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

Reserved on: 12th September, 2024
Date of Decision: 30th December, 2024

\+ CS(COMM) 733/2022, CC(COMM) 11/2023, I.A. 7752/2023, I.A. 6294/2024 & I.A. 34934/2024

M/S HCL INFOSYSTEMS LIMITED .....Plaintiff
Through: Mr. Amitesh Chandra Mishra, Adv. (Through VC)

versus

M/S PRESTO INFOSOLUTIONS PVT. LTD. .....Defendant

Through: Ms. Purnima Maheshwari, Adv.

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

I.A. 34934/2024(Application on behalf of the plaintiff under Order VI Rule 17 CPC for amendment of plaint)

1. The present application has been filed by the Plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 ('CPC'), seeking amendment of the original plaint.

Brief facts leading to filing of the captioned application

2. The underlying suit as per the unamended plaint has been filed by the Plaintiff for recovery of an amount of Rs. 4,56,73,534.14 along with interest against the Defendant.

3. The Ministry of Defence ('MOD'), Government of India issued request for proposal dated 08.09.2009 for supply, installation,

commissioning, warranty and maintenance of 'Defence Communication Network' project. The said project was awarded to the Plaintiff.

3.1. It is stated that the supply, installation, commissioning, warranty and maintenance of one (1) of the components of the project i.e., Video Conferencing System ('VCS') was sub-contracted by the Plaintiff to the Defendant on back-to-back basis vide the Master Purchase Agreement ('MPA') dated 30.07.2013.

3.2. It is stated that as per Clauses '16' and '25' of the MPA the Defendant had to provide support for four (4) years warranty period and ten (10) years of annual maintenance of the products supplied until 10.09.2028, under the Annual Maintenance Contract ('AMC') which was part of the MPA.

3.3. It is stated that the ground on which the recovery is sought is material non-compliance and breach of the obligations as incorporated under MPA by the Defendant including failure to provide AMC services for ten (10) years till 10.09.2028 and support for the product supplied, after the period of warranty of four (4) years.

4. The AMC as per the MPA was to continue for ten (10) years till 10.09.2028 and Plaintiff was obliged to raise separate purchase orders (POs) for all the 10 years in accordance with the MPA.

4.1 It is stated that as per Clause '2' of the MPA the Plaintiff issued two (2) POs to the Defendant i.e., (i) PO-1 dated 11.09.2018 for 1st year of AMC for the period from 11.09.2018 to 31.08.2019; and (ii) PO-2 dated 06.11.2019 for 2nd year of AMC for the period from 01.09.2019 to 31.08.2020.

4.2 It is stated that however, the Defendant vide its email dated 26.11.2019 informed the Plaintiff that it cannot process the PO dated

06.11.2019 for the 2nd year, due to organizational changes and lack of support from the supplier/manufacturer.

4.3 It is stated that in these facts the Plaintiff thereafter terminated the MPA as per Clause '49' of the MPA vide termination notice dated 31.08.2020.

4.4 It is stated that the Plaintiff was thereafter constrained to avail the services due to it under the MPA from other service providers i.e., (i) M/s Millennium Automation Private Limited ('Millennium'); (ii) M/s Harman Connected Services Corporation Private Limited ('Harman') and (iii) M/s RV Solutions Private Limited ('RV Solutions'), at the risk and cost of the Defendant. The services included procurement of buffer stock and the AMC services.

4.5 The Plaintiff at paragraph '16' and '17' of the captioned application asserts that subsequent to filing of the captioned suit the Plaintiff has issued POs to third parties for the services due from the Defendant under the MPA until 10.09.2028 and the differential costs to be recovered from the Defendant has been quantified at Rs. 7,42,46,803/-. It is stated that in terms of the right reserved at paragraph '68' of the unamended plaint to raise additional claims, the Plaintiff has filed the present application for including the said additional claims.

4.6 In this backdrop the captioned application has been filed by the Plaintiff to amend the underlying suit so as to include the additional claims against the Defendant for its failure to provide AMC services and to maintain the buffer stock for the remainder period expiring on 10.09.2028.

Arguments of the Plaintiff

5. Learned counsel for the Plaintiff contended that the underlying suit was filed on 13.09.2022 and the unamended plaint included claims limited to the POs which already stood issued as on the said date. He stated that after the filing of the suit Plaintiff has issued POs to the other service providers for the services which the Defendant had undertaken to perform until 10.09.2028.

5.1. He stated that the old POs issued to the third-party vendors/service providers were valid till 15.08.2023, and therefore the Plaintiff has issued new purchase orders.

