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IN THE COURT OF LXXXIV ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH-85) (COMMERCIAL COURT), BENGALURU

DATED THIS THE 24th DAY OF AUGUST 2024

PRESENT

SRI.RAMAKANT CHAVAN,

B.Com., LL.B.(Spl)

LXXXIV ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.

Com.O.S.No.5746/2018

PLAINTIFF:

Intertech Electro Controls Pvt. Ltd.
No.47, 1 & 2 Floor,
Millers Tank Band Road,
Vasanth Nagar,
Bengaluru-560052.
Rep. by its Authorized Signatory,
D.A. Joshi

(By Sri. Arun A. Gadag, Adv.)

AND

DEFENDANT:

ENRICH
(Proprietary concern)
No.40/3, 1st Floor,
Ave Maria,
Dickenson Road,
Bengaluru-560 042

Rep. by its Proprietor
Mr. Suresh Gidwani

(By Sri.Shafi Ulla Sharief, Adv.)

Date of Institution	07.08.2018		
Nature of suit	For recovery of money		
Date of commencement of recording of evidence	01.03.2021		
Date on which judgment pronounced	24.08.2024		
Time taken for disposal	**Years** **00**	**Months** **06**	**Days** **25**

LXXXIV Addl. City Civil & Sessions Judge
(CCH-85) Commercial Court, Bengaluru

J U D G M E N T

This is a suit filed by the plaintiff-company against the defendant for recovery of Rs.6,76,133/- with interest at 18% per annum from the date of suit till realization.

2. Brief facts of the plaintiff's case are that, the plaintiff is a registered company deals with supply and installation of Electronic Security, building maintenance, fire alarm system, access control system, CCTV system, public address system, fire fighting, FM 200 Gas suppression system and other allied

products to the residents, commercial places as well as corporate set-ups.

It is further pleaded that the defendant who is a commercial entity running interior decorator business. It is a proprietary concern. Defendant being an interior decorator has requested the plaintiff to supply the install sprinkler and fire extinguisher works and other allied sales and services to one of their client IMS Health Analysis Pvt. Ltd. The defendant has executed two separate letter of intent on 20.02.2014 and notice of award dated 30.06.2014 in favour of the plaintiff for 8th and 9th floor respectively. The letter of intent dated 20.02.2014 for the 8th floor was valued at Rs.14,24,539.42. The defendant issued award notice on 30.06.2014 for Rs.12,30,831/-. The award notice is for 9th floor. The defendant has also issued purchase order on 29.09.2014 in favour of the plaintiff for preparation of drawing and supply of map and key plan Rs.54,194/-.

It is further pleaded that as per these documents, the plaintiff was entrusted with the work of installing fire extinguishers, air conditioners and sprinkler works at Omega building, 8th and 9th floor Embassy Tech Square, outer ring road, Marathahalli, Bengaluru. The entire cost for the contract agreed to be paid by the defendant under award notice, LOI and a purchase order was for Rs.27,09,564.42. As per the client orders, the scope of the work involved supply and installation of air conditioning low side works, the supply of men and materials and all tools and tackles required for the completion of the project. It was also agreed that 'the scope of work shall not be limited to the items included in the bill of quantities/annexures, which may be/added/supplemented/deleted by the employer/project in-charge'. As per the client orders executed in favour of the plaintiff, he has completed his work and during the process of the work, the plaintiff has raised tax invoices from time to time i.e., Tax invoice 26.06.2014 for Rs.3,37,074/-, Tax invoice 26.06.2014 for Rs.2,04,555/-, Tax invoice 28.02.2014 for Rs.6,04,930/-, Tax invoice 12.03.2014 for Rs.3,27,607/- (for 8th floor), Tax invoice 22.07.2014 for Rs.10,02,678/-, Tax invoice 31.03.2015 for Rs.787/-, Tax invoice 30.03.2016 for Rs.1,35,185/-, Tax invoice dated 30.03.2016 for Rs.61,251/- and Tax invoice dated 31.03.2015 for Rs.3,25,136/- (for 9th floor).

