Hcl Infosystems Ltd vs.ferranti Computer System India Pvt Ltd

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SooperKanoon Citation : sooperkanoon.com/1221951

Court : Delhi

Decided On : Mar-12-2019

Appellant : Hcl Infosystems Ltd

Respondent : Ferranti Computer System India Pvt Ltd

Advocate for Pet/Ap. : Mr. Akhilesh Arora

Judgement :

$~ * + % IN THE HIGH COURT OF DELHI AT NEW DELHI CS(OS) 515/2015 HCL INFOSYSTEMS LTD ..... Plaintiff Through: Mr. Akhilesh Arora, Advocate. Versus FERRANTI COMPUTER SYSTEM INDIA PVT LTD Through: None. ..... Defendant Date of Decision:

12. h March, 2019 CORAM: HON'BLE MR. JUSTICE MANMOHAN MANMOHAN, J: (Oral)

JUDGMENT

1 Present suit has been filed for recovery of Rs. 4,59,83,411/- along with pendente-lite interest @ 18% per annum and damages. The prayer clause in the present suit is reproduced hereinbelow:-

"(a) Pass a decree of Rs. 1,76,80,511/- (Rupees One Crore Seventy Six Lacs, Eighty Thousand Five Hundred and Eleven only) towards recovery of the sum which had been paid by the Plaintiff to the Defendant towards the performance of the Agreements, which the Defendant has miserably failed to perform alongwith interest @18% p.a. amounting to around Rs. 50,00,000 (Rupees Fifty Lacs Only) till the date of filing of the present suit. (b) Pass a decree for a minimum of Rs. 2,33,02,900 (Rupees Two Crores Thirty Three Lacs Two Thousand Nine Hundred Only) or such higher sum that may be determined by this Honble Court towards damages which CS(OS) 515/2015 Page 1 of 8 the Defendant is liable to pay to the Plaintiff due to the breach and non-performance of the contract by the Defendant. Award interest @18% p.a. towards pre-suit, pendente-lite and future interest to the Plaintiff and against the Defendant; (c) (d) Pass a decree in favour of the Plaintiff and against the Defendant, towards exemplary damages; Award costs of the present proceedings in favour of the Plaintiff and against the Defendants; and Pass any other order that this Honble Court may deem fit. (e) (f) On 11th May, 2016, this Court closed the right of the defendant to file 2. the written statement. Since none has appeared on behalf of the defendant thereafter, it is proceeded ex-parte.