5.2. He stated that a new PO on 23.10.2023 was issued to Millennium for AMC of Telecom Equipment for the period 16.08.2023 to 31.12.2025. He stated that in continuation the Plaintiff has entered into an agreement RV Solutions for AMC for the period 01.01.2026 to 31.12.2028.

5.3. He stated that Plaintiff has entered into a Service Agreement with the RV Solutions for providing AMC services for the equipment- RSS 4000. It is stated that this agreement is effective from 01.12.2023 for a duration of five (5) years.

5.4. He referred to the POs and invoices issued by the Plaintiff for the aforesaid three agreements. He stated that the claim of differential amount under these POs sought to be recovered from the Defendant has been calculated until 10.09.2028.

5.5. He stated that the amendments to the plaint by way of addition and deletion have been set out at paragraph '31' of this application. He stated that the amendment does not alter the cause of action. He stated that the three purchase orders have been issued subsequent to the filing of the suit and reflect the costs incurred by the Plaintiff for the AMC services after Defendant blatantly denied to provide said services.

5.6. He stated that issues have not been framed in the suit and thus trial has not commenced. He stated that it is well settled law that amendment applications are to be liberally allowed if the issues have not been framed in the suit and trial has yet not commenced. He stated that therefore, the present application for amendment of the plaint should be allowed as it would not cause any prejudice to the Defendant.

5.7. He stated that additional Court Fees of Rs. 7,69,126.34/- on the additional claims being raised by way of the present application shall be submitted upon this application being allowed.

Arguments of the Defendant

6. In reply, learned counsel for the Defendant contended that present suit is a commercial suit therefore, the prescribed timelines in completing the pleadings are relevant and has to be adhered to as per the objective of the Commercial Courts Act, 2015 ('the Act of 2015'). She stated that the Plaintiff's right to file replication stands closed as it was filed beyond the prescribed period of limitation. She states that the Joint Documents Schedule already stands filed and the suit is at the stage of recording admission/denial of document and marking of exhibits. She states that the Plaintiff by filing the present application for amendment and addition documents is seeking to undo the progress achieved in the suit.

6.1. She states that the Defendant has filed a counterclaim and this application will delay the adjudication of the proceedings to the prejudice of the Defendant.

6.2. She stated that amendments being sought to be incorporated is not needed for complete and effective adjudication of the amount originally claimed in the underlying suit, which is admittedly comprehensive. She stated that the amendments sought to be done to the plaint if allowed would change the nature of the suit and dispute therein. She stated that if the amendment is allowed it would be treated as a precedent for the Plaintiff to bring another amendment application for claiming amount towards AMC for the period from 2025 till 2028.

6.3. She stated that the additional claim as mentioned in the captioned application is based on a different cause of action and events which happened after the filing of the suit. She stated that the amendment would result in 'Misjoinder of Cause of Actions'. She stated that the Plaintiff can raise such claims in a separate suit as different cause of action by way of an independent suit and the same would not be barred under Order II Rule 2 CPC.

Rejoinder Arguments of the Plaintiff

7. In response learned counsel for the Plaintiff states that no further amendment will be necessary for the period 2025 till 2028 as the Plaintiff has comprehensively included its entire claim against the Defendant until the period of 10.09.2028.

Analysis and Findings

8. This Court has considered the submission of the parties and perused the record.

9. The Plaintiff has filed the underlying suit praying for the reliefs which reads as under:

> "94. In terms of the above premised facts and circumstances, the Hon'ble Court may graciously be pleased to pass in favour of the Plaintiff, a Decree:
> a) For a **<u>sum of Rs. 3,79,07,377.00</u>**;
> b) **<u>Interest of Rs. 77,66,157.00</u>** @12% per annum simple interest along with pendente lite and future interests; And
> c) Pass such other reliefs as this Hon'ble Court may deem fit in the interest of justice."
>
> (Emphasis supplied)

9.1. The captioned application is filed seeking various amendments and the relief prayed for in the proposed amended plaint after additions reads as under:

> "94. In terms of the above premised facts and circumstances, the Hon'ble Court may graciously be pleased to pass in favour of the Plaintiff, a Decree:
> a) For a **<u>sum of Rs. 11,21,54,180/-</u>** in favour of the Plaintiff;
> b) **<u>Interest of Rs. 1,22,23,314/-</u>** @12% per annum simple interest along with pendente lite and future interests; And
> c) Pass such of justice. other reliefs as this Hon'ble Court may deem fit in the interest."
>
> (Emphasis supplied)