It is further pleaded that, the plaintiff incurred more expenditure than the client orders issued by the defendant and such increase is only due to the changes sought by the defendant. The total expenses incurred for the project was Rs.29,99,203/-. As per the ledger records, the defendant was maintaining running accounts and he has made some payments- Rs.2,79,209/- on 05.03.2014, Rs.4,90,000/- on 11.04.2014, Rs.3,00,000/- on 30.07.2014, Rs.2,50,000/- on 05.07.2014, Rs.2,50,000/- on 09.09.2014, Rs.4,53,861/- on 13.12.2014 and Rs.3,00,000/- on 28.10.2015 through cheques. Hence the defendant has paid an amount of Rs.23,23,070/-. The defendant even is not responding the request made by the plaintiff for sharing the handing over certificate and installation certificate signed by end user to check whether back to back billing done by the defendant on the end user based on the work done by the plaintiff.

It is further pleaded that, it is trite Law to either make payment of the materials received against Invoices raised or return the materials which were not installed and not certified. The Defendant neither returned the materials nor making a payment towards the same nor sharing the handing Over and Installation Certificates signed by End User to enable Plaintiff to crosscheck the billing done by Him on End User. It is evidently clear that the Defendant accepts his liability in the e-mail which concludes that there are no other works pending, in such situation the Defendant cannot take shelter under 6% of retention as per the Award Notice/ Work Order. The Defendant has also sent RPAD confirming very same contents through RPAD. In the messages sent from Whatsapp application from his number '9844154141' on 01.08.2018 at 12-48 p.m. he states "the correct amount being still in Service Tax problem and I'll clear your payment v v long-delayed". The due amount is evidently clear but he is delaying the payment for the reasons best known to him.

It is further pleaded that the claim of the Plaintiff is well within the limitation as the Defendant has made a payment towards the dues towards the running account on 28.10.2015; apart from this, the Defendant has purchased another product on 30.03.2016. The Defendant herein is maintaining Running

Account with the Plaintiff accordingly he was paying Bills intermediately against several bills raised by the Plaintiff. It may be noted from the Payment made by the Defendant was on 28.10.2015. Subsequent to last payment made by the Defendant, he has demanded Sprinkler and Fire Extinguishers on 30.03.2016 accordingly the same was supplied to him. As per the terms and conditions of the Notice of Award, the Defendant was only entitled to hold 6% of the entire project value and same shall be paid to the plaintiff within 12 months from the date of completion. It is evident from the records that the defendant can only hold as Retention up to 6%. The Defendant is aware of completion of the work order and thereafter he has not raised any complaint regarding defects till date such being the case the defendant is also liable to release the 6% which was withheld as Retention Money.

It is further pleaded that though the work was completed, the defendant is reluctant to pay the remaining sum. On the other hand the Plaintiff herein time and again requested for the repayment of dues reminding him through emails. In several emails particularly dated 10.10.2017 to 03.05.2018, the Plaintiff executives cautioned the Defendant of taking appropriate legal action in the event of failure to make payments. However, the Defendant having received all the e-mails has responded and accepted the dues outstanding to the extent of Rs.2,04,195.28 vide its email dated 12.10.2017 and keeping silent. The defendant is liable to pay an amount of Rs.6,76,133/-. Hence, the plaintiff company is constrained to file this suit.

3. After service of summons, the defendant put its appearance through its counsel and filed written statement. It has admitted the contents of plaint averments at Para No.I(a) and also some other plaint averments. It has denied the other averments of the plaint. It is further pleaded that the defendant has already paid the amounts to the plaintiff. The claim made by the plaintiff company is false. In spite of payments made by the defendant, the plaintiff company has not carried out the work as schedule and the work was left over and it was completed by some other party who was entrusted by the defendant. Because of this, the defendant sustained huge loss. Regarding purchase order amounting to Rs.27,09,564.42 and the defendant has paid the payments as per the list.