3. The plaintiff has filed its list of witnesses as well as evidence by way of affidavits.

4. The contentions and submissions advanced by learned counsel for the plaintiff are as under:-

"i. The plaintiff is a reputed company incorporated in India and engaged in the business of IT Solutions and Services. The plaintiffs services and solutions enable companies to achieve their desired business transformation through optimum use of technology and process excellence and helps organizations to perform well. ii. The defendant is a company registered in India and a related entity of Ferranti Computer Systems, which is headquartered in Antwerp, Belgium. The defendant represented to the plaintiff that it has expertise in mapping out business processes and has the capability to provide software based on requisite requirements. CS(OS) 515/2015 Page 2 of 8 iii. Jairpur Vidyut Vitran Nigam Limited (hereinafter referred to as JVVNL), Jharkhand State Electricity Board Limited (hereinafter referred to as JSEBL) and Himachal Pradesh State Electricity Board (hereinafter referred to as HPSEB) issued Request for Proposals on 20th June, 2009, 15th September, 2010 and 05th November, 2009 respectively, for implementation, delivery of software products and performance of services for their respective States under the Restructured Accelerated Power Development and Reforms Program. iv. The plaintiff was awarded the projects and accordingly entered into agreements with HPSEB dated 09th September, 2010 and with JSEBL and JVVNL dated 14th March, 2011, for supply, commissioning and integration of software products including procurement of requisite licenses for the projects. v. Based on the representations made by the defendant, the plaintiff subcontracted the defendant to perform certain works arising from the aforesaid agreements. Accordingly, the plaintiff entered into Master Procurement Agreements (hereinafter referred to as MPAs) for the Rajasthan Project of JVVNL dated 25th October, 2011, for the Jharkhand Project of JSEBL and for the Himachal Pradesh Project of HPSEB dated 02nd March, 2012. The MPAs were executed in New Delhi. vi. Under Class 3A of the MPAs, the defendant was required to provide services and deliverables as per the desired specifications and obligations of the plaintiff. Furthermore, the governing Clause 11(b) of the MPAs provided that the parties shall submit to the exclusive CS(OS) 515/2015 Page 3 of 8 jurisdiction of Courts of New Delhi for all claims arising under the Agreements. vii. In terms of the MPAs, the plaintiff issued purchase orders upon the defendant dated 06th March, 2012, 12th March, 2012 and 04th June, 2013 amongst others. viii. The defendant raised invoices against the orders with the plaintiff on various dates. Though payment under the invoices was not due, in order to ensure compliance with the agreement, the plaintiff released payments to the defendants for a sum of Rs. 1,76,80,511/-. ix. Despite payment, the defendant breached the terms and conditions of the MPAs and did not provide services or software as per its obligations. x. Consequently the plaintiff was made to suffer liquidated damages in the form of penalties for not fulfilling its obligations towards its clients i.e. JVVNL, HPSEB and JSEB. xi. The plaintiff and defendant exchanged several emails with regard to non-performance as well as letters dated 19th March, 2014, 29th April, 2014 and 06th June, 2014 for deficient service rendered by the defendant in the three projects and material breach of terms of the MPAs, for which the plaintiff sought compensation from the defendant for payments made and damages suffered. However, the defendant failed to make any payments to the plaintiff. xii. Due to the defendants non-performance, the plaintiff was compelled to subcontract the works to M/s Seyfert Technologies, a third party, who ultimately fulfilled the obligations under the agreements at CS(OS) 515/2015 Page 4 of 8 escalated costs. The plaintiff also deployed additional resources in the form of employees for the Rajasthan project.

5. Learned counsel for the plaintiff prays that the present suit be decreed for Rs. 1,76,80,511/- along with interest @ 18% per annum, Rs. 2,33,02,900/- on account of damages for breach and non-performance of the MPAs as reproduced hereinbelow:-

"Invoice Amount with Taxes (Total Amount paid to the Defendant) (in Rs.) TDS (in Rs.) Amount paid (in Rs.) 1,76,80,511 17,68,058 1,59,12,456/- S.No.Heads of Damage(s) Amount (in Rs.) to Liquidated damages deducted by the customer of the Plaintiff - at least 1/3rd of the amount deducted, which are attributable the omissions of the Defendant Irreparable loss to the reputation and goodwill of the Plaintiff in the market, loss of opportunity; and Damages incurred by the Plaintiff towards obtaining the softwares and services from competent third parties and in engaging new service providers. Total 4,89,08,69
At least 50,00,000/- 2,00,000 2,33,02,900 1. 2.

3.

6. The plaintiff has filed the affidavit of evidence of Mr. Pranav Bhardwaj, its Senior Team Leader, as PW1 who has proved the institution of the Suit and the case of the plaintiff Company. The said witness has proved CS(OS) 515/2015 Page 5 of 8 the agreements entered into with HPSEB dated 09th September, 2010 and with JSEB and JVVNL dated 14th March, 2011 as Ex.PW1/4(colly). PW1 has also proved the MPAs entered into between the plaintiff and the defendant for the Rajasthan Project dated 25th October, 2011, for the Jharkhand Project dated 02nd March, 2012 and the Himachal Pradesh Project dated 02nd March, 2012 as Ex.PW1/5(colly). He has proved the relevant portion of the Section G2 of Technical Specifications of the SRS Document template for execution of works contemplated from the agreements as Ex.PW1/6. PW1 has proved the purchase orders issued by the plaintiff upon the defendant dated 06th March, 2012, 12th March, 2012 and 04th June, 2013 as Ex.PW1/7(colly). PW1 has proved the MPAs

