

**IN THE COURT OF MS. BARKHA GUPTA
DISTRICT JUDGE (COMMERCIAL), NORTH,
ROHINI COURTS : DELHI**

CS (COMMERCIAL) NO. 67/20 (OLD No. 103/20)

M/s Smiths Detection Systems Pvt. Ltd.,
(formerly known as M/s Smiths Detection
Veecon Pvt. Ltd.)

Through its Authorized Representative,
Unit No.300, Third Floor,
Vardhman Crown Mall, Sector-19,
Dwarka, New Delhi.

..... Plaintiff

Versus

Supreme Transport Organisations Pvt. Ltd.
5B, 34, Akshay Mittal Industrial Estate,
M.V. Road, 400059,
Andheri East, Mumbai (Registered Office)

Also at: D-338, Aara Machine Wali Gali,
Bawana Road, Shahbad Dairy,
Rohini, Delhi-110042.

Also at: Unit No.255, Second Floor,
Aggarwal Plaza, Plot no.4,
Sector-14, Rohini,
New Delhi-110085

..... Defendant

Date of Institution	:	09.01.2020
Date of Final Arguments	:	23.11.2021
Date of Decision	:	01.12.2021

JUDGMENT

1. The plaintiff namely M/s Smiths Detection Systems Pvt. Ltd., through its authorized representative Mr. Viney Drall (hereinafter referred to as the 'Plaintiff') has filed a Suit for recovery

of Rs.71,64,960/- alongwith pendente lite and future interest, against the defendant namely 'Supreme Transport Organizations Pvt. Ltd.' (hereinafter referred to as the 'Defendant').

2(a) Brief facts of the case as revealed from the plaint are that the plaintiff is a company incorporated under the Companies Act, 1956, having its Registered Office at Unit No.300, Third Floor, Vardhman Crown Mall, Sector-19, Dwarka, New Delhi-110075. Further, the plaintiff was previously known as 'M/s Smiths Detection Veecon Systems Private Limited' which name was amended to 'M/s Smiths Detection Private Limited' with effect from 30.07.2019.

The plaintiff has annexed the copy of Certificate of change of its name alongwith the Certificate of Incorporation (along with MCA receipt) as Annexure-P1 (colly.)

(b) The plaintiff submitted that it is a subsidiary of 'Smiths Detection (Asia Pacific) Pvt. Ltd. (SDAP)' and is part of the Smiths Group, which is a global authority on the application, management and manufacture of world class detection and screening technology for the aviation, ports and borders, urban security and defence end use market.

The plaintiff has annexed the copy of the Articles and Memorandum of Association (alongwith MCA receipt) as Annexure-P-2 (colly.)

(c) The plaintiff has further contended that the defendant is a company incorporated under the Companies Act, 1956, having its registered office at 5/B-34, Akshay Mittal Industrial Estate, M.V. Road, Andheri (East) Mumbai, MH-400059 and having its subordinate and branch office at D-338, Aara Machine Wali Gali, Bawana Road, Shahbad Dairy, Rohini, Delhi-110042 and Unit No.255, Second Floor, Aggarwal Plaza, Plot No.4, Sector-14, Rohini, New Delhi.

(d) The plaintiff also submitted that it filed the present suit through its authorized representative namely Mr. Viney Drall, who is duly authorized vide Board Resolution dated 06.09.2016 to sign and verify the plaint.

The plaintiff has also annexed the copy of the Board Resolution dated 06.09.2016 as Annexure-P3.

(e) The plaintiff further submitted that the defendant placed an order vide Purchase Order dated 19.02.2018 (hereinafter referred to as the 'Purchase Order') upon the plaintiff for purchasing various items as mentioned at page nos.10 and 11 of the plaint, for a total sum of Rs.72,29,860/- (hereinafter referred to as the 'Total Order Value').

The plaintiff has annexed the copy of the said Purchase Order dated 19.02.2018 bearing No.STOP/090/2018 as Annexure-P4.

(f) Thereafter, on 03.10.2018 and 19.11.2018, the plaintiff raised following Commercial Invoices for supply of products :

Assignment	Invoice Refernce	Due Date	Amount
STOPL/090/2018	99855938	03.10.2018	Rs.68,94,150/-
STOPL/090/2018	99856221	19.11.2018	Rs.56,640/-
Total			Rs.69,50,790/-

The plaintiff has annexed the copies of the invoices alongwith their typed copies as Annexure-P-5 (colly.).