It is further pleaded that, the ledger of the plaintiff shows balance only as Rs.1.16 lakhs and the defendant's ledger shows minus Rs.4,000/- for 8th floor and minus Rs.54,000/- for 9th floor, hence, as per the ledger of the defendant dated 17.10.2017, the minus amount of Rs.58,000/- for 8th and 9th floor should be paid by the plaintiff company itself. It has taken further defence that the suit of the plaintiff is barred by limitation and there is no cause of action to file this suit. Hence, prays for dismissal of the suit.

4. Based on the above, this court has framed the following:

ISSUES

1. Whether the plaintiff proves that the defendant has executed two separate Letter of Intent on 20.02.2014 and 30.06.2014, as pleaded?

2. Whether the plaintiff proves that it has raised various invoices in the year 2014 to 2016 for different amounts, as pleaded?

3. Whether the plaintiff proves that the defendant is liable to pay the balance amount of Rs.6,76,133/- and also interest thereon?

4. Whether the defendant proves that it has already paid the amounts to the plaintiff?

5. Whether the plaintiff is entitled for the relief sought?

6. What order or decree?

5. To prove the case, the plaintiff's Authorized Signatory is examined as PW1 and got marked some documents at Ex.P1 to P17. The proprietor of the defendant is examined as DW1 and Ex.D1 to D16 are got marked through him.

6. Heard the learned counsel for the parties.

7. My findings on the above issues are:

Issue No.1: In the affirmative
Issue No.2: In the affirmative
Issue No.3: Partly in the affirmative
Issue No.4: In the negative
Issue No.5: Partly in the affirmative
Issue No.6: As per the final order for the following

REASONS

8. **<u>Issue Nos.1 to 4</u>:** The burden of proving Issue Nos.1 to 3 lies on the plaintiff company. In regard to Issue No.4 is concerned, the burden of proving this Issue lies on the defendant. The Authorized Signatory of the plaintiff has filed his affidavit and he is examined as PW1. He has narrated the contents of the plaint in his affidavit. He has produced some documents at Ex.P1 to P17 i.e. Authorization letter, copies of LOI, copy of the purchase order, service bills, tax invoices, ledger extract, email of the defendant, letter of the defendant, Form No.1 regarding Certificate of Incorporation of the plaintiff.

9. In the cross examination of PW1, it is forthcoming that the plaintiff company had supplied materials / installation to the defendant worth of Rs.29,99,203/-. The plaintiff received orders from the defendant firm in the months of February, June and September 2014. After February 2014 work was commenced and it was concluded in the month of March 2015. The plaintiff company had deputed its Engineers to supervise the work. The last balance due from the defendant firm was Rs.6,76,133/-. As per the clause mentioned in the purchase orders, the plaintiff company had supplied extra material as per the requirement of the installation. He has denied that the only due was Rs.23,23,070/-. He has also denied that the defendant firm has made entire payments. He has admitted that there were several email communications between the defendant firm and the plaintiff company. He has denied that there was an excess

payment of Rs.1.16 lakhs and Rs.4,000/- for 8th and 9th floors. The balance due from the defendant firm as per Document No.4 was Rs.2,04,195.25. In Document No.14, it shows Rs.1,16,700/-. The project was completed in the year 2015 i.e. on 15.03.2015 and the suit is filed in the year 2018. He has denied the other suggestions.

10. The defendant's proprietor is examined as DW1 and he has filed his affidavit. He has produced some documents at Ex.D1 to D16 i.e. copy of the letter dated 12.10.2017, payment statements, copy of the Intertech balance forwarded by the plaintiff, office copy of the letter dated 23.10.2018, copy of email conversations and Certificate U/Sec.65B of the Evidence Act.