9.2. The plaintiff has contended that the additional claims sought to be incorporated by the captioned application have been quantified subsequent to filing of the underlying suit. It is stated that as per the MPA the Defendant was bound to provide the AMC services till 10.09.2028, but the Defendant defaulted in providing the said services in the year 2019 itself and therefore the Plaintiff was compelled to enter into agreement(s) with various other vendors for the AMC services and maintenance of the equipments. It is stated that the additional costs incurred by the Plaintiff for availing the said services is to be ascribed to the defaults committed by the Defendant and therefore it forms part of the same cause of action which have arisen pursuant to the MPA. It is stated that in this regard right to raise additional claims was specifically reserved by the Plaintiff in the paragraph '68' of the original unamended plaint which reads as under:

> "68. The services for the remaining period i.e., (i) 2023-2028 (for Millennium) (ii) 2025-2028 (for Harman) have still not commenced, neither any vendor has been appointed for the said period. **Hence, the Plaintiff reserves its right to re-agitate the issue regarding such additional claims as and when such claim arises as the costs shall escalate owing to end of life of Products**."
>
> (Emphasis supplied)

9.3. The period to which the claims of the unamended plaint relate to have been specifically set out at paragraph '71' of the said plaint. The said paragraph shows that claim for AMC support to Ministry of Defence (MOD) was raised until 15.08.2023 and claim for AMC services for the equipment RSS 4000 was raised until 14.11.2025.

9.4. It is stated at paragraph '31' of the captioned application that the Plaintiff wants to incorporate the following amendments in the plaint for additional costs incurred by the Plaintiff towards the AMC services availed from the third party: (i) Amendment of Paragraph '1', '71'; (ii) Additional Paragraph Nos. '49A', '49B', '66A', '67A', '67B', '84A' to '84J'; (iii) Deletion of Paragraph '68' and (iv) Amendment in the Prayer Clause.

10. On the other hand, learned counsel for the Defendant has contended that the additional claims sought to be raised by the Plaintiff are based on subsequent cause of action and that the said cause of action cannot be clubbed with the existing cause of action. She further contended that amendments sought to be introduced qua the captioned application would alter the very nature of the suit i.e., the cause of action.

10.1. The said arguments also form part of the written submission filed by the Defendant under the cover of Index dated 02.09.2024 and the relevant para reads as under:

> "4. That since the present suit is a commercial suit, the prescribed time is important and has to be adhered to as per the objective of the Commercial Courts Act.
> 5. That the present amendment being sought are otherwise not needed for complete and effective adjudication of the claimed amount (recovery of Rs.4,56,73,534.14/-) and rather it changes the nature of disputes. The plaintiff this way would then later allege a third amendment for amount after 2025 till 2028.
> 6. That the same is based on **subsequent cause of action i.e. allege failure to provide AMC services as stated even in para 2 of the said amendment Application.** Allowing the amendment would result in 'Misjoinder of cause of actions'.
> 7. That cause of action in a suit cannot be altered by amendment of pleadings as it is the very basis of a suit. **If a subsequent/new/distinct cause of action is there, the Plaintiff is always free to file a fresh suit with such cause of action by way of an independent suit.** There is no bar including Order II Rule 2 CPC or limitation."
>
> (Emphasis supplied)

11. In view of the above facts, it would relevant to refer to the judgments of the Supreme Court dealing with the mandate of Order VI Rule 17 CPC.

11.1. The Supreme Court in an authoritative judgment pronounced in **Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Ors.** [1], after considering all its relevant judgments on Order VI Rule 17 CPC, set out its conclusions on the discretion to be exercised by the Court while considering an application under Order VI Rule 17 CPC. In the said conclusion(s) while the Supreme Court reiterated that all amendments which are necessary for determining the real question in controversy ought to be

[1] 2022 SCC OnLine SC 1128.

allowed, held that if the amendment application is moved before the commencement of the Trial, then the Court should be liberal in its approach while considering such application for amendment. The relevant paragraph '70' reads as under:

> 70. Our final conclusions may be summed up thus:
> (i) …..
> (ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.
> (iii) The prayer for amendment is to be allowed
> (i) if the amendment is required for effective and proper adjudication of the **controversy** between the parties, and
> (ii) **to avoid multiplicity of proceedings**, provided
> (a) the amendment does not result in injustice to the other side,
> (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and
> (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).
> (iv) ……
> (v) In dealing with a prayer for amendment of pleadings, **the court should avoid a hypertechnical approach, and is ordinarily required to be liberal** especially where the opposite party can be compensated by costs.
> (vi) Where the amendment would enable the court to pin-pointedly consider the dispute and **would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed**.
> (vii) …..
> (viii) …..
> (ix) …..

