstances, the averments made in the plaint are deemed to be admitted by the defendants and the plaintiff is consequently entitled to a decree under Order XXXVII Rule 2(iii) CPC.
3. The case of the plaintiff as set up in the plaint is that the plaintiff is engaged in the business of providing services in the field of mobility,

IT and IT peripherals, AV & Enterprise Solutions, Displays and Consumer Electronics.

4. The defendant no. 1 on the other hand is a company incorporated in Hong Kong and is engaged in the business of manufacturing and selling of electronic or electric product and accessories in brand names of Avita, Nexstgo & Vaio and is stated to have its registered office at 405, Copia Corporate Suite Plot No. 9, District Centre, Jasola, New Delhi. The defendant no. 2 is stated to be a company incorporated in India having the same set of Directors and common employees as the defendant no. 1 and has been therefore arrayed on the ground that it is alter-ego of defendant no.1.
5. It is the plaintiff's further case that on 01.10.2019 the plaintiff and defendant no. 1 entered into a 'Service Center Agreement', amended on 11.05.2021, in terms of which the plaintiff was to render warranty services for the products delivered and sold by defendant no.1 in India. Even though the aforesaid agreement came to an end on 30.04.2022, the parties mutually agreed to continue the arrangement with the plaintiff being obliged to provide services in terms of the 'Service Center Agreement' till 07.06.2022.
6. It is further averred that since the plaintiff satisfactorily rendered warranty services for the products delivered and sold by the defendant in India till 07.06.2022, the defendant no. 1 was, in terms of clause 4.1 read with Schedule D of the agreement, obliged to release the payments for the invoices being raised by the plaintiff within 30 days. The plaintiff claims that though the defendant no. 1 was making timely payments during 2019-2020, it failed to pay the due amount

after October 2021 and consequently, 19 invoices for USD 3,63,604.10/- raised by the plaintiff between November, 2021 to July 2022 have remained unpaid till date. It is further averred that the defendant no.1 had vide its below mentioned email communications addressed to the plaintiff duly admitted it's liability-

S. No.	Month	Date	Invoice No.	Invoice Amount in USD (With Tax)
1.	October 2021	November 23, 2021	F1 SKAI2200 001153	27,879.25
2.	November 2021	December 17, 2021	F1 SKAI2200 001282	60,947.12
3.	December 2021	January 11, 2022	F1 SKAI2200 001443	66,864.22
4.	December 2021	January 13, 2022	F1 SKAI2200 001465	947.28
5.	January 2022	February 18, 2022	F1 SKAI2200 001700	63,867.42
6.	January 2022	February 18, 2022	F1 SKAI2200 001701	750.10
7.	February 2022	June 06, 2022	F1 SKAI2300 000397	511.14
8.	February 2022	June 06, 2022	F1 SKAI2300 000396	40,029.36
9.	March 2022	June 06, 2022	F1 SKAI2300 000399	511.14

7. Learned counsel for the plaintiff submits that it is only on 21.12.2022 that the defendant no. 1 while admitting it's liability to pay the outstanding dues of the plaintiff for the first time raised a wholly misconceived plea that the plaintiff could adjust its dues against the price of the spare parts and service units lying with it. He submits that this proposal was not acceptable to the plaintiff as under the agreement the spare parts and service units were to remain exclusive

property of defendant no. 1. Furthermore, the value of these spare parts may not be sufficient to even cover the dues of the plaintiff partially.

8. Having considered the submissions of the learned counsel for the plaintiff and perused the documents filed along with the plaint, I am of the view that while the plaintiff has been able to make out a case for passing a decree for a sum amounting USD 3,63,604.10 equivalent to a sum of Rs. INR 2,98,71,040 along with interest @ 12% against the defendant no. 1, no case is made out against defendant no. 2. Merely because most of the Directors and employees of defendant no 1 and 2 are the same, it cannot be a ground to foist the liability of defendant no. 1 on defendant no. 2 which are two different corporate entities.

9. The suit is, accordingly, decreed for a sum of INR 2,98,71,040 with interest @12% p.a. A decree sheet be drawn up accordingly.

10. It is however made clear that this Court has not expressed any opinion regarding the goods of defendant no. 1 which are lying with the plaintiff in accordance with the terms of 'Service Center Agreement' dated 07.06.2022.

(REKHA PALLI)
JUDGE

SEPTEMBER 18, 2023
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