(g) The plaintiff further stated that in the said invoices, it is also mentioned that :

- i) that there shall be interest @ 2% per month in case the invoice is not paid within due date.
- ii) that the payments shall be made to the following bank account :

HSBC India
IFSC Code : HSBC0110002
Swift Code : HSBCINBB
A/c : 051-399491-001

The plaintiff has annexed the copy of the Branch detail showing that the branch office is at New Delhi as downloaded from the Internet as Annexure-P-6.

- iii) that all disputes are subject to Delhi Jurisdiction.

(h) The plaintiff further submitted that the payments mentioned in the Purchase Order were also amended to net 30 days from the date of raising the Invoice.

(i) Thereafter, as per consensus-ad-idem, the material as per the invoices was delivered by the plaintiff, which was received by the defendant on 09.10.2018.

The plaintiff has annexed the copy of the email (alongwith its typed copy) confirming the receipt of the material as Annexure-P-7.

(j) The plaintiff further submitted that the defendant received the entire material and though, on various occasions, the defendant admitted its liability to pay the invoiced amounts, both verabally and in writing to the plaintiff, but the defendant did not make any payment.

(k) The plaintiff has given the details of the communication exchanged between it and the defendant as under :

(i) On 20.11.2017, the plaintiff sent an Email to the defendant alongwith the copies of invoices and sought the payment status from the defendant. It has also filed copy of the said Email as Annexure P-8, to which the defendant did not give any reply.

(ii) Thereafter, on 03.12.2018 and 07.12.2018, the plaintiff again sent Emails to the defendant for making payments. The

plaintiff has annexed their copies as Annexure P-9 (colly.)

Further, on 11.12.2018, the plaintiff again sought status of the payment by providing details of the invoices raised on the defendant. The plaintiff has annexed its copy as Annexure P-10, but the defendant did not give any reply.

(iii) The plaintiff has further submitted that on 18.12.2018, it also sent a follow up Email to its earlier Email dated 11.12.2018 to the defendant for release of the payment on priority and on the same day, the defendant sent its reply by stating that *“we had already asked Kotak Bank to pay. We are into some legal dispute with Kotak and hence the delays. Varun shall forward the email sent to Kotak for your reference purpose. We anticipate the payment to be made asap”*.

The plaintiff has annexed its copy as Annexure P-11.

(iv) Thereafter, the plaintiff, vide its email dated 20.12.2018 again asked the defendant to share payment details as it had to confirm the same to the Singapore team and the plaintiff also requested the defendant that the payment can be made from any other bank account. The defendant, in its reply dated 21.12.2018 to the said Email, wrote that *“Kotak has blocked all other accounts in HDFC and other banks. However, courts have asked Kotak to pay to our vendors. Please bear with us for sometime.”*

(v) The plaintiff also contended that on 15.01.2019, there

was a telecall between the plaintiff and the defendant, whereby the defendant promised the release of payment within 10 days i.e. by 25.01.2019. Further, the contents of the said telecall were recorded in the Emails dated 16.01.2019 and 28.01.2019 by the plaintiff as addressed to the defendant.

The plaintiff has annexed the copies of the Emails as Annexure P-13.

(vi) The plaintiff submits that since it was left with no other option, so, on 05.02.2019, it intimated the decision of its management to the defendant and asked the defendant for return of the materials supplied as the defendant was not able to keep up to its commitment and did not pay the outstanding amount.

The plaintiff has annexed the copy of the said email dated 05.02.2019 as Annexure-P-14.

(vii) Further, on 06.02.2019, Emails were exchanged within the plaintiff company with its copy to the defendant to arrange pick-up of the material from the defendant.

The plaintiff has annexed the copies of the said emails as Annexure-P15.

(viii) Thereafter, on 06.03.2019, the plaintiff once again wrote to the defendant to make payment and further, the plaintiff alternatively also gave an option to the defendant to return the material and sent email following up for payment on 07.03.2019.

The plaintiff has annexed the copy of the said Email as Annexure-P16.

(ix) Further, on 16.03.2019, the plaintiff sent another Email to the defendant following up for its payment, wherein the plaintiff also mentioned that it was made to understand that the defendant had sold the machine to a customer and sought the details so that the installation process could be initiated but no reply was received from the defendant.

