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

\+ CS(COMM) 173/2023

BLUE GRASS & ANR. ..... Plaintiffs

Through: Mr.S.S.Ahluwalia and Mr.Mohit Kukreja and Mr.Mahendra P. Singh, Advocates

versus

NIRVIKAR FILM LLP AND ORS ..... Defendants

Through: Nemo

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

<u>O R D E R</u>

% 27.03.2023

<u>I.A. No. 5914/2023 (for exemption)</u>

Subject to the plaintiff filing the clear, original and legible/typed copies of any dim documents on which the plaintiff may seek to place reliance, within four weeks from today, exemption is granted for the present.

The application is disposed of.

<u>CS(COMM) 173/2023</u>

1. The present plaint has been filed by the plaintiffs seeking recovery of the sum of Rs.2,57,49,552/- along with interest @ 24 % per annum seeking the following prayers:

> *"a. Pass a decree in favour of the plaintiff no.1 and 2 with the directions to Defendant no.1, 2, 3 and 4 to pay the due amount of Rs. 2,57,49,552/- (Rupees Two Crores Fifty-Seven Lacs Forty-Nine Thousand Five Hundred Fifty-Two Only) along with the interest @24%p.a.*

> *b. Pass the decree in favour of Plaintiff no. 1 and 2 with the directions to Defendants no. 1, 2, 3 and 4 to pay the damage for the loss to the sum of Rs. 10,00,000/- plus the litigation cost of Rs. 5,00,000/-.*
> *c. Pass any such order which the Ld. Court may deem fit."*

2. The learned counsel appearing for the plaintiff submits that the plaintiff/Blue Grass is a Sole Proprietorship firm having its registered office at Lower Ground Floor B-1/20 Basement Malviya Nagar, New Delhi - 110017. The Plaintiffs no. 1 and 2 have been in the business of line production for the past 25 years. It is further submitted that the plaintiffs command good respect and goodwill in the business of line production.

3. It is further submitted on behalf of the plaintiffs, that the plaintiffs have filed the instant suit in order to recover its due money, i.e., the sum of Rs. 2,57,49,552/- plus interest.

4. It is submitted that the cause of action for filing the instant suit against the defendant accrued for the first time on 3rd May, 2022 at the time when the bill for Rs.4,05,485/- for recce and tech recce was raised by the plaintiffs to defendant No. 1 pertaining to the reccee done by the plaintiff. It is further submitted that the cause of action arose again when the defendant No.1 shared line production agreement and supply agreement with the plaintiffs to assist in the making of OTT Series Criminal Minds. It is submitted that the cause of action again arose on 30th August, 2022 when the bill was raised by the plaintiff No.l towards the cost incurred for the extra days of shooting and extra facilities availed by the defendants.

5. The learned counsel appearing for the plaintiffs further submitted that the cause of action is continuing till date since the defendants have admitted

their liability vide an email dated 22nd July, 2023 and the said amount remains pending. It is further submitted on behalf of the plaintiffs that the plaintiffs had sent a legal notice dated 9th February, 2023 to the defendants for the recovery of the above dues, but the said notice has not been replied to by the defendants as on date.

6. Heard learned counsel for the plaintiffs.

7. Let the plaint be registered as a suit.

8. Issue summons in the suit. *Dasti* in addition.

9. The written statement(s) shall be filed within thirty days from the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the documents of the plaintiff.

10. Liberty is given to the plaintiffs to file replication(s), if any, within thirty days from the receipt of the written statement(s). Along with the replication(s) filed by the plaintiffs, affidavit of admission/denial of the documents of the defendants be filed by the plaintiffs.

11. List before the Joint Registrar on 19th April, 2023 for completion of service and pleadings.

12. List before the Court on 18th September, 2023.

I.A5913/2023 (O-XIIIA R-3 of CPC)

1. The plaintiffs have filed the present application along with the suit in order to seek immediate relief under Order XIII-A Rule 3 of the Code of Civil Procedure, 1908 applicable to the commercial disputes for the sum of Rs. 51,87,000/- plus the interest thereon.

2. The learned counsel appearing for the plaintiffs/applicants submitted that the plaintiffs were approached by the defendant No.l for the line producer service for the upcoming Web Series 'Criminal Minds'. The

plaintiffs and the defendants entered into two agreements i.e., Line Producer Agreement and Supply Agreement. The payment in respect of both the agreements was decided well in advance, which is not disputed by either of the parties.

