

(2011) 12 DEL CK 0016
In the Delhi High Court
Case No : CS (OS) No. 2215 of 2007

M/s Subros Limited

APPELLANT

Vs

M/s Glasnost Hydraulic Equipments (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Interest Act, 1978 — Section 3

Citation : (2011) 12 DEL CK 0016

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : R.C. Beri with Mr. S.K. Beri, for the Appellant;

Judgement

V.K. Jain, J.—This is a suit for recovery of Rs. 23,43,000/-.

2. The case of the plaintiff is that the plaintiff company placed a purchase order on the defendant company for purchase of 7 machines, detailed in Purchase Order dated 12.12.2002, at a total basic cost of Rs. 65,90,625/- and subject to the terms and conditions mentioned in the Purchase Order.

The Purchase Order was amended vide letter dated 16.12.2002, thereby changing the delivery date from 25.3.2003 to 30.3.2003. The order in respect of two equipments, Manual Core Assy. Machine and Wire Winding Machine was cancelled. The basic value of the order was thus reduced to Rs. 46,55,000/-. The plaintiff made payment of Rs. 18,62,000/- to the defendant being 40% of the basic value of the order as was agreed between the parties. The defendant agreed to deliver the machines latest by 07.7.2003. Later, the dispatch date in respect of Caulking Machines was changed by the defendant to 30.7.2003. This, however, was not acceptable to the plaintiff, which insisted on dispatch of the machines by 07.7.2003. Since, there was delay in dispatch of machines, in a meeting held on 31.7.2003, it was agreed that all the 5 machines will be dispatch on or before 30.9.2003 and they were likely to be ready for inspection by 20.9.2003. On confirmation of final date of inspection by the defendant, the

plaintiff was to depute its representative for inspection and trial of the machines and thereafter, they were to be packed in the presence of representative of M/s Subros Ltd./plaintiff and payment was to be delivered to the defendant after loading of machines in the truck and creation of excise documents. In case of delay in dispatch beyond 30.9.2003, a penalty @ 1% per week was to be imposed on the defendant.

3. The defendant, however, failed to adhere even to the revised delivery schedule and thereby became liable for payment of penalty at a stipulated rate @ 1% of the basic value of the order per week. Since, the defendant failed to adhere even to the revised delivery schedule, the plaintiff after awaiting for one month, served a legal notice dated 01.11.2003 on the defendant informing that it had been forced to make alternative arrangements for procuring the machines from another source and their Purchase Order dated 12.12.2002 as modified on 25.4.2003 stood cancelled. The defendant was required to refund the advance of Rs. 18,62,000/- along with the penalty @ 1% of the basic value of the order per week as well as the interest @ 18% per annum. Since, the defendant failed to pay the aforesaid amount, the plaintiff is now claiming the advance of Rs. 18,62,000/- along with the interest on that amount @ 10% per annum, amounting to Rs. 4,81,000/-.

4. The defendant was proceeded ex-parte vide order dated 08.8.2011. The plaintiff has filed affidavit of Mr. Virender Kumar by way of ex-parte evidence. In his affidavit, Mr. Virender Kumar has supported on oath the case set-out in the plaint.

5. "Ex.PW1/2" is the quotation, which the defendant had submitted to the plaintiff company for supply of machines, whereas, "Ex.PW1/3" is the Purchase Order dated 12.12.2002. "Ex.PW1/5" is the revised Purchase Order dated 25.4.2003 issued by the plaintiff to the defendant.

6. A perusal of the initial Purchase Order dated 12.12.2002 would show that timely delivery of the machines was made essence of the order, failing which, the plaintiff reserved the right to withdraw the order and, in that case, the defendant was to refund the entire advance paid to it against the order. The term making the timely delivery essence of the contract was not modified at the time revised purchase order was issued on 25.4.2003.

7. A perusal of the E-mail dated 08.5.2003 sent by the defendant to the plaintiff would show that the delivery period was two months from the date of receipt of advance, i.e. 07.5.2003. The defendant, thus, was required to deliver the machined to the plaintiff latest by 07.7.2003. "Ex.PW1/8" is an E-mail sent by the plaintiff to the defendant, whereby it declined to change of dispatch date from 07.7.2003 to 30.7.2003 and maintained that the delivery period will be two months from 07.5.2003. "Ex.PW1/10", are the Minutes of Meeting held on 31.7.2003 in the office of the defendant company. A perusal of the Minutes would show that it was agreed between the parties that all the 5 machines would be

dispatched by the defendant on or before 30.9.2003. They also agreed that the machines were likely to be ready for inspection by 20.9.2003. The final date of inspection was to be confirmed by the defendant, whereupon the plaintiff was to depute its official representative for inspection and trial of the machines. After trials and final clearance, the machines were to be packed in the presence of the representative of the plaintiff company and the payment, as per the purchase order was to be handed over to the defendant on the machines being loaded on the truck and creation of the excise documents.

8. It has come in the affidavit of Mr. Virender Kumar that the defendant had failed to adhere even to the revised delivery schedule and did not supply the machinery within time, agreed in the Meeting held on 31.7.2003.

9. "Ex.PW1/11" is the notice sent by the plaintiff to the defendant informing it that since it had failed to adhere even to the revised delivery schedule, the purchase order be cancelled. The defendant was also called upon to refund the advance of Rs. 18,62,000/- along with penalty @ 1% of the basic value of the order per week and interest @ 18% per annum.

10. The testimony of Mr. Virender Kumar coupled with the documents filed by the plaintiff company would show that though time was made essence of the contract between the parties and the defendant was required to deliver all the machines latest by 30.9.2003, in terms of the decision taken in the meeting held on 31.7.2003, the defendant failed to adhere to this revised schedule as well. Hence, in terms of the Purchase Order dated 12.12.2002 as well as the revised Purchase Order dated 25.4.2003, the plaintiff was entitled to cancel the purchase order and thereupon the defendant was required to refund the entire advance payment received by it from the plaintiff.

Since the purchase order has been cancelled on failure of the defendant to adhere to the schedule agreed between the parties for delivery of machines, the defendant is required to refund the advance of Rs. 18,62,000/-, which it had received from the plaintiff.

11. As regards interest, admittedly, there is no agreement between the parties for payment of interest by the defendant on the advance which it received from the plaintiff. No custom or usage of trade for payment of interest has been proved by the plaintiff. Section-3 of the Interest Act, 1978 to the extent it is relevant provides that in any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest. It further provides that if the proceedings relate to a debt payable otherwise than by virtue of a written instrument at a certain time, then, interest can be granted from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that

interest will be claimed, to the date of institution of the proceedings. Since the plaintiff gave notice envisaged in Section 3 of the Interest Act, 1978 claiming interest from the defendant, it is entitled to interest in terms of the aforesaid provision.

In the facts and circumstances of the case and considering the nature of the transaction between the parties, I am of the view that the plaintiff is entitled to interest @ 10% per annum w.e.f. 30.4.2003 to 30.11.2005, which comes to Rs. 4,81,000/-. The plaintiff, thus, is entitled to recover a total sum of Rs. 23,43,000/-.

12. In view of the above discussions, a decree for recovery of Rs. 23,43,000/- with pendente lite and future interest @ 10% per annum is hereby passed in favour of the plaintiff and against the defendant.

Decree sheet be drawn accordingly.