The plaintiff has annexed the copy of the Email dated 16.03.2019 as Annexure-P17.

(x) On 18.03.2019, after various follow ups including by text message sent by the plaintiff on 07.03.2019, the defendant sent a text message to the plaintiff, vide which it promised to pay the amount due to the plaintiff.

The plaintiff has annexed the copy of the text messages dated 07.03.2019 and 18.09.2019 as Annexure-P18.

(xi) Thereafter, the plaintiff also sent reminders for making the payments to the defendant vide Emails dated 25.03.2019 and 29.03.2019. The plaintiff has annexed the copies (alongwith its typed copies) as Annexure-P19.

(xii) The plaintiff further submitted that on 18.09.2019, since the defendant did not give any reply to any of the follow up Emails

and also did not inform the plaintiff where the installation was to be done, hence, the plaintiff went ahead and raised its bills towards transportation of material to the site bearing invoice no.99858413 for a sum of Rs.2,14,170/-, which as a general practice was raised with the installation charges. It is also submitted that since no installation took place, hence, the installation charges were not raised on the defendant.

The plaintiff has annexed the copy of the said invoice as Annexure-P20.

(xiii) Further, on 25.09.2019, the plaintiff also sent a letter to the defendant asking it to release the outstanding amount of Rs.69,50,790/- as on date and also the amount raised vide invoice bearing No.9958413 for Rs.2,14,170/- towards cost of transportation of the said material to site on 18.09.2019.

The plaintiff has annexed the copy of letter dated 25.09.2019 as Annexure-P21.

3. The plaintiff has prayed that decree in sum of Rs.71,64,960/- alongwith pendente lite and future interest @ 18% per annum alongwith the costs of the suit, may be passed in its favour and against the defendant.

4. From perusal of record, it is revealed that the defendant did not appear despite service and also did not file written statement and accordingly, vide order dated 08.03.2021, the defence of the

defendant was struck off.

5. The plaintiff, in support of its case examined its Director namely, Sh. Sandeep Bhatia, as PW1, who adduced his evidence vide his affidavit Ex.PW1/A.

6. I have heard final arguments as advanced by Advocate Ms. Payal Chawla, learned counsel for the plaintiff and have also gone through the material as placed on record. As per record, none appeared for the defendant to advance final arguments.

7. The plaintiff examined its Director namely Sh. Sandeep Bhatia as PW1, who adduced his evidence by way of his affidavit Ex.PW1/A bearing his signatures at point A & B respectively. He has reiterated in it whatever the plaintiff has mentioned in the plaint, which is not repeated here for the sake of brevity. He also relied upon the following documents :

1. Copy of Name Change Certificate alongwith Certificate of Incorporation as Ex.PW1/1 and Ex.PW1/2 respectively.
2. Copy of the Articles and Memorandum of Association as Ex.PW1/3 and Ex.PW1/4.
3. Copy of Purchase Order dated 19.02.2018 bearing No.STOPL/090/2018 as Ex.PW1/5.
4. Copies of Invoices dated 03.10.2018 and 19.11.2018 as Ex.PW1/6 and Ex.PW1/7 respectively.
5. Internet Copy of Branch detail showing that the branch office is

at New Delhi as mark-A.

6. Copy of Email dated 09.10.2018 confirming the receipt of the material as Ex.PW1/9.
7. Copies of Email dated 20.11.2018 as Ex.PW1/10
8. Copy of Email dated 03.12.2018 and 07.12.2018 as Ex.PW1/11 and Ex.PW1/12 respectively.
9. Copy of Email dated 11.12.2018 as Ex.PW1/13.
10. Copy of Email dated 18.12.2018 as Ex.PW1/14.
11. Copy of Email dated 20.12.2018, 21.12.2018 and 03.01.2019 as Ex.PW1/15 (colly.)
12. Copy of Email dated 16.01.2019 and 28.01.2019 as Ex.PW1/16.
13. Copy of Email dated 05.02.2019 as Ex.PW1/17.
14. Copy of Email dated 06.02.2019 as Ex.PW1/18.
15. Copy of Email dated 06.03.2019 and 07.03.2019 as Ex.PW1/19 (colly.)
16. Copy of Email dated 16.03.2019 is Ex.PW1/20.
17. Copy of text messages dated 07.03.2019 and 18.03.2019 as Ex.PW1/21 (colly.).
18. Copies of Emails dated 25.03.2019 and 29.03.2019 as Ex.PW1/22 and Ex.PW1/23 respectively.
19. Copy of invoice no.99858413 dated 18.09.2019 as Ex.PW1/24.
20. Copy of letter dated 25.09.2019 as Ex.PW1/25.
21. The invoices and proof payment made by the plaintiff to its advocate as Ex.PW1/26.
22. Copy of Board Resolutions duly certified by the Company Secretary Ms. Kanika Sabherwal as Ex.PW1/27.