(x) Where the amendment changes the nature of the suit or the cause of action, so as **to** set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed.
Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.
(xi) **Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.** (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)

(Emphasis supplied)

11.2. In the case of **Rajesh Kumar Aggarwal v. K.K. Modi**[2] the Supreme Court deliberating on the issue 'Whether merits of the case have to be gone into at the stage of consideration of amendment application' held as under:

"19. **While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment.** Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment…."

(Emphasis supplied)

12. In the facts of the present case, it is evident that the additional claims now sought to be introduced by way of the captioned application are in

[2] (2006) 4 SCC 385.

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:31.12.2024 13:09:01

continuation of the factual matrix already set out in the unamended plaint. The foundational fact remains the action of Defendant recusing itself from extending ACM support to the Plaintiff vide email dated 26.11.2019. Since the Plaintiff claimed differential costs incurred by it for availing AMC services from third parties, the unamended plaint included the actual differential costs incurred by the Plaintiff until the date of filing the said plaint, for the period ending August, 2023. However, since as per the Plaintiff, the Defendant had undertaken to provide AMC until 10.09.2028, the present amendment application has been filed to include the claim of differential costs for the remaining period until 10.09.2028.

13. Since the Plaintiff's claim is based on actual differential costs (as opposed to projected differential costs) the said claim for the period ending 10.09.2028 could not have been added in the original plaint, because the purchase orders in favour of third parties for the said period have been issued subsequent to the filing of the plaint.

14. The Defendant in the written submission has admitted that a fresh suit on the cause of action sought to be incorporated by way of captioned application would be maintainable as the same relates to a subsequent event. Therefore, in the facts of the present case the test of Order XI of the CPC as amended by the Act of 2015 would not be applicable and mandate of Order VI Rule 17 CPC alone will have to be applied to the facts of the present case.

15. Admittedly, issues have not been framed in the present case and therefore, there is no jurisdictional bar for this Court to entertain the application and the case of the Plaintiff would fall in the former part of Order VI Rule 17 CPC. Moreso, the additional claims are predicated on the

facts which has already been pleaded by the Plaintiff in the original plaint, specifically at paragraph '68' and the right to raise the same was reserved.

16. In the opinion of this Court the captioned amendment application deserves to be allowed. The amendment sought to be incorporated can be met by the Defendant by advancing appropriate pleadings. Further it would be in the interest of justice that the captioned application is allowed as the same would be in furtherance of avoiding multiplicity of proceedings between the same party qua the same subject matter i.e., the rights and liabilities under MPA.

17. At first blush, keeping in view the fact that the stage of completion of pleadings had been crossed and the matter was at the stage of recording of admission/denial of documents and marking of exhibits, this Court was of the view that the filing of the application ought not to be permitted as it would delay the suit and set at naught the progress of the suit. However, in the absence of any jurisdictional bar in Order VI Rule 17 CPC as applicable to the Commercial suit, this Court is unable to decline the relief sought. However, the fact that the matter has been set-back in time due to this amendment will be considered, while determining the Plaintiff's claim for pendente lite interest.

18. Accordingly, the captioned application is allowed and the amended plaint filed along with the captioned application is taken on record. The Plaintiff is directed to file the additional Court fee within a period of three (3) weeks.

19. The Plaintiff is directed to file the documents forming the basis of the amended claim in the plaint within three (3) weeks.

20. Upon being served with the additional documents, the Defendant is granted liberty to file amended written statement only to the extent of responding to the amendments in the plaint allowed vide this judgment within four (4) weeks from today. The Defendant shall not be at liberty to amend the written statement with respect to the paragraphs of the plaint, which remain unamended. In case, the directions issued is not complied with, the written statement will be taken off from the record. The Defendant shall file its affidavit of admission/denial of the additional documents filed by the Plaintiff along with the amended written statement.

21. Since the Plaintiff's right to file a replication already stands closed as recorded in order dated 22.08.2023, no right to file replication to the amended written statement is being reserved. It is also well settled that right to file replication is not inherent to the Plaintiff and the same can only be filed if permitted by the Court (**Anant Construction (P) Ltd. v. Ram Niwas** [3]).

22. It is made clear that nothing said in this order is in expression on the merits or maintainability of the claims of the Plaintiff and all rights and contentions of the Defendant qua the claims are left open.

<u>CS(COMM) 733/2022</u>

23. List on 18.02.2025.

MANMEET PRITAM SINGH ARORA
(JUDGE)

DECEMBER 30, 2024/mt/*sk*

Click here to check corrigendum, if any

[3] Anant Construction (P) Ltd. v. Ram Niwas, 1994 SCC OnLine Del 615.