

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

% Judgment delivered on: 17.04.2025

+ **RFA(COMM) 68/2024 and CM APPLs. 11406-07/2024**

**ABC INFOSYSTEMS PRIVATE LIMITED
& ANR**

..... Appellants

Versus

ABS INDIA PRIVATE LIMITED

..... Respondent

Advocates who appeared in this case:

For the Appellants : Mr Satish Kumar, Advocate.

For the Respondent : Mr Prakhar Dixit and Mr Samvel Mashih,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

VIBHU BAKHRU, J

1. The appellants have filed the present appeal under Section 96 of the Code of Civil Procedure, 1908 [**CPC**] read with Section 13(1A) of the Commercial Courts Act, 2015 [**CC Act**] impugning a judgment dated 02.12.2023 [**impugned judgment**] in CS(COMM) 751/2021 captioned *ABS India Private Limited v. ABC Infosystems Private Limited*. In terms of the impugned judgment, the learned Commercial Court decreed the aforesaid suit for a sum of ₹9,54,094/- along with simple interest at the rate of 7% per annum from 01.01.2020 till its realization in favour of the respondent [hereafter **the plaintiff**] and



against appellant no.1 [ABC Infosystems Private Limited – hereafter **the defendant**].

2. The learned counsel for the defendant has confined the present appeal for assailing the impugned judgment on two grounds. First, that the suit was barred by law as the plaintiff had not engaged with the defendants in a pre-institution mediation as mandated under Section 12A of the CC Act. And second, that the learned Commercial Court had erred in accepting an amount of ₹3,88,294/- as payable by the defendant to the plaintiff on account of failure to furnish the Form-C for availing the concessional rate of sales tax.

3. Briefly stated the relevant facts necessary to address the challenge raised by the appellants (defendants) are set out hereafter.

4. The plaintiff is a company with its registered office located in Bangalore, Karnataka. The plaintiff is engaged in the business of providing communication solutions. It builds, implements and maintains ‘Alcatel-Lucent Communication Networks’, which assist in efficient exchange of communication data between the enterprises such as voice, multimedia and other relevant information/data, in India and neighbouring countries.

5. Appellant no.1 [**the defendant**] is a private company, which has its registered office located in New Delhi. Appellant no.2 [**defendant no.2**] is the Managing Director of the defendant. The plaintiff claimed that the defendants had opted for availing the services of the plaintiff



for supply, installation and commissioning of the following devices/equipment including accessories:

- i. 40 – Alcatel-Lucent Model : OS6860E-U28 – 24
Gigabit Fibre Port Switch
- ii. 50 Alcatel-Lucent Model : OS6860E-24 – 24
Gigabit Fibre Port Switch

6. Accordingly, the defendant had issued a purchase order dated 10.11.2016 of a total value of ₹1,13,16,000/-. The said equipment was required to be delivered to the Stores Officer, Central Stores Unit, Directorate of Purchase & Stores, B.A.R.C., Trombay, Mumbai. In terms of the purchase order, 80% of the total purchase value was required to be paid before delivery; 15% was required to be paid through post-dated cheques; and the remaining 5% was to be adjusted from the bank guarantee and would be deposited in a bank as a fixed deposit, which could be encashed by the plaintiff after expiry of the warranty period of three years from the date of the purchase order. The plaintiff claimed that the agreed amount was inclusive of Central Sales Tax [CST] and the defendants had agreed to provide Form-C in order to enable the plaintiff to avail concessional rate of CST. The plaintiff claimed that it had performed its obligations of supply, installation and commission of the equipment and accessories, as agreed.

7. Thereafter, the plaintiff issued an invoice dated 28.12.2016, which was inclusive of CST at the rate of 2%. The plaintiff claimed that this was on the assurance that the defendant would provide Form-C. The plaintiff claimed that despite several reminders, the defendants did



not issue Form-C as required. Consequently, the plaintiff had to pay an amount of ₹3,88,294/- as differential sales tax as assessed by the Karnataka Sales Tax Department and thus, was entitled to recover the same.