23. Copy of Board Resolutions duly certified by the Company Secretary Ms. Kanika Sabherwal as Ex.PW1/28.
24. Copy of relieving letter of Mr. Viney Drall duly certified by the Company Secretary Ms. Kanika Sabherwal as Ex.PW1/29.
25. Original copy of POD of letter dated 25.9.2011 as Ex.PW1/30.
26. Original copy of cancelled cheque showing the Branch Office in Delhi as Ex.PW1/31.
27. Declaration on oath with respect to the electronic records being filed on behalf of Mr. Viney Drall under Order XI CPC and Section 65B as Ex.PW1/32.
28. Declaration on oath with respect to the electronic records being filed on behalf of Mr. Rinesh Philip under Order XI CPC and Section 65B as Ex.PW1/33.
29. Declaration on oath with respect to the electronic records being filed on behalf of Mr. Sandeep Bhatia under Order XI CPC and Section 65B as Ex.PW1/34.

8. From perusal of record, it is revealed that despite opportunity granted, the defendant did not cross-examine Sh. Sandeep Bhatia i.e. PW1 on any aspect at all. It is well settled law that if a witness is not cross-examined on any point/aspect, then, it amounts to truthfulness of the same. Accordingly, in the given facts and circumstances, the only reasonable conclusion that can be drawn is that the defendant did not want to cross-examine PW1 on any aspect at all. Hence, the entire testimony of PW1 has remained un rebutted and uncontroverted as the defendant has not challenged

the version of PW1 on any ground at all.

9. Further, the defendant has also not disputed any of the documents as placed on record by the plaintiff and as proved by PW1 on any point. Accordingly, in the given facts and circumstances, in view of unrebutted testimony of PW1 and the documents proved by him, there is no reason to doubt either the unrebutted and uncontroverted version of PW1 or the documents proved by him. Further, nothing is shown on record, if PW1 has deposed falsely or that the documents proved by him are fake or fabricated.

10. Accordingly, in view of totality of facts and circumstances of the case, on the basis of the material as placed and proved on record and in view of the aforesaid discussion, in considered opinion of the court, the plaintiff is able to prove its case and hence, the suit of the plaintiff is decreed in its favour and against the defendant for a sum of Rs.71,64,960/- alongwith interest @ 6 % per annum from the date of filing of the suit till realisation of the amount alongwith costs of the suit. The decree sheet be prepared accordingly.

File be consigned to Record Room after due compliance, as per rules after compliance of necessary legal formalities.

**Announced today in the
open court i.e. on 01.12.2021**

**(BARKHA GUPTA)
District Judge (Commercial Court)
North:ROHINI:DELHI/01.12.2021**

CS (comm.) 67/20

**M/s Smiths Detection Systems Pvt. Ltd Vs.
Supreme Transport Organizations Pvt. Ltd.**

01.12.2021

Case taken up today physically in terms of directions vide Office Order No.798/RG/DHC/2021 dated 29.10.2021 issued by the Hon'ble High Court of Delhi, New Delhi and Order No. 32811-32875/PD&SJ Sectt./COVID/North/RC/2021 dated 29.10.2021 passed by learned Principal District & Sessions Judge, North, Rohini Courts, Delhi.

Present: Ms. Snigdha Das, Learned counsel for the plaintiff.

None for the defendant. From the record, it is revealed that vide order dated 08.03.2021, the defence of the defendant was struck off.

Vide separate judgement dictated and announced in the open court today, the suit of the plaintiff is decreed in its favour and against the defendant. The decree sheet be prepared accordingly.

File be consigned to record room after compliance of necessary legal formalities, as per rules.

(BARKHA GUPTA)

District Judge (Commercial Court)
North:ROHINI:DELHI/01.12.2021