11. In the cross examination, it is forthcoming that, he has given purchase order for supply of fire escape root map as per Ex.P4 to the plaintiff company. The total amount of purchase orders as mentioned in Ex.P2 to P4 is Rs.27,09,564/-. He has also admitted that there is a condition No.1 in Ex.P3 regarding variation may come in the work order. He engaged the plaintiff for IMS Health care's work as a Sub-Contractor. He has also admitted that, the plaintiff company has done work for him on Omega building in 8th and 9th Floors of Embassy Tech Square, Bengaluru and also admitted that Nine invoices were raised during this work as per Ex.P5 to P13. He has paid Rs.23,23,070/- as against Rs.29,99,203/-.

12. In his further cross examination, it is forthcoming that, according to DW1, the Ex.P13 is not correct when witness is shown Ex.P5 to P13. He has denied that, he has not sent any email in respect of Ex.P13. The Ex.D7 is the copy of the email, but, it is a general email, not particularly pertaining to Ex.P13. He has admitted that, he has not produced End User Bills. He has not produced any documents pertaining to work not completed by the plaintiff company. Even he has not produced any documents to show that the work has not been completed by the third party. He has denied the other suggestions.

13. The learned counsel for the plaintiff has submitted his arguments based on the plaint averments, evidence of PW1 and documents referred above. He has pointed out towards the defence made out by the defendant as well as evidence of DW1 and documents produced at Ex.D1 to D16 and also the documents produced on behalf of the PW1 at Ex.P1 to P17. He has further submitted that, the Ex.P5 to P8 and Ex.P12 and P13 are the tax invoices of different dates. The Ex.P9 to P11 are the Service bills. The DW1 has denied during his cross examination in respect of Ex.P13, when he was shown Ex.P5 to P13. It shows that the DW1 has admitted the other invoices produced on behalf of the plaintiff company. The defendant has not produced relevant and cogent documents to substantiate his defence.

14. Per contra, the learned counsel for the defendant has submitted his arguments and he has pointed out towards the defense made by the defendant. The defendant has already paid

the amounts to the plaintiff company. The plaintiff has filed this suit against the defendant only to claim money. The IMS was given work to the defendant and not the plaintiff company. There is no direct allotment of work by the plaintiff. But, the plaintiff is claiming the amount. The work agreed was completed in the year 2015 itself. But, in the year 2016 the plaintiff company has issued a letter. The suit is barred by limitation. There is no merit in the suit. He has also pointed out towards the documents produced on behalf of the defendant at Ex.D1 to D16. There is a minus payment as could be seen in Ex.D2. The plaintiff company itself has to pay the amount to the defendant. The plaintiff company has not produced any documents to show that the defendant is still having due.

15. After hearing the learned counsel for the parties, I have gone through the evidence of the witnesses and pleadings of the parties as well as the documents produced at Ex.P1 to P17 and Ex.D1 to D16. After going through the pleadings of the parties as well as evidence and materials on record, there is no dispute regarding the business transactions between the parties. The say of the defendant is that, the claim made by the plaintiff company is false one. He has already paid the entire amount towards the work carried out. According to the plaintiff, as pleaded, as per the invoices from 26.06.2014 to 31.03.2015, the total amount was Rs.29,99,203/- and it is clearly pleaded in para No.9 of the plaint that the defendant has paid an amount of Rs.23,23,070/-. According to the plaintiff company still the

defendant is in due of Rs.6,76,133/- and its further say is that the defendant is liable to pay an interest at the rate of 18% p.a.

16. By going through the evidence of PW1 and DW1 as discussed herein above, there is a suggestion put to PW1 during cross examination that "as per our ledger extract, the only balance was Rs.1,16,700/- and as per the ledger extract of the defendant, it was Rs.58,000/- for 8^{th} and 9^{th} floors of the project." This suggestion is denied by the witness. It shows that the only balance of Rs.58,000/- pertaining to 8^{th} and 9^{th} floors still pending due. Admittedly, the project was completed in the year 2015 and the suit came to be filed in the year 2018. It is also admitted by PW1 during his cross examination. After going through the evidence of DW1, when Ex.P5 to P13 shown to him, he said that the Ex.P13 is not correct. It is argued on behalf of the plaintiff company that the other invoices are correct and admitted by DW1. Though the defendant has maintained the ledger regarding work done by the plaintiff company, as admitted by DW1, but, he has not produced the ledger extract. According to DW1, he has sent an email in respect of Ex.P13. The Ex.D7 is the copy of the email. It is a general email and not pertaining to Ex.P13 alone. Even he had not returned any materials to the plaintiff company, it is also admitted by DW1 during his cross examination. Even the DW1 has not produced any documents pertaining to not completed the work by the plaintiff company.

17. After going through the documents produced by the parties, the Ex.P1 is the copy of the Authorization letter and

Ex.P4 is the purchase order dated 29.09.2014 for Rs.54,194/-, Ex.P5 to P8 are the tax invoices for the months of February, March, June and July 2014. It is in favour of Omega Building. Ex.P9 to P11 are the Service Bills, the Ex.P12 and P13 are the Tax invoices for the months of March 2016. The Ex.P14 is the ledger account extract for the period 01.04.2013 to 31.10.2017. It is pertaining to 8th floor. It also consists 9th floor also for the said period. By perusing this ledger account extract, the closing balance was Rs.3,37,074/- for 8th floor and Rs.2,22,359/- for 9th floor. The closing balance as could be seen in page No.4 of the Ex.P14 is Rs.1,16,700/-. The say of the plaintiff company is that, the defendant has admitted to pay an amount of Rs.2,04,195.28 as against total outstanding balance of Rs.5,59,433/- as per the email conversation produced under Ex.P15, it is dated 03.05.2018. As stated supra, a suggestion was put to PW1 that the closing balance is not Rs.1,16,700/-, but, it is Rs.58,000/- pertaining to 8th and 9th floors.

18. The DW1 has produced some documents i.e. Ex.D2 to D5 are the copies of payment statements, Ex.D6 is the copy of the balance forwarded by the plaintiff company to the defendant on 10.10.2017 and the Ex.D7 is the copy of the letter to the plaintiff company on 23.10.2018, the Ex.D8 is the copy of the email by Anand Karajagi on 17.10.2017 and Ex.D9 is another email forwarded by the Admin of DW1 on the same date. The Ex.D11, D12 and D13 are also the copies of email forwarded by the defendant. The DW1 has not produced any documents

pertaining to work not completed by the plaintiff company, even he has admitted that he has not returned any materials to the plaintiff company. As stated supra, though DW1 has maintained the ledger account regarding work done by the plaintiff company, but, he has not produced the same. If the defendant (DW1) produced the ledger account, it will help and ascertain regarding the dues by the defendant. Therefore, in view of the discussions made supra, the plaintiff company is able to prove regarding execution of Two separate LOI in the year 2014 in respect of 8th and 9th floors and also produced the various invoices in the year 2014 to 2016 for different amounts.

19. In regard to point of limitation is concerned, it is argued on behalf of the defendant that the project was completed in the month of March 2015. As per the plaint averments, it is clearly pleaded regarding the invoice numbers, amount and date in para No.8 of the plaint. The last tax invoice is dated 31.03.2015 for Rs.3,25,136/-. It is also pleaded in para No.16 of the plaint that the defendant has purchased another product on 30.03.2016. The Ex.P13 is the said purchase order dated 30.03.2016, it is regarding supply of Fire Exit Root Map. The suit filed on 07.08.2018. Hence, by perusing the documents and materials, the suit is in time. In view of the discussions made supra, the claim made by the plaintiff company is not clear. The closing balance as could be seen in Ex.P14 at page No.4 referred above is Rs.1,16,700/-. There is no authentication or admission on behalf the defendant (DW1) regarding admitting the balance

of Rs.2,04,195/-. There is variation in this account extract as well as the claim made by the plaintiff in its plaint. Even there is minus balance as could be seen from Ex.D2 referred above and the balance as could be seen in Ex.D3 is Rs.54,717.88 as on 05.10.2015 and the balance as could be seen in Ex.D4 is Rs.2,04,195.28. The say of the defendant is that the balance shown in statement is not correct. But, the defendant has not produced any account statement on its behalf. In regard to interest is concerned, the plaintiff company has not produced any documents regarding rate of interest agreed between the parties. Since, this is a commercial transaction, therefore, it fetches interest. Therefore, the plaintiff company is entitled for Rs.54,717.88 and interest at the rate of 8% thereon from the date of suit i.e. 07.08.2018. Accordingly, I answer the Issue Nos.1 and 2 in the affirmative and Issue No.3 partly in the affirmative and Issue No.4 in the negative.

20. **Issue No.5:** The plaintiff company has sought an amount of Rs.6,76,133/-. But, the plaintiff has failed to prove the actual balance sought in the plaint by producing cogent documents, including interest. As per Ex.D3 the balance due is Rs.54,717.88. Hence, the plaintiff company is entitled for **Rs.54,718/-** and interest at the rate of 8% p.a. from the date of suit, till its realization. Accordingly, I answer the Point No.5 partly in the affirmative.

21. **Issue No.6:** In the result, I pass the following :

ORDER

Suit of the plaintiff is hereby decreed in part with cost.

The defendant is liable to pay Rs.54,718/- with interest at the rate of 8% p.a. from the date of suit till its realization.

The defendant is directed to repay the amount as ordered within <u>Three months</u> from the date of this order.

Draw decree accordingly.

Issue copy of the judgment to the parties through email as provided U/Or. XX Rule 1 of CPC if email ID is furnished.

(Dictated to the Stenographer typed by her directly on the computer, corrected and then pronounced by me in the open court on this the **24th** day of **August 2024**)

(RAMAKANT CHAVAN)
LXXXIV Addl. City Civil & Sessions Judge,
(CCH-85) Commercial Court, Bengaluru.

ANNEXURE

<u>List of witnesses examined for the plaintiff:</u>

PW1 D.A. Joshi

<u>List of documents marked for the plaintiff:</u>

Ex.P1	Authorization letter dated 21.07.2018.
Ex.P2-P3	Copies of two letters of intent dated 20.02.2014.

Ex.P4	Copy of the purchase order.
Ex.P5-P8	Tax invoices.
Ex.P9-P11	Service bill.
Ex.P12-13	Tax invoices.
Ex.P14	Ledger account extract.
Ex.P15	Admission of debt by the defendant through e-mail.
Ex.P16	Letter of defendant partially admitting the debt.
Ex.P17	Form-1 regarding Certificate of Incorporation

List of witnesses examined for the defendants:

DW1 Mr. Suresh Gidawani

List of documents marked for the defendants:

Ex.D1	Copy of the letter dated 12.10.2017
Ex.D2-D5	Copies of the payment statements
Ex.D6	Copy of the inter tech balance forwarded by the plaintiff to the defendant dated 10.10.2017
Ex.D7	Office copy of the letter dated 23.10.2018
Ex.D8	Copy of the email by one Anand R. Karajagi dated 17.10.2017
Ex.D9	Copy of the email forwarded by my Admin dated 17.10.2017
Ex.D10	Copy of the email dated 11.12.2018 with mobile No.9844154141
Ex.D11	Copy of the email sent by the defendant company dated 12.10.2017
Ex.D12	Copy of the email sent by the defendant company dated 12.10.2017

Ex.D13	Copy of the letter through email dated 12.10.2017
Ex.D14	Copy of the letter issued by the defendant company dated 12.10.2017
Ex.D15	Copy of the email sent by Anand R. Karajagi dated 17.10.2017
Ex.D16	Certificate U/Sec.65B of the Evidence Act.

(RAMAKANT CHAVAN)
LXXXIV Addl. City Civil & Sessions Judge,
(CCH-85) Commercial Court, Bengaluru.