8. The plaintiff also alleged that the defendant had resold the equipment and had earned a handsome profit in the process. The defendants had also withdrawn the bank guarantee issued by them as the three-year warranty period had expired. However, the defendants had failed to pay the remaining amount of 5%, which according to the plaintiff, was due and payable by the defendant.

9. The plaintiff had, accordingly, issued a legal notice calling upon the defendants to pay the aforesaid amount, but it had failed to satisfy the outstanding liability.

10. The defendants filed their written statement. They claimed that the plaintiff had agreed to supply the goods at competitive prices and had assured that the rates would be reasonable. However, the goods supplied were available at the market at a price, which was less by 40% to 50% of the price at which the plaintiff had supplied the goods. The defendants claimed that the plaintiff had assured the defendants that it would issue a credit note on account of charging increased prices, but had not done so. It also claimed that the suit was liable to be dismissed for non-compliance of the mandatory provisions and Section 12A of the CC Act. On the basis of the rival pleadings, the learned Commercial Court had framed the following issues:



- “1. Whether the plaintiff is entitled to recovery of ₹9,54,094/- along with interest from the defendant as alleged? OPP
2. Whether there is no cause of action in favour of the plaintiff? OPD
3. Whether suit is bad for misjoinder of necessary parties? OPD
4. Whether the suit is time barred? OPD
5. Whether the suit is liable to be dismissed for non-compliance of section 12-A of the Commercial Courts Act?
6. Relief.”

11. The parties had led evidence. The plaintiff had examined one Mr Devendra [PW1], who was its authorized representative. He had furnished his affidavit of evidence affirming the averments made in the plaint and proving the copy of the invoice dated 28.12.2016 [Ex.PW1/2] as well as the copy of the sales tax assessment order, the C-Form pending list and the CST differential payment challan [Ex.PW1/3]. He was cross-examined and, *inter alia*, denied the suggestion that the defendant had supplied Form-C for the purchases.

12. The defendant had also examined defendant no.2, Sh. Anjani Kumar Jaiswal [DW1], who was the Managing Director of defendant. He was also cross-examined.

13. The learned Commercial Court after examining the evidence found that the plaintiff was entitled to recover an amount of ₹9,54,094/- along with interest as the plaintiff had established that it had supplied the equipment and had raised the invoice for the price as agreed. The



defendant had failed to establish that there was any agreement whereby the plaintiff had agreed to reduce the prices. The defendant had also failed to establish by any documentary evidence that it had forwarded Form-C for enabling the defendant to claim the CST chargeable at 2%.

REASONS AND CONCLUSION

14. The pleadings as well as the evidence placed on record clearly establishes that the plaintiff had supplied the equipment as agreed. There is no cavil that the defendant had agreed to receive the same. The supply was in accordance with the purchase order [Ex.PW1/1], which clearly specified the equipment, the unit price as well as the total price of the said equipment. It is necessary to note that the purchase order unambiguously provided that the price of ₹1,13,16,000/- was inclusive of taxes. The terms and conditions also clearly provided that “2. *Taxes: CST Inclusive & Form-C will be provided*”.

15. The plaintiff had, accordingly, raised an invoice [Ex.PW1/2] for a sum of ₹1,13,16,000/-. The invoice clearly reflected the price of the equipment as ₹1,10,94,117.20 and “*Central Sales Tax 2% - 2016-17 Against Form-C*” as ₹2,21,882/-. Therefore, there is no dispute that the defendant was obliged to provide Form-C. This would enable the sale to be effected against a levy of sales tax, confined to CST at 2%.

16. As noted above, the learned counsel for the appellants (defendants) has not pressed the challenge to any finding of the learned Commercial Court that there was no agreement for reducing the price and the defendant was obliged to pay the amount as invoiced. The



defendant's challenge – apart from non-compliance with Section 12A of the CC Act – is to the learned Commercial Court's decision to accept the claim for an additional of an amount of ₹3,88,294/- being the differential amount payable on account of non-supply of Form-C by the defendant.

17. The defendants have also filed an application under Order XLI Rule 27 read with Section 151 of the CPC praying that additional evidence being copies of Form-C, which the defendants claim was furnished to the plaintiff, be taken on record.

