2026:DHC:9425-DB

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

***Date of decision: 12.10.2026***

\# **CNR No. DLHC010494082026**

\+ RFA(COMM) 691/2026 & CM APPL. 71225/2026

ISOURSE TECHNOLOGIES PVT LTD .....Appellant

Through: Ms. Manisha Tyagi, Mr. Sachin Dhamija, Advs.

versus

JSR NETSOL PVT LTD .....Respondent

Through: None.

**CORAM:**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**
**HON'BLE MS. JUSTICE RENU BHATNAGAR**

**JUDGMENT (ORAL)**

**CM APPL. 71226/2026 - *Exemption***

1. Allowed subject to all just exceptions.

2. Accordingly, the applications stand disposed of.

**RFA(COMM) 691/2026**

3. The present appeal has been filed under Section 96 of the Code of Civil Procedure, 1908 ("CPC"), read with Section 13(1) of the Commercial Courts Act, 2015, and Order XLI of the CPC, challenging the judgment and decree dated 30.07.2026 ("Impugned Order") passed by the learned District Judge, Commercial Court-03, Dwarka Courts, New Delhi ("Trial Court") in CS (COMM.) No. 380/2025.

4. By the Impugned Order, the learned Trial Court rejected the application for leave to defend filed by the appellant herein and consequently passed a decree for the amount claimed in the plaint.

5. Shorn of unnecessary details, the facts of the case reveal that the respondent-plaintiff instituted a summary suit under Order XXXVII of the CPC against the appellant-defendant. The relevant facts and proceedings are as follows:

i. The respondent engaged in the business of providing IT solutions, including procurement and supply of software licenses, hardware, and related services across the country.

ii. It is the case of the respondent that a contract was entered into between the respondent and the appellant herein for renewal of existing VMware software licence.

iii. That the Purchase Order No. PO/2024-25/4449 dated 13.08.2024 was issued for "*VMware vSphere Standard 8.64 Core*" setting out the product and quantity.

iv. It is the case of the respondent that the purchase order does not refer to any specific licence type such perpetual or SaaS software.

v. It is the case of the respondent that the correspondence took place between the respondent and the appellant, whereby, the software licence was delivered, activated and provisioned with effect from 02.08.2024 for the period of one year i.e., from 02.08.2024 to 01.08.2025. Invoice, in this regard, was raised by the respondent on 23.09.2024 for a

sum of Rs. 3,02,080/- .

vi. It is the case of the respondent that they had procured a licence from its distributor, Tech Data Advance Private Limited, who in turn had raised its own invoice dated 20.09.2024 against PO ID 2408134 for which, the payment was required to be made by the respondent.

vii. It is the case of the respondent that at no point of time during the delivery, the acceptance, or at the time the invoice was raised, that the appellant had raised any issue or had given any communication regarding any grievance over the nature or the form of the licence supplied.

viii. It is the case of the respondent that several reminders were made for the due payments. A legal notice was also issued which was not replied to.

ix. Subsequently, a pre-institution mediation, mandatory under Section 12A of the Commercial Courts Act, 2015, was initiated by the respondent. The appellant did not participate in the said mediation, resulting in a "non-starter" report and a suit under Order XXXVII of the CPC was filed by the Respondent.

x. After receiving summons, the appellant filed the application for leave to defend. The case of the appellant in the application for leave to defend is that the Plaintiff had supplied a different product and not the product which was sought by the appellant. According to the appellant, the invoice raised by the respondent bears HSN/SAC codes as

998713, which establishes this fact**.** It was further stated by the appellant that details of the mentioned HSN/SAC code giving a technical description downloaded from the portal shows a different number.

xi. The difference in the HSN/SAC number in as much as the purchase Order dated 13.08.2024 issued by the appellant to the respondent bears the number 85238020, however, the invoice raised by the respondent contains 998713 as the number and in view of the difference between the purchase order raised by the appellant and invoice raised by the respondent, it was argued that the product supplied is different.

xii. It was also contended that the purchase order contains an arbitration clause and, therefore, the suit cannot proceed. However, the learned Trial court in this regard, held that the appellant had not moved an application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter "the Arbitration Act"), before filing the application for leave to defend and, therefore, the mandate of Section 8 of the Act has not been carried out.

xiii. The learned Trial Court, in its impugned order, placed reliance on the judgments of the Supreme Court in ***Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.,*** (2011) 5 SCC 532, ***Rashtriya Ispat Nigam Ltd. v. Verma Transport Co.,*** (2006) 7 SCC 275 and other judgments of this Court, to hold that for attracting Section 8 of the Arbitration Act, an

application under Section 8 is required to be filed, not later than the date of submitting the first statement and that the date of first statement is wider than a written statement. Since the appellant had not filed an application under Section 8 of the Arbitration Act before filing the leave to defend, objecting to the maintainability of the suit on the ground that the there is an arbitration clause and the suit is not maintainable. The Trial Court was of the opinion that the objection raised in the leave to defend is not sufficient and therefore the contention that the suit was not maintainable in the leave to defend was rejected.

xiv. The learned Trial Court further held that the respondent delivered the software on 02.08.2024 which was accepted by the appellant without any objection and, despite making various demands, there has been no payment. The learned Trial Court, therefore, was of the opinion that the appellant herein had ample opportunities to examine the software at the time of delivery which has not been rejected and, consequently, the application seeking leave to defend was dismissed, decreeing the suit for a sum of Rs. 3,02,080/- along with interest @ 12% per annum from the date of invoice.