dated 05th January, 2014 and 10th April, 2014 with Seyfert Technologies, a third party, as Ex.PW
and Ex.PW1/10, respectively. The plaintiffs witness has also proved purchase orders issued by the plaintiff to Seyfert Technologies for completion of the work in the Himachal Pradesh Project as Ex.PW1/11(colly), for the Jharkhand Project as Ex.Pw1/12(colly) and for the Rajasthan Project as Ex.PW1/13. PW1 has also proved the emails exchanged between the plaintiff and defendant with regard to non- performance as Ex.PW1/14, Ex.PW1/15 and Ex.PW1/16(colly). The plaintiffs witness has also proved letter dated 09th June, 2014 as Ex.PW1/18(colly). The PW1 has also filed a Certificate under Section 65-B of the Evidence Act, 1872 as Ex. PW1/21.

7. The plaintiff has examined Mr. Sanjay Sharma, Associate Director, Standard Chartered Bank, DLF Building - 7A, Gurugram, Haryana, as PW- 2, who has duly proved the Statement of Account maintained by the plaintiff for the period 01st February, 2013 to 28th February, 2013 as Ex.PW2/A and CS(OS) 515/2015 Page 6 of 8 for the period 01st May, 2013 to 31st May, 2013 as Ex.PW2/B. PW2 has also proved the statement of account for the period 01st June, 2013 to 31st June, 2013 as Ex.PW2/C.

8. With respect to the plaintiffs claims, the invoices raised by the defendant are a part of the record at pages nos. 128 to 137, page 157, 163 and 164, and the Statement of Accounts Ex.PW2/A to Ex/PW2/C shows payments of Rs. 1,76,80,511/- to the defendant.

9. Furthermore, the plaintiff has proved the amount of the purchase order dated 06th March, 2012 i.e. Rs. 61,02,977/-, raised on the defendant for the Himachal Pradesh Project as Ex.PW1/7(colly). The plaintiff has also proved the amount of the purchase orders raised by the plaintiff for completion of the same works by Seyfert Technologies i.e. Rs. 70,53,736/- as Ex.PW1/11(colly). Consequently, the plaintiff has incurred an additional amount of Rs. 9,50,759/- on account of risk purchase and is entitled to the same amount as compensation towards obtaining the softwares and services from third parties.

10. However, this Court is of the opinion that the plaintiff is not entitled to damages of Rs. 1,63,02,900/- on account of liquidated damages of Rs. 4,89,08,696/- deducted by the customer of the plaintiff - at least 1/3rd of the amount deducted suffered by the plaintiff as it has not exhibited any document or proved that liquidated damage of Rs. 4,89,08,696/- was levied by JVVNL, JSEBL and HPSEB on the plaintiff. Furthermore, the plaintiff is not entitled to an amount of Rs. 50,00,000/- on account of irreparable loss to reputation and goodwill as it has not led any evidence to prove the same.

11. Keeping in view the aforesaid facts and the documents on record as well as the arguments advanced by the learned counsel for the plaintiff, this CS(OS) 515/2015 Page 7 of 8 Court is of the view that the plaintiff has proved its case and is entitled to amounts of Rs. 1,76,80,511/- as well as Rs. 9,50,759/-.

12. Further, as the averments in the plaint have not been rebutted by the defendant, they are deemed to have been admitted.

13. Consequently, the suit is decreed in favour of the plaintiff and against the defendants for Rs.1,76,80,511/- plus Rs. 9,50,759/- along with presuit (i.e. from the date the amounts became due) pendente lite and future interest at 7% per annum. This Court may mention that it is awarding the interest at 7% per annum as that is the normal rate at which the banks are lending monies now-a-days.

14. The plaintiff is also held entitled to actual costs of litigation. The costs shall amongst others include the lawyer's fees as well as the amount spent on Court-fees. The plaintiff is given liberty to file on record the exact cost incurred by it in adjudication of the present suit. Registry is directed to prepare a decree sheet accordingly. MARCH12 2019 KA MANMOHAN, J CS(OS) 515/2015 Page 8 of 8