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

+ **CS(COMM) 472/2022**

CHELSEA MILLS LLP

.....Plaintiff

Through: Mr. Vipul Wadhwa, Ms. Kashika Gera and Mr. Shreyash Choudhry, Advs.

versus

THERMAX LIMITED

.....Defendant

Through: Mr. Dattatray Vyas and Mr. Shaurya Nirwal, Advs.

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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15.05.2025

1. The parties have handed over a copy of the joint draft issues on behalf of the parties.
2. With the assistance of the parties, the following issues have been framed: -
 - i. Whether the suit is not maintainable on account of the failure of the plaintiff to comply with the provision of Section 12A of the Commercial Courts Act, 2015? **(OPD)**
 - ii. Whether the termination of purchase orders by the Plaintiff, vide notice dated 23.11.2020 is legally tenable? **(OPP)**
 - iii. Whether the encashment of the performance bank guarantee by the plaintiff was justified and legally tenable? **(OPP)**
 - iv. Whether the defendant is liable to make a payment of INR 2,18,35,453/- (Rupees Two Crore Eighteen Lakhs Thirty-Five Thousand Four Hundred and Fifty-Three only), to the plaintiff, on account of the alleged breach of its obligations as prescribed by the purchase orders dated 26.11.2016? **(OPP)**
 - v. Whether the plaintiff is entitled to a declaration that the defendant has failed to perform its obligations as prescribed under the purchase orders dated 26.11.2016, issued by the plaintiff? **(OPP)**
 - vi. Whether the plaintiff was liable to ensure that the quality of the in-let water matches the specification contained in the technical proposal

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- dated 26.07.2016? **(OPD)**
- vii. Whether the non-function of the water recycling plant at its optimum capacity was on account of any reason attributable to the plaintiff? **(OPD)**
 - viii. Whether the defendant performed any services out of its scope of work and incurred an additional cost in relation to the same? **(OPD)**
 - ix. Whether the plaintiff is entitled to pendente lite and future interest, from the date of payment till realization? If so at what rate **(OPP)**
 - x. Reliefs and costs.
3. No other issues are pressed by the parties.
4. The parties are directed to file their list of witnesses within four (4) weeks.
5. The plaintiff will file the evidence affidavit(s) of its witnesses within eight (8) weeks. The defendant undertakes that he will file evidence affidavit of its witnesses within four (4) weeks after the plaintiff's last witness's evidence is closed.
6. Learned counsel for the parties jointly prays that a Local Commissioner may be appointed for recording of evidence.
7. Accordingly, Ms. Chand Chopra, Advocate (D-995/2012) (Mob. No. 9915907494) and (e-mail ID: chand@chandchopra.com) is appointed as a Local Commissioner. There shall be time bound recording of evidence. In this regard, following directions are hereby passed: -
- a. The fees of the Local Commissioner will be borne by the party whose witness is under examination and the fees of the Local Commissioner is fixed at Rs. 12,000/- per hearing.
 - b. The maximum fee of the LC, initially is fixed at Rs. 4 lakhs at this stage.
 - c. The fees of each hearing will be borne by the party whose witness is under examination.
 - d. The attendant costs of each hearing i.e., venue and stenographer will also be borne by the party whose witness is under examination.

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- e. The evidence will be recorded by the Local Commissioner within the High Court precincts.
 - f. The parties shall provide full assistance to the Local Commissioner for recording of evidence.
 - g. No hearing fee will be payable on the dates when the matter is simplicitor adjourned on joint request, subject to parties duly informing the Local Commissioner at least 24 hours in advance; or else the session fees will be payable by the party seeking adjournment.
 - h. The Local Commissioner shall record the evidence in strict compliance with the Guidelines approved on 01.07.2024. The registry is directed to send the present order along with the copy of the Guidelines via email to learned Local Commissioner for information, besides a hard copy to be supplied through plaintiff's/defendant's counsel.
 - i. The fees and costs of local commission will abide by the final outcome of the suit.
8. List before the Local Commissioner for fixing the dates for recording of evidence and preliminary hearing on **04.07.2025 at 3:30 P.M.**
9. List before the learned Joint Registrar (J) for compliance on **24.07.2025.**
10. The registry is directed to send copy of this order along with Guidelines approved on 01.07.2024 to learned Local Commissioner for information.
11. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

MAY 15, 2025/msh/MG

[Click here to check corrigendum, if any](#)

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