6. The learned counsel for the appellant has tried to draw our attention to certain email correspondence to point out a discrepancy. She states that in view of fact that the product was different, a triable issue arises. She further states since there is an arbitration clause, the

learned Trial Court should have relegated the parties to arbitration. Moreover, it is also argued that the rate of interest @ 12 % is exorbitant and is thus, unsustainable.

7. Heard the learned counsel for the appellant.

8. The parameters of the law relating to leave to defend in a suit under Order XXXVII of the CPC has been crystallised by the Supreme Court in ***IDBI Trusteeship Services Limited v. Hubtown Limited (2017)*** 1 SCC 568. The relevant paragraph of the said judgment is reproduced as under:

> *"17. Accordingly, the principles stated in para 8 of Mechelec case will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram cases, as follows:*
>
> *17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.*
>
> *17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.*
>
> *17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are*

*not shut out by unduly severe orders as to deposit or security.*

*17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.*

***17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.***

*17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court."*

(emphasis supplied)

9. In ***B.L. Kashyap an Sons Limited v. JMS Steels and Power Corporation*** (2022) 3 SCC 294, the Supreme Court placed reliance in ***IDBI Trusteeship Services Limited*** (Supra) and observed as under:

*"33. It is at once clear that even though in IDBI Trusteeship, this Court has d observed that the principles stated in para 8 of Mechelec Engineers case[3] shall stand superseded in the wake of amendment of Rule 3 of Order 37 but, on the core theme, the principles remain the same that grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to defend is an exception. Putting it in other words, generally, the prayer for leave to defend is to be denied in such cases where the defendant has*

*practically no defence and is unable to give out even a semblance of triable issues before the court.*

> *33.1. As noticed, if the defendant satisfies the Court that he has substantial defence i.e. a defence which is likely to succeed, he is entitled to unconditional leave to defend. In the second eventuality, where the defendant raises triable issues indicating a fair or bona fide or reasonable defence, albeit not a positively good defence, he would be ordinarily entitled to unconditional leave to defend. In the third eventuality, where the defendant raises triable issues, but it remains doubtful if the defendant is raising the same in good faith or about genuineness of the issues, the trial court is expected to balance the requirements of expeditious disposal of commercial causes on one hand and of not shutting out triable issues by unduly severe orders on the other. Therefore, the trial court may impose conditions both as to time or mode of trial as well as payment into the court or furnishing security. In the fourth eventuality, where the proposed defence appears to be plausible but improbable, heightened conditions may be imposed as to the time or mode of trial as also of payment into the court or furnishing security or both, which may extend to the entire principal sum together with just and requisite interest.*
>
> *33.2. Thus, it could be seen that in the case of substantial defence, the defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the defendant or genuineness of the triable issues as also the probability of defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or*

*payment or furnishing security. Thus, even in such cases of doubts or reservations, denial of leave to defend is not the rule; but appropriate conditions may be imposed while granting the leave. It is only in the case where the defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the court's view that the defence is frivolous or vexatious that the leave to defend is to be refused and the plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the plaintiff is admitted by the defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the defendant in the court.*

*33.3. Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the defendant indicating his having a fair d or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and the court finds the defence to be frivolous or vexatious."*

10. Applying the aforesaid *judicial dicta* in the facts of the present case, undoubtedly, grant of leave to defend is ordinary rule and denial

of leave to defend is an exception. However, the defendant has to satisfy the Court that he has a defence which is likely to succeed. Some triable issue has to be raised. Undoubtedly, Courts do not ask for proof of the facts stated in the application for leave to defend while deciding the same. The facts have to be taken on the face value.

11. In the facts of the present case, it is not denied that a contract was entered to supply for a software. The said software was duly supplied on 02.08.2024. Admittedly, the software was not returned. We have perused the relevant material on record. The communication between the parties, as alleged by the learned counsel for the appellant, does not, in any way, indicates that the appellant has raised any objections that the software that was sought for, was different from the software which was delivered to them.

12. The records further disclose that the payments were being constantly raised by the respondent for the software which was supplied. In fact, the correspondence indicates that the appellant had written a mail dated 25.10.2024, asking for cancelling the invoice on the basis of the fact that they had better commercials in hand. This conduct shows that they were not inclined to pay the said amount of money. The communication was replied to by the respondent by stating that after activating the software, it was not open for the appellant to go back.

13. In view of the fact that there is nothing on record to show that the software demanded in the purchase order and the software supplied by the invoice were entirely different and since there is no communication to this effect from the appellant to the respondent, it

cannot be said that any issue, much less any triable issue, would arise for consideration.

14. The conditions of Order XXXVII CPC stands satisfied. The learned Trial Court was therefore, justified in coming to the conclusion that no triable issue arises.

15. This Court has gone through the material on record to satisfy itself as to whether there is any material or any correspondence to show that the appellant has, at any point of time, made any statement that the software which was supplied is not the same. Rather the material shows that they had better commercials in hand and that after receiving the software, sought to wriggle out of their contractual obligations.

16. In view of the foregoing discussion on law and facts, this Court is not inclined to interfere with the order passed by the learned Trial Court.

17. Accordingly, the present appeal, along with pending applications, stands dismissed.

**SUBRAMONIUM PRASAD, J**

**RENU BHATNAGAR, J**

**OCTOBER 12, 2026***/bs/sm*