

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

CS 65 of 2016

Gemini Equipment & Rentals Pvt. Ltd.

Versus

Chitra Builders Pvt. Ltd.

Ms. Rakhi Shroff

... for the plaintiff.

Hearing Concluded On : 26.02.2024

Judgment on : 11.03.2024

Krishna Rao, J.:

- 1.** The instant suit is filed by the plaintiff company for a decree of Rs. 21,55,194/- along with interim interest and interest on judgment at the rate of 21% per annum until realisation.
- 2.** The Plaintiff is a company incorporated under the Companies Act, 1956 and carries on business from 'Gemini House', Bus Depot Lane, Deonar, Mumbai, Maharashtra – 400008.

3. The Plaintiff is engaged, inter alia, in the business of rental service provider for capital equipments and also provides rental services for equipment required on rent for various fields like concreting, earth moving, road work, building work, foundation engineering, captive power plant, vertical axel and material handling.
4. The defendant is a company incorporated under the Companies Act, 1956 and carried on or still carries on business from its registered office at Room No. 405, 4th Floor, Centre Point Building, 21, Hemanta Basu Sarani, Kolkata – 700001.
5. On or about May 2011, the defendant approached the plaintiff for providing capital equipment on rent and the plaintiff company had agreed to provide such rental services and shall raise bills and invoices per month and the same would be cleared by the defendant.
6. As agreed upon between the parties, the defendant had issued four (4) work orders, dated 30th June, 2011; on 19th July, 2011, two work orders were issued together, and 6th February, 2012, upon the plaintiff at its registered office, for providing capital equipment on rent at Kalinganagar site and Bhilai site.
7. It was agreed between the parties that the plaintiff will raise its monthly rental bills for capital equipment on the last day of the month of operation and the same will be settled by the defendant within ten days of receipt and it was agreed that if in case of any delay in making

payment beyond the period of ten days the same will attract interest @2% per month.

- 8.** The plaintiff, therefore, has accordingly given on rent capital equipment and has duly raised its bills and/or invoices for a total sum of Rs. 65,61,837/- , and also the plaintiff had issued some credit notes and upon adjustment of the same the net amount payable by the defendant to the plaintiff was an amount of Rs. 57,89,159/-.
- 9.** The defendants in order to release its liabilities towards payment due, has made a part payment for a sum of Rs. 42,04,457/-, through NEFT being numbered as SET1STP13B348236, dated 6th February, 2013 for a sum of Rs. 1,50,000/- thereby leaving a balance principal amount of Rs. 15,84,702/-, which primarily proves that the defendant had acknowledged and admitted its liability.
- 10.** On 19th February, 2013 at around 2:26 p.m., an email was sent by one Mr. Nandan Vartak, Manager – Credit Control of the plaintiff to Mr. Maniraj, who is the Finance Manager of the defendant, thereby calling upon the defendant to confirm outstanding balance amount due for Kalinganagar Site, to which a reply was received by the plaintiff sent by Mr. Maniraj, the Finance Manager, whereby detailed accounts and ledgers of the parties were sent for reconciliation, where it was admitted by the defendant that a sum of Rs. 15,84,702/- is outstanding due and payable by the defendant to the plaintiff.

- 11.** On 21st February, 2013 at 10:54 a.m., an e-mail was sent by one Mr. Satish Poojari, Finance Head of the plaintiff to Mr. Maniraj, confirming that the outstanding payment of the plaintiff from Chitra Builders is Rs. 15,84,702/- and the plaintiff requested the defendant to release the payment at earliest.
- 12.** After several requests made to the defendant for payment of the outstanding due amount, the defendant had failed and neglected to pay the same. On 31st October, 2014, a legal notice was sent by the Learned Advocate of the plaintiff, to the defendant, calling upon the defendant to pay Rs. 15,84,702/- and if the defendant fails to pay the same, the plaintiff shall take appropriate steps against the defendant.
- 13.** On 24th June, 2015, again a notice was sent to the defendant by Registered Post at the address i.e. Room No. 405, 4th Floor, Centre Point Building, 21, Hemanta Basu Sarani, Kolkata – 700001, which was returned unserved with the endorsement “receiver refused” and “addressee moved”. The plaintiff submits that the defendant has not moved and/or changed its registered office as appearing in the endorsement, which means that the defendant has received the notice but has deliberately refused to accept the same and that tantamount to good service.
- 14.** In the facts and circumstances as aforesaid, on or about 14th January, 2016, the plaintiff instituted a winding up petition under Sections 433,

434 and 439 of the Companies Act, 1956, being C.P. No. 32 of 2016 before this Hon'ble High Court, praying for the following reliefs:

- (a) *Chitra Builders Private Limited be wound up under the provisions of Companies Act, 1956.*
- (b) *Costs of and incidental to this petition be paid at the first instance from the assets of the said company; and.*
- (c) *Such further order and/or orders be made and/or direction or directions be given as to which this Hon'ble Court may deem fit and proper.*

In the above mentioned Company petition, no order is passed and is still pending before the Hon'ble Court and subsequently, the plaintiff has filed the present suit.