18. Before proceeding further, it would be relevant to note that the plaintiff had produced a rectification order dated 24.07.2019 under Section 9(2) of the Central Sales Tax Act, 1956 read with Section 69(1) and 36 of the Karnataka Value Added Tax Act, 2003. The said order indicates that the plaintiff was held liable to pay differential tax at the rate of 3.5% on account of non-furnishing of C-Forms and the amount was quantified at ₹4,38,224/-. A notice of demand for a sum of ₹6,19,565/-, which comprised of the amount of tax of ₹4,36,314/- along with interest at ₹1,83,251/- was issued by the Commercial Tax Officer. PW1 had also proved the list of customers that had not issued Form-C and the differential value of the tax assessed on that count. The said list indicates that the differential tax as assessed included an amount of ₹3,88,294/- being the differential tax payable on account of non-furnish of Form-C by the defendant.



19. The plaintiff had applied for waiver of penalty and interest and also produced an order of waiver dated 29.08.2019 passed by the Commercial Tax Officer, whereby the arrears of interest amounting to ₹1,83,251/- were waived on the plaintiff paying the differential tax of ₹4,36,314/-.

20. The plaintiff has, thus, clearly proved that it had paid an amount of ₹3,88,294/- on account of difference in tax resulting from non-furnishing of Form-C pertaining to the sale made to the defendant.

21. As noted above, PW1 had testified that the defendant had not furnished Form-C despite reminders. In his cross-examination, he unequivocally denied the suggestion that the defendant had supplied the Form-C for the sale-purchase in question.

22. Defendant no.2 (DW1) has furnished his affidavit by way of evidence, *inter alia*, affirming that Form-C has been provided to the plaintiff. He was also cross-examined and denied the suggestion that the defendant company had not issued Form-C to the plaintiff. The defendants have also filed an application *inter alia* seeking to place copies of Form-C on record.

23. As noted above, the plaintiff had, unequivocally, denied receiving copies of Form-C in question. Thus, the onus to prove that copies of Form-C had been provided to the plaintiff was required to be discharged by the defendant. The defendant had not produced any document on record to show that it had forwarded Form-C in question to the plaintiff. Although the defendant has now sought to produce the



copies of Form-C in these proceedings by filing an application for producing additional evidence, the defendants have not produced any letter or communication forwarding the said Form-C to the plaintiff.

24. There is no reason for the plaintiff to have suffered an additional liability of tax in the event Form-C was provided by the defendant to the plaintiff as claimed. Producing Form-C, at this stage, is of little assistance to the plaintiff as the plaintiff has already entered into a settlement for payment of the differential tax for seeking waiver of the interest on the said sum as demanded by the concerned tax authorities.

25. In view of the above, we find that the plaintiff is entitled to receive the amount of ₹3,88,294/- along with remaining consideration as differential tax along with the balance consideration. We concur with the learned Commercial Court that the plaintiff is entitled to the amount of ₹9,54,094/- as decreed.

26. The second question to be examined is whether the suit is liable to be dismissed for non-compliance with the provision of Section 12A of the CC Act.

27. Undisputedly, the plaintiff had filed an application under Order XXXVIII Rule 5 of the CPC for seeking attachment of the amount claimed. In terms of the Agreement, the defendant was required to deposit the remaining consideration of 5% in a fixed deposit, which would be withdrawn by the plaintiff on expiry of the warranty period of three years. During this period, the plaintiff was required to be secured by a bank guarantee. Admittedly, the bank guarantee had been



withdrawn. Thus, it is understandable from the stand point of the plaintiff that it required to be urgently secured in respect of its claim. In the given facts, we are unable to accept that the plaintiff's contention that the suit involved matter of urgency, is farcical or a ruse.

28. In view of the above, the suit could not be dismissed as barred by law on account of Section 12A of the CC Act.

29. It is also relevant to note that the Supreme Court in *M/s Patil Automation Private Limited and Ors. v. Rakheja Engineers Private Limited: (2022) 10 SCC 1* had held that the provisions of Section 12A of the CC Act are mandatory. However, it was clarified that the decision would be prospective.

30. In view of the above, the appeal is unmerited and accordingly, dismissed. Pending applications are also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 17, 2025
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