3. The learned counsel appearing for the plaintiffs submits that the said Line of Production Agreement pertained to the remuneration/fees to be paid for providing service as line producer by the Plaintiff no.2 and it was agreed that plaintiff no. 2 in terms of Clause 4 of the Line Producer Agreement shall be entitled to the sum of Rs. 15,00,000/- (Rupees Fifteen Lacs only) towards the services rendered.

4. The defendant no. 1 engaged the Plaintiff no.l/Blue Grass to facilitate Services in terms of the 'Supply Agreement' as per Annexure- I at the consideration of Rs. 2,70,00,000/-(Rupees Two Crore Seventy Lakh Only) plus the GST of Rs. 49,66,000/- (Rupees Forty-Four Lacs Sixty-Six Thousand only) as per Clause 6 read with Annexure-2 of the 'Supply Agreement'. It is pertinent to mention that as per Clause 7.2 of Supply Agreement, plaintiff no.l is entitled for the GST on the total consideration amount of Rs.2,70,00,000/- as stated above. The defendant no.l in terms of Clause 6.2 of the Supply Agreement had agreed to pay the additional payment of Rs.5,00,000 to plaintiff no.l for the services rendered to the satisfaction of completion of work assigned.

5. It is further submitted on behalf of the plaintiffs that the payment outstanding to the Plaintiff no.2 in respect of the Line Producer Agreement duly admitted to be paid by the defendants is Rs. 2,17,500/- (Rupees Two Lacs Seventeen Thousand Five Hundred Only) as on date to the plaintiff no.2. At the same time the admitted outstanding payment of Rs. 19,63,500/-

(Rupees Ninteen Lacs Sixty Three Thousand Five Hundred Only) is liable to be paid by the defendants to the plaintiff no.1 as on date as per Supply Agreement and the e-mail dated 22nd July, 2022. It is further submitted on behalf of the plaintiffs that the plaintiffs are entitled to seek recovery of the said admitted monies from the defendants.

6. The learned counsel appearing for the plaintiffs further submitted that as per Clause 7.2 of the Supply Agreement the defendant had admitted to pay the GST amount calculated on the total consideration to Rs. 2,70,00,000/- to the Plaintiff no.l. The actual GST amount is calculated as Rs.49,66,000/- on the total consideration of Rs. 2,70,00,000/- as per the supply agreement entered into between the parties. The defendant no.l admittedly paid a sum of Rs.19,60,000/- as the GST amount out of the total GST sum of Rs.49,66,000/- . It is further submitted that the said statutory liability to be deposited in the GST account by plaintiff No. 1 had already been accrued to the sum of Rs.30,06,000/-(Rupees Thirty Lacs Six Thousand Only) plus the late fee and the interest levied by the department.

7. It is further submitted on behalf of the plaintiffs that the plaintiffs have received the notice under Rule 22 (1) form GST REG-17 Reference No. ZA0701231406511 dated 25th January, 2023 for the suspension of his GST account due to failure in filing GST RC-B return since July 2022. Admittedly, the defendant no.l has intentionally not paid the pending GST of Rs.30,06,000/- since June, 2022 due to which the plaintiffs GST account has been cancelled and has become offender in the eyes of the Government under the GST Act. It is submitted that the defendant no.l despite admitting his liability has not been paying the said GST Amount which has now attracted the late fee as well as the interest by the GST department which is

liable to be paid by the defendant no.1.

8. It is further submitted on behalf of the plaintiffs that the non-payment of the admitted amount that is GST of Rs.30,06,000/- plus late fee and interest; plus Rs.2,17,500/- (pending fee of line producer agreement); and Rs.19,63,500/- Pending consideration of supply agreements to the plaintiffs, has caused the misery and the financial distress to the plaintiffs by the defendants.

9. Heard the learned counsel appearing for the plaintiffs/applicants.

10. Issue notice.

11. Notice be issued to the defendants through all modes, including *dasti*.

12. Reply(ies) be filed within four weeks.

13. Rejoinder(s) thereto, if any, be filed within two weeks thereafter.

14. List before the Joint Registrar on 19th April, 2023 for completion of service and pleadings.

15. List before the Court on 18th September, 2023.

CHANDRA DHARI SINGH, J

MARCH 27, 2023
SV/AK

Click here to check corrigendum, if any