- 15.** It appears from the reports, dated 30th March, 2016, obtained from the Deputy Sheriff of this Hon'ble Court that the Writ of Summons was not served upon the defendant and the un-delivered packet has been returned with the remark 'Moved'. Thereafter, the plaintiff prayed for substituted services and this Court had directed to publish the notice of the instant suit for the purpose of information in an English daily newspaper as well as in the Bengali daily newspaper being 'The Statesman' and 'Bartaman'.
- 16.** The plaintiff have made publication on both the newspapers, i.e. "The Statesman" and "Bartaman" on 30th June, 2022, and inspite of publication of notice of the case, none appeared on behalf of the defendant and the matter was listed as 'Undefended Suit'.

- 17.** The plaintiff in order to prove its case have examined one Mr. Satish Poojary, General Manager, Finance and Accounts of the plaintiff company, and had adduced a total number of 'Eight (8) Documents, being 'Exhibit A to Exhibit H', which read as follows:

Exhibit A – copy of an Authorization letter given to Mr. Satish Poojary, authorising him to look into the legal affairs of the company regarding the instant suit.

Exhibit B – Copies of work orders issued by the defendant, to the plaintiff. First work order was of 30th June, 2011, for hiring of two numbers of Concrete Pump Model No. BP 350 D for their Kalinganagar Project, the second work order of 19th July, 2011 was for hiring of Transit Mixer, the third work order was of 19th July, 2011 for hiring of one Boom Placer-32 M and the last one was dated 6th February, 2012, for supply of Boom Placer, are all exhibited collectively.

Exhibit C – Copies of Invoices made by the plaintiff sent to Chitra Builders, total amounting to Rs. 65,61,837/-, are all exhibited collectively.

Exhibit D – Copies to account statement of Kotak Mahindra Bank of the Plaintiff Company, which also shows that the defendant has made a payment of around 42 Lacs and odd figures, and the last

payment was dated 6th February, 2013, are all exhibited collectively.

Exhibit E – Copies of emails dated 19th February, 2013 and 21st February, 2013, which were exchanged between the parties, whereby the plaintiff had requested the defendant to clear the outstanding due amount of Rs. 15,84,702/-

Exhibit F – Copy a letter dated 24th June, 2015, which was sent to the defendant, informing them about the winding up petition which was institute against them and also the plaintiff in the same letter requested the defendant to make payment of the due outstanding amount along with a copy of the postal receipt with an endorsement 'Refused'.

Exhibit G – copies of two documents wherein the first document is complaint for lost of original document lodged to the police station and the second document is FIR copy.

Exhibit H – Copy of an order dated 15th March, 2016, passed in C.P. No.32 of 2016 by this Hon'ble Court, where it was ordered to release the amount of Rs. 15,84,702/-.

18. Exhibit 'B' proves that the Defendant had issued work orders, one on 30th June, 2011, two on 19th July, 2011 and one on 6th February, 2012, for hiring of several capital equipments.

In pursuance of the work orders made by the defendant, the plaintiff Company had provided its services and has also raised several invoices, which are proved through **Exhibit 'C'**.

Exhibit 'D' is bank statements of the plaintiff which proves the acknowledgement of defendant regarding the amount payable, wherein the defendant had paid an amount of 42,04,457/- and an amount of Rs. 1,50,000/-. Leaving behind an outstanding amount of Rs. 15,84,702/-.

Exhibit 'E' proves that there was several emails exchanged between the parties, whereby the plaintiff had requested the defendant to clear the outstanding due, but the defendant had failed to do so.

At last the plaintiff by an Advocate's notice dated 24th June, 2015, called upon the defendant that in case the defendant fails to make payment of such outstanding due amount to the plaintiff, the plaintiff will take legal action against the defendant but the defendant refused to accept and the said notice is proved, being **Exhibit "F"**.

Exhibit 'G' proves that on the complaint of the plaintiff proves that on the complaint of the plaintiff, police has registered a case and has made an entry about loss of original documents.

Exhibit 'H' is a copy of an order which was passed by this Hon'ble Court in the C.P. No. 32 of 2016, wherein this court had directed the defendant to clear the due amount, but no initiatives were taken by the defendant to comply with such order.

- 19.** Considered the submissions made by the Learned Counsel for the plaintiff, perused the evidence and exhibits. This Court finds that the invoices/bills raised by the plaintiff is admittedly by the defendant, as out of the total amount of Rs. 57,89,159/-, the defendant has paid only Rs. 42,04,457/- and the balance amount of Rs. 15,84,702/- is not paid inspite of several correspondences.
- 20.** In view of the above, the defendant is directed to pay Rs. 15,84,702/- along with interest at the rate of 12% per annum from 19th February, 2013 till the realisation of the amount to the plaintiff.
- 21. CS No. 65 of 2016 is disposed of.** Decree be drawn accordingly.

(Krishna